



ESWATINI GOVERNMENT GAZETTE

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THE MARRIAGES BILL, 2022

(Bill No. 8 of 2022)

(to be presented by the Minister for Justice and Constitutional Affairs)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to reform and consolidate the laws relating to marriage and to bring them in conformity with the Constitution and modern principles, and give effect to international obligations on human rights, in particular, provide for –

- (a) the types of recognised marriages;
- (b) essential requirements of a valid marriage, whether civil or customary;
- (c) solemnization of marriages;
- (d) marital rights and duties of spouses in a marriage;
- (e) status and capacity of spouses in a marriage;
- (f) dissolution of marriages;
- (g) the repeal of the Marriage Act No. 47 of 1964 and the Validation of Marriages Act No. 26 of 1902; and
- (h) incidental matters.

SIFISO MAFELENKHOSINI M. KHUMALO
ATTORNEY GENERAL

PART A

A BILL ENTITLED

AN ACT to reform and consolidate the law relating to marriages and to provide for the types of recognised marriages, essential requirements of a marriage, marital rights and duties of spouses, dissolution of marriages and for other incidental matters.

ENACTED by the King and Parliament of Eswatini.

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PART I PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Marriages Act, 2022.

(2) This Act shall come into force on such day as the Minister may by notice in the Gazette appoint.

Interpretation

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

“adultery” means-

(a) in case of civil marriage, it is when a married person engages in an act of sexual intercourse with another person other than the spouse; and

(b) in case of customary marriage, it is when a married man engages in an act of sexual intercourse with a married woman other than the spouse or where a married woman engages in an act of sexual intercourse with another man other than the spouse.

“child” means a person under the age of eighteen (18) years;

“court” means a Eswatini National Court or Magistrate Court or High Court of Eswatini or any special court as may be established for family matters;

“civil marriage” means a marriage solemnized before a Marriage Officer or a Magistrate or a Regional Secretary under this Act;

“cohabitation” means the fact of an unmarried man and an unmarried woman living together as if they were husband and wife for a period of three years or more;

“consortium” means the fact of a husband and wife living together and includes, the right to sex, companionship, care, services and all rights and obligations commensurate with the

marriage status;

“customary marriage” means a potentially polygamous marriage contracted and celebrated according to Eswatini law and custom;

“irretrievable breakdown of marriage” means a situation where one or both of the spouses proves to the court that they can no longer live together in consortium as husband and wife and the marriage relationship has reached a state of disintegration to the extent that there is no reasonable prospect of restoration to a normal marriage relationship;

“judicial separation” means the separation of a husband and wife by court decree;

“licence” means a marriage licence or a special marriage licence issued under this Act;

“legal guardian” means -

- (a) the father or mother of the minor; or,
- (b) where the minor has no father or mother, such person as a judge or the master of the High Court may appoint as guardian of the minor;
- (c) where the father or mother has been deprived of the custody of the minor by order of a court, the person to whom the custody of the minor

has been granted by such court;

“*emalobolo*” means cattle or their equivalent in money which a prospective husband or husband or the parent or legal guardian of the family of that husband undertakes to give to the parent or legal guardian of family of the prospective bride in consideration of a marriage in accordance with Eswatini law and custom;

“marriage” means a marriage between a male and a female or a marriage recognised as such under this Act;

“matrimonial home” means the principal residence or residences of the spouses in which both of them have a proprietary interest;

“matrimonial property” as outlined in section 48 means the property occupied as such and held in common in undivided shares by the spouses;

“Minister” means the Minister responsible for home affairs;

“monogamous marriage” means a marriage between a man and a woman neither of whom, during the subsistence of the marriage, shall be at liberty to enter into or contract any other valid marriage;

“non-monetary contribution” means the contribution made by a spouse for the maintenance welfare, advancement and endurance of the family other than by way of money and includes -

- (a) domestic work and management of the home;
- (b) child-care;
- (c) companionship during the subsistence of the marriage; and
- (d) any other matter that may be deemed by the court to be relevant;

“polygamous marriage” means a marriage in which the man is married to more than one wife;

“Registrar” has the meaning ascribed to the Registrar in the Birth, Marriages and Death Registration Act, 1983 or its successor;

“register” has the meaning ascribed to it in the Birth, Marriages and Deaths Registration Act, 1983 or its successor;

“same treatment” means the capability of the husband to give similar treatment to all the wives of that husband with respect to allocation of time and resources; and

“spouse” means a husband or a wife in a marriage.

PART II GENERAL PROVISIONS

Validity of marriage

3. A marriage shall not be valid unless that marriage-
 - (a) in the case of a civil marriage, is solemnised by a marriage officer,
 - (b) in the case of customary marriage, satisfies the requirements specified under section 24 of this Act.

Appointment of marriage officers

4. (1) The Minister responsible for home affairs shall, by Notice in the Gazette, appoint a fit and proper person to be a marriage officer for a fixed period of time, which shall be subject to renewal.

(2) Notwithstanding subsection (1), the Regional Secretary or the Registrar subject to a fitness test prescribed by the Minister or duly appointed Magistrate shall be a marriage officer in respect of civil marriages.

(3) The Minister may specially appoint a minister of religion for the purpose of solemnizing a marriage, subject to the provisions of this Act, according to a specified religion, for a specified date and at a specified area.

(4) A Chief (*Sikhulu*) or in the absence of a Chief (*Sikhulu*), *iNdvuna* or any person duly authorised by Chiefdom (*Umpakatsi*), shall be a marriage officer in respect of any Customary marriage celebrated in the locality of that chief.

(5) A marriage officer shall submit to the Registrar such returns as may be prescribed.

Recognised marriages.

5. (1) Subject to subsection (2) and section 6, a marriage shall be either -

(a) civil marriage; or

(b) customary marriage.

(2) A marriage contracted in a foreign country in accordance with the laws of that foreign country where one or both of the parties is subject to the laws of that country, shall, subject to 6, be recognized in Eswatini as a valid marriage.

(3) The provisions of subsection (2) shall not apply in respect of any marriage that is, and to the extent that it is inconsistent with the principles of humanity or morality as recognized in Eswatini or Eswatini law and custom.

(4) For the avoidance of doubt, all marriages recognised under this section have the same legal status.

(5) Without prejudice to any procedures prescribed for marriages under this Act, any other institutions or practices which traditionally facilitate a marriage shall continue to be recognised.

Powers of Minister to recognise other types of marriages.

6. (1) A person, body or denomination may apply to the Minister in writing to have a form of marriage referred to in section 5(2) be declared a recognised marriage in Eswatini.

(2) An application under subsection (1) shall be in the prescribed form and shall set out all the particulars of the form of marriage, its essential elements and the required procedure.

(3) The Minister may allow the application but the Minister shall notify the party concerned by notice published in the Gazette and at least in one newspaper circulating in Eswatini.

Cohabitation.

7. (1) Cohabitation shall not, by itself, constitute a marriage or give rise to a presumption of marriage under this Act.

(2) Notwithstanding subsection (1), the following provisions shall have effect in relation to the rights of the parties to the relationship of cohabitation -

- (a) one or both of the parties may, during the subsistence of the cohabitation register the particulars of any monetary and non-monetary contribution each party may have made during the cohabitation with the office of the Registrar;
- (b) where the parties cease to cohabit, a court on application by either or both of the parties, shall distribute the property in accordance with the registered amounts of contribution made by either party;
- (c) failure to register shall not affect the rights of the parties but the burden to prove the facts of cohabitation or any contributions made shall be on the party alleging the existence of those facts;
- (d) where the court is satisfied that the parties cohabited, and that there was some contribution, the court may distribute the property equitably between the parties.

(3) The particulars of the monetary and non-monetary contributions referred to in subsection (2) shall be in a prescribed form.

(4) For the avoidance of doubt, the rights conferred by this section on persons cohabiting are available only to persons who have the capacity to get married to each other under any marriage recognized under this Act.

PART III
ESSENTIAL REQUIREMENTS OF MARRIAGE

Minimum age of marriage.

8. A person shall not have the capacity to marry unless that person has attained eighteen (18) years of age and is of sound mind.

Consent to marriage.

9. (1) A marriage shall be entered into with free, full and informed consent of the parties to an intended marriage.

(2) In this section, “informed consent” includes information on the legal and proprietary consequences of a marriage provided for under the law governing matrimonial property.

Widow or widower marriage restrictions.

10. (1) A widow or widower with minor children from a previous marriage may not marry unless the law regulating the administration of the estate of the deceased is complied with.

(2) A relative of the deceased may marry a widow or widower where both that man or woman and the widow or widower, with their free consent, adopt any form of marriage provided for under this Act.

(3) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two thousand Emalangeni (E2, 000) or imprisonment not exceeding one (1) year or both.

Prohibited degrees of relationship.

11. A person shall not be a party to a marriage where the other party is related to that person within any of the degrees of relationship set out in the First Schedule to this Act.

Status of parties.

12. (1) A party intending to contract a marriage under this Act, except a party already married under a Customary marriage or converting a marriage under section 37, shall first prove by way of a declaration before a marriage officer that that party is not a party to any other subsisting marriage.

(2) Except with the written approval of the Minister, the party intending to contract a marriage under this Act shall be a citizen of Eswatini or a person lawfully resident in Eswatini or in possession of a Residence Permit or a Temporary Residence Permit issued in terms of the immigration laws.

Status of marriage.

13. (1) A marriage under this Act may either be –

(a) a monogamous or polygamous Customary marriage; or

(b) a civil rites marriage contracted with or without community of property.

(2) Parties who marry in community of property may -

- (a) elect to bring to their joint estate some or all of their assets without encumbrances acquired by them before the marriage; or
- (b) elect that only assets acquired by them after the marriage should form part of their joint estate.

(3) Parties who intends to marry out of community of property shall execute an antenuptial contract before a notary public prior to the solemnization of the marriage.

(4) Parties who marry out of community of property are entitled to share in the assets of each other in the event of death of one of them.

Mixed marriages forbidden

14. (1) A party married under a polygymous type of marriage shall not convert their marriage to a monogamous marriage.

(2) A party married under a potentially polygymous marriage may, subject to section 37, convert the marriage to a monogamous marriage.

Void marriages.

15. (1) Subject to the provisions of this Act, a marriage shall be null and void if contracted in contravention of any of the provisions under this Part.

(2) A person who goes through a marriage ceremony knowing that the marriage is void under this section commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand Emalangi (E5, 000) or to imprisonment for a term not exceeding two (2) years.

Voidable marriages.

16. (1) Where one of the parties to a marriage -

- (a) is pregnant by or is expecting a child with another person at the time of the ceremony and the fact is unknown to the other party;
- (b) refuses to consummate the marriage for a period of three months from the date of the marriage;
- (c) is unable to consummate the marriage within nine months; or
- (d) is permanently impotent,

the injured party may, at the option of that injured party, apply to a court to nullify the marriage.

(2) A marriage contracted in terms of this Act shall be voidable by virtue of non-registration within the period prescribed under the law applicable to registration of marriages.

PART IV
PRELIMINARIES TO A CIVIL MARRIAGE

Notice of intention to marry.

17. (1) Where a civil marriage is intended to be contracted, one of the parties to the intended marriage shall sign and give to the Registrar in a prescribed form in which the marriage is intended to take place, a notice in that prescribed form.

(2) The party giving notice shall give the notice in an official language, but it shall be sufficient if the party places the mark of the party on the notice in the presence of a literate person who shall attest the notice in terms of the prescribed form.

Action by Registrar.

18. (1) Upon receipt of a notice given under section 17, the Registrar shall –

- (a) cause the notice to be entered in the register; and
- (b) search the registers to ascertain whether there is a subsisting marriage involving either party to the intended marriage.

(2) The Registrar shall cause a copy of the notice to be published by affixing it on a public notice board at the office of the Registrar for twenty-one (21) consecutive days next after the notice is entered in the register.

(3) The register shall be open to inspection by the public during office hours on payment of the prescribed fee.

(4) Where a search by the Registrar shows the existence of a civil marriage, the party giving notice shall deposit with the Registrar one or a combination of -

- (a) the final decree or judgment dissolving or annulling the marriage;
- (b) the death certificate in respect of the deceased spouse;
- (c) in the case of a marriage in community, a statement regarding the winding up of the estate of marriage; or

(d) such other documentary proof as the Registrar may require.

Issuance of marriage licence.

19. (1) Subject to section 18 and subsection (2), at the expiration of the period of twenty-one (21) days referred to in subsection (2) of section 18, the Registrar shall, at the request of the person by whom the notice was given, and upon payment of the prescribed fee, issue a marriage licence in the prescribed form.

(2) The Registrar shall not issue a marriage licence under this section unless -

(a) each of the parties to the intended marriage has, by declaration, proved to the satisfaction of the Registrar that the party is not in contravention of the essential requirements of a marriage under this Act as to age, consent, prohibited degrees, status or double marriages as specified in this Act; and

(b) any objection, where applicable, has been removed in accordance with Part VI.

(3) A declaration under this section may be made before the Registrar or a marriage officer.

(4) The Registrar or marriage officer before whom a declaration is made, shall explain to the person making the declaration the prohibited degrees of relationship specified in the Schedule and the penalties for false information.

Publication of banns.

20. (1) Except under circumstances under section 21, parties to a civil marriage shall first fill in and sign the prescribed form before the marriage officer where the banns are to be published to the effect that they are not in contravention of the essential requirements of a marriage under Part III.

(2) The banns referred to in subsection (1) shall be published by notice for a period covering three consecutive Sundays or Saturdays, in a conspicuous place, to which the public has access, at the office of the Regional Administration Office and Inkhundla Centre and Chiefdom in which each of the parties to the intended marriage resides.

(3) Where banns are published in one religious place and the marriage is to be solemnised in another religious place of the same denomination, a minister of religion shall not solemnise the marriage unless that minister has received a certificate from an official of the religious place where the banns were published that the banns were duly published in that religious place.

Special Licence.

21. (1) Where the parties to an intended marriage are not able, for exceptional reasons, to give the requisite notice under section 17 and comply with section 20, the parties may apply in writing to a Magistrate for a special licence.

(2) The Court shall ascertain whether there is any lawful impediment to the intended marriage, and for that purpose examine the parties on oath or affirmation.

(3) Where upon the examination of the parties the Magistrate is not satisfied that there is no lawful impediment to the marriage the Court shall refuse to grant the special licence and may order the parties to give the requisite notice under section 17.

(4) Where the Court is satisfied that the parties have made a satisfactory case for a special licence the Court shall grant the special licence.

Commencement of marriage after issuance of marriage licence or publication of banns.

22. (1) Subject to subsection (2), a marriage under this Part may be contracted or solemnized at any time within three months after the issue of the marriage licence or publication of banns or the issue of a special licence under section 21.

(2) A marriage under this Act may take place after the period of three months mentioned in subsection (1) where the Registrar is satisfied that there are reasonable grounds for the delay upon payment by the parties of the prescribed fee.

**PART V
PRELIMINARIES TO CUSTOMARY MARRIAGE**

Notice of intention to marry.

23. (1) A person intending to enter into a customary marriage shall, in addition to other the customs, rites and practices, give notice of the intention, in writing, to marry to the Registrar and the Chief of the locality of the groom and bride intending to marry.

(2) Subject to section 18, the notice shall be displayed for a period of twenty-one (21) days in a conspicuous place at the Regional Administration Office and *Inkhundla* Centre and on the premises of the *Umphakatsi* or offices of the Chief at which the parties to the intended marriage reside.

(3) Where the party giving the notice under this section is intending to contract a subsequent marriage under this Part, the notice shall be accompanied by a copy of the decision of the

Registrar under subsection (2) of section 25 showing that that party has complied with section 25.

(4) The Chief or marriage officer shall within fourteen days after the marriage transmit the notice to be entered in the register with information that the marriage has taken place.

Requirements of Customary marriage.

24. (1) Parties to a Customary marriage shall satisfy the preliminary requirements specified in Part III and in addition-

- (a) the marriage shall be negotiated through *kucela* in accordance with the Eswatini law and custom;
- (b) *emalobolo* shall be agreed upon by the families of both parties in the presence of a representative of the Chiefdom;
- (c) the bride shall be smeared with *libovu* (red ochre) in the presence of at least two witnesses, of which one shall be from the bride's family.

(2) Notwithstanding subsection (1), the fact that *emalobolo* has not been presented either in part or in full shall not invalidate a customary marriage that is otherwise duly celebrated.

(3) The fact that a marriage has not been celebrated shall not invalidate the marriage.

Conditions requisite to contracting a subsequent marriage.

25. (1) Where a person, other than a Chief, referred to in this section as "the applicant", who is a party to a subsisting customary marriage intends to marry a subsequent wife, that person shall make an application to a Chief showing that person -

- (a) has made provision for a matrimonial home for the subsequent wife, except in exceptional circumstances where the parties including the current wife or wives, have agreed to live together in the same home;
- (b) is capable of giving the same treatment to all the wives;
- (c) has made an inventory of property owned separate from the spouse in the subsisting Customary marriage.

(2) Where the Chief is satisfied that the applicant has complied with all the conditions set out in subsection (1), the Chief shall grant the application for the subsequent marriage to take place under this Act.

(3) Where the Chief refuses the application, the Chief shall furnish the applicant with written reasons for refusal.

(4) A Chief shall grant or refuse an application within fourteen (14) days from date of receipt of an application under this section.

(5) An applicant whose application has been refused may appeal to the Eswatini National Court who may confirm, reverse or vary the decision of the Chief.

Indication of matrimonial property in polygamous marriages

26. A spouse in a polygamous marriage shall maintain and timeously update an inventory indicating the property that that spouse owns separately in consultation with the other party and register that inventory with the Chief or Registrar.

Issuing of a marriage licence.

27. (1) At the expiration of the twenty-one (21) days referred to in subsection (2) of section 23, the Registrar, shall, subject to section 26, issue a Customary marriage licence in the prescribed form.

(2) A Customary marriage licence under subsection (1) shall be issued by the Registrar on the satisfaction of the Registrar that -

- (a) the parties have complied with all the provisions of this Act; and
- (b) there is no objection lodged against the marriage, or if there has been an objection, that the objection has been removed in accordance with the procedure set out in Part VI dealing with objections.

Customary marriage licence.

28. A Customary marriage licence shall have the following particulars-

- (a) the names of the parties and their addresses;
- (b) the date and place when the marriage is intended to be celebrated;

- (c) the names of the parents of the parties;
- (d) in the case of a subsequent wife, particulars of the decision of the Chief or the Court, as the case may be, allowing the subsequent marriage to take place;
- (e) the name of the traditional official to celebrate the marriage; and
- (f) authorisation of a Chief to proceed with registering the customary marriage.

Marriage to take place within three months.

29. (1) Subject to subsection (2), a customary marriage shall take place within three months from the date of the giving of the licence to marry.

(2) A customary marriage may take place after three months where the Registrar, is satisfied that there are reasonable grounds for the delay upon issuance of a subsequent licence.

**PART VI
OBJECTIONS**

Objection to issue of marriage licence or to marriage.

30. (1) A person who knows of any just ground why a civil marriage should not take place, may, within twenty-one (21) days of publication of notice of intention to marry or banns of marriage, make an objection against the marriage to the Registrar or relevant marriage officer, either in writing, stating the ground of the objection to the intended marriage.

(2) A person who knows of any just ground why a customary marriage should not take place may, within twenty-one (21) days of notice of intention to marry make an objection against the marriage to the Chief or the Registrar, in writing or orally, stating the grounds of the objection.

(3) Where the marriage officer, as the case may be, is satisfied that there is no lawful impediment, the marriage officer may solemnize the marriage.

Objection by person outside Eswatini.

31. Where a person who knows of any just ground why a marriage should not take place resides outside Eswatini, that person may send the objection signed in accordance with the law of the country of residence of that person and duly authenticated by a Notary Public to the Registrar, whichever is the best placed to ensure receipt of the objection.

Procedure in objection proceedings.

32. (1) The Registrar shall enter the objection against the notice and write the word “objectionable” opposite the entry of the notice in the register together with the name and other particulars of the objection or the grounds of the objection.

(2) The Registrar may, if satisfied that there is no lawful impediment to the proposed marriage, dispense with the objection or refer the matter to the Court.

Court to summon parties.

33. (1) The court to which an objection is referred under section 32, shall summon the parties to the intended marriage, and the person who made the objection shall show cause why the marriage should not be solemnised.

(2) Where the court issues to the Registrar an order sustaining the objection, the marriage shall not be solemnised and the objection shall remain until such time that there is a change of circumstances.

(3) The court may, if it considers that an objection was made on malicious grounds, direct the person who made the objection to pay such compensation or costs to a party to the marriage, as it may deem fit.

(4) On receiving a court order dismissing the objection, the Registrar shall file the order and shall cancel the word “objectionable” in the respective register and permit the marriage to be solemnised.

**PART VII
SOLEMNISATION OF CIVIL MARRIAGE**

Solemnisation of a civil marriage.

34. (1) After the Registrar has issued a marriage licence, a civil marriage may be solemnised at the Regional Offices or at any other place mentioned in the licence.

(2) A civil marriage shall be performed before the marriage officer-

(a) at the Regional Office or any other place appointed by the parties;

(b) with open doors;

(c) in the presence of at least two witnesses.

(3) Where the marriage is solemnised at the Regional Offices, the marriage officer shall,

after perusing the marriage licence, require the parties to the intended marriage to make the following declaration-

“I solemnly declare that I do not know of any lawful impediment why I, AB, may not enter into marriage with CD”

Each of the parties shall then say to each other -

“I call upon these persons here present to witness that I, AB take you, CD, to be my lawful wife or husband so long as both of us shall live”.

(4) A civil marriage may be solemnised by a marriage officer in the manner set out in Second Schedule.

(5) A religious ceremony may at the same time accompany the marriage contracted under this section.

(6) A civil marriage is a marriage in community of property and Part VIII and the law regulating matrimonial property shall regulate its consequences unless such consequences are specifically excluded in an antenuptial contract which regulates the matrimonial property system of their marriage.

Registration of civil marriage.

35. (1) Immediately after a civil marriage has taken place, the marriage officer shall fill in quintuplicate the marriage certificate in the prescribed form and enter the serial number of the marriage, the names of the parties and the names of the witnesses.

(2) The marriage certificate shall be signed in quintuplicate by the marriage officer, the parties and the witnesses to the marriage and the marriage officer shall give two copies to the parties to the marriage, forward one copy to the Registrar.

CONVERSION OF MARRIAGE

Conversion of marriage.

36. (1) Parties to a civil marriage may, subject to section 37, convert that marriage to a Customary marriage under this Act.

(2) Parties to a Customary marriage may convert that marriage to a civil marriage under this Act, but only if the husband at the time of conversion has only one wife.

Conversion preliminaries and procedure

37. (1) Parties intending to proceed under section 36 shall, in a prescribed form, give notice of the intention to convert their marriage to the Registrar and display the notice for a period of twenty-one (21) days in a conspicuous place at the Regional Administration Office, *Inkhundla* Centre and on the premises of the *Umphakatsi* or offices of the Chief at which the parties reside.

(2) The parties shall after the notice period in subsection (1) apply to a court for leave to change their matrimonial property system to that which applies to intended marriage, and the court may, if satisfied that -

(a) there are sound reasons for the proposed change;

(b) sufficient notice of the proposed change has been given to all the creditors of

the spouses; and

(c) no other person will be prejudiced by the proposed change,

order that such matrimonial property system shall no longer apply to their marriage and the court may authorize them to enter into a notarial contract by which their future matrimonial property system is regulated on such conditions as the court may consider appropriate.

(3) The conversion of marriage shall take place in the office of the Registrar or in any other place, where each of the parties may, instead of saying to each other the words prescribed in subsections (3) and (4) of section 34 say -

“I call upon all persons here present to witness that whereas I...AB... have been married to you... CD ...; under (specify type of marriage), I now solemnly knowingly and wilfully renounce the (specify type of marriage) and agree to continue and to take you as my wife or husband in a civil marriage as long as both of us shall live.”

Marriage certificate on conversion of marriage.

38. (1) Immediately after the conversion of marriage has taken place the marriage officer as the case may be, shall fill in, in quintuplicate a marriage certificate in the prescribed form and enter the number, the date on which the marriage took place, the names of the parties and the names of the witnesses.

(2) The marriage officer who is officiating shall retain one copy of the marriage certificate, give two copies to the parties to the marriage and one copy to the Registrar.

Registration of Customary marriage.

39. (1) Within seven (7) days after the completion of the ceremony of kutekwa of a Customary marriage, the marriage officer of the place where the marriage was celebrated or solemnised shall complete a prescribed form and present it for registration of the marriage or the issuance of a certificate to the Registrar.

(2) The Registrar shall, where satisfied that the spouses concluded a valid Customary marriage, register the marriage by recording the identity of the spouses, the date of the marriage any other particulars prescribed.

Registration fees.

40. At the time of registration of a marriage, the parties to the marriage shall pay a prescribed fee for the marriage certificate.

**PART VIII
MATRIMONIAL RIGHTS AND OBLIGATIONS**

Equal rights to consortium.

41. Spouses are entitled to equal rights to consortium in a marriage.

Duty to maintain family.

42. Both spouses shall have the duty to maintain their family except that

(a) the monetary contribution of each spouse shall be proportionate to each of their income; and

(b) non-monetary contribution shall also be taken into account when determining the contribution of a spouse to the maintenance of the family.

Equality between wives.

43. (1) Subject to subsection 2 and for the avoidance of doubt, notwithstanding any law or custom to the contrary, where a man has two or more wives, each wife shall enjoy the same and equal legal rights and have the same and equal status in law in the marriage.

(2) The provisions of subsection (1) shall not apply to affect the Eswatini law and custom of the ranking of wives to determine matters pertaining to succession with regards to a position in the family or other matters determined through the customary practise of ranking of wives.

**PART IX
BREAKDOWN OF MARRIAGE**

Dissolution of marriage.

44. A marriage under this Act shall be dissolved by-

- (a) in the case of civil marriage, a decree of divorce on the ground of irretrievable breakdown of the marriage;
- (b) in the case of a customary marriage, -
 - (i) agreement between the parties to the marriage;
 - (ii) family resolution; and
 - (iii) Umphakatsi endorsement; or
 - (iv) declaratory order for dissolution of a customary marriage by the Eswatini National Court;
- (c) the death of either spouse.

(2) The High Court in granting an order for cancellation of customary marriage certificate shall have regard to subsection (1) (b) (i) (ii) and (iii).

Irretrievable breakdown of marriage to be sole ground for divorce.

45. (1) An action for divorce may be brought by either party to a marriage under this Act.

(2) The action for divorce shall be on the sole ground that the marriage has irretrievably broken down.

Evidence of breakdown of marriage.

46. (1) In deciding whether or not a marriage has broken down, the court shall have regard to all relevant facts regarding the conduct and circumstances of the parties and, in particular, shall refuse to grant a decree of divorce where an action is founded exclusively on the wrong doing of the plaintiff.

(2) Without prejudice to subsection (1), a court shall, without limiting the right of the court to accept other facts, accept any one or more of the following facts as evidence of the irretrievable breakdown of marriage -

- (a) the adultery of the respondent and the fact that because of it, the plaintiff finds it intolerable to live with the respondent;
- (b) sexual perversion on the part of the respondent;
- (c) abuse, whether mental or physical on the part of the respondent affecting the health of the plaintiff;
- (d) the desertion by the defendant of the plaintiff for a continuous period of at least six months immediately preceding the presentation of the action without any justifiable cause;
- (e) a change of religion by the respondent where both parties followed the same faith at the time of the marriage and, where the plaintiff cannot tolerate the change of religion.

Jurisdiction of court in matrimonial causes.

47. Subject to any other law, matrimonial causes and disputes arising out of a marriage under this Act shall first be heard in a Magistrate's Court or in the case of customary marriage Eswatini National Court or an appropriate forum recognised under Eswatini law and custom or any other law.

High Court to have original jurisdiction in foreign marriages.

48. The High Court shall have original jurisdiction in all matrimonial causes arising from marriages contracted under foreign laws.

Matrimonial causes proceedings to be in open court.

49. Proceedings in a matrimonial cause shall be in open court, except that where the court considers that the parties to any proceeding may be unduly prejudiced, the court may hold the proceeding in camera.

Separation.

50. Separation of parties may either be-

- (a) by agreement, where the parties consent to suspend the marriage and the consent is witnessed by at least one representative of either party; or
- (b) by judicial separation, where one or both of the parties institute action a court for a suspension of the marriage on evidence that the parties can no longer live together.

Contents of an action for divorce or separation.

51. Pleadings for separation or divorce shall contain -
- (a) the form of marriage;
 - (b) the names of the parties;
 - (c) the ages of the parties;
 - (d) the names, ages and sex of the children, where any, of the marriage;
 - (e) particulars of the facts giving the court jurisdiction;
 - (f) particulars of any previous efforts to resolve the dispute and any matrimonial proceedings between the parties;
 - (g) a statement of the evidence to be relied on to establish the irretrievable breakdown of the marriage;
 - (h) the terms of any related agreement made between the parties;
 - (i) the orders being prayed for; and
 - (j) a verification sworn by the plaintiff before a commissioner for Oaths that what is stated in the plaintiff is correct.

Refusal for grant of decree for divorce.

52. Where a court is not satisfied with the evidence given to it that the marriage has irretrievably broken down, the court shall refuse to grant a decree of divorce but may make any other orders for ancillary relief, including judicial separation, as it may deem necessary under the circumstances.

Judicial separation not a bar to divorce.

53. A spouse shall not be prevented from presenting an action for divorce, or a court from granting a decree of divorce, by reason only that the plaintiff has, on similar facts or substantially the same facts as those proved in support of the action, been granted a decree of judicial separation.

effect of decree of separation.

54. A decree of judicial separation shall relieve the parties of the duty to co-habit and to render each other consortium, except that the duty to maintain shall continue unless otherwise provided under the decree of separation.

Power of court to set aside or vary decree of judicial separation.

55. (1) A court shall set aside a decree of judicial separation on the application of either or both spouses if the spouses have consented to the setting aside of the decree.

(2) A court may rescind a decree of judicial separation on the application of either spouse where the court is satisfied that the decree was obtained as a result of misrepresentation or mistake of fact.

(3) A court may vary the terms of the decree of judicial separation on the application of both the spouses or either of them where there has been any material change in the circumstances of either or both of them.

Grant of decree terminating marriage.

56. Where a court is satisfied, on the basis of the evidence before the court, that a marriage has irretrievably broken down, it shall grant a decree terminating the marriage.

Counter-proceedings

57. Where there is counter-proceedings, the court may grant a decree on the counter-actions or may dismiss the counter-action or give any ancillary order or relief as may be provided under the rules of the Court.

Non- division of matrimonial property on separation.

58. (1) Upon separation of the spouses, matrimonial property shall not be divided between the parties but a court may rule that the spouses share any income that may accrue from the property.

(2) Any property that is separately acquired by either spouse during the period of separation shall remain the property of the spouse who acquired it.

Court power to divide matrimonial property.

59. Where a decree has been granted terminating the marriage, the court may proceed to divide any matrimonial property between the parties to the dissolved marriage subject to the law regulating matrimonial property.

Alimony.

60. Where a divorce has been granted, a court may order one party to continue maintaining the other party.

Orders relating to children on divorce or separation.

61. In making orders relating to maintenance and custody of children on separation or divorce, the law governing the protection of children and their welfare and in particular the best interests of the child principle, shall guide the court.

Maintenance to cease on re-marriage.

62. The right of a party to receive maintenance from the former spouse of the party shall cease immediately on the re-marriage of that party.

Powers of court to vary order of maintenance.

63. The Court may, from time to time, vary or rescind any subsisting order for maintenance on the application of the party in whose favour or against whom the order was made, on being satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances of the parties.

**PART X
MISCELLANEOUS**

Refusal to register marriage.

64. (1) Where the Registrar refuses to register a marriage, the Registrar shall furnish the parties in writing with the reasons for the refusal.

(2) A person who is aggrieved by the refusal of the Registrar to register the marriage may, within twenty-one (21) days after being furnished with the reasons for refusal, apply to court for appropriate redress.

(3) The court shall inquire into the reasons for refusal and may confirm or reverse the decision of the Registrar.

(4) Where the Court reverses the decision of the Registrar, the Court shall direct the Registrar to register the marriage.

Making false statement an offence.

65. Any person who, for the purposes of doing anything required to be done under this Act, makes any statement, oral or written which is false in a material particular -

(a) knowing that it is false ;or

(b) without having taken reasonable care to find out whether the statement is true or false,

commits an offence and is liable, on conviction, to a fine not exceeding two thousand Emalangeni or imprisonment not exceeding one year or both.

Correction of errors.

66. The Registrar, may correct any clerical error in a register, index, return or certificate under this Act.

Forms.

67. The Registrar shall supply any form of notice of marriage to any person who may apply for it on payment of the prescribed fee.

Offences.

68. (1) A person who-

(a) being unmarried, goes through a ceremony of marriage under this Act, with a person, except a person under customary law, whom that person knows to be married to another person ; or

(b) being married, goes through a ceremony of marriage under this Act with a person other than the spouse of that person; or

(c) being a marriage officer or Registrar but subject to the provisions of this Act-

(i) performs a marriage ceremony under this Act, after three months from the issue of the relevant marriage licence , except where the period of three months has been extended under this Act;

(ii) issues a certificate which is prohibited by any law;

(iii) refuses to register a marriage without any justifiable cause;

- (iv) has the custody of a register or certified copy of a register and without any reasonable excuse causes it to be damaged or lost;
- (d) not being authorised to solemnise marriages under this Act, solemnises a marriage;
- (e) gives out in engagement a child to be married or forces a child to be the subject of a dowry transaction;
- (f) by force or deceit is in anyway involved in the marrying or marriage of a child or any person;
- (g) personates another person in marriage or marries under a false name with intent to deceive the other spouse;
- (h) goes through a marriage ceremony knowing that the marriage is void designed to defeat the ends of justice;
- (i) being a spouse in a Customary marriage enters into a monogamous marriage during the subsistence of the Customary marriage.

(2) A person who commits an offence under paragraph (a), (b) or (d) to (i) of this section is, on conviction, liable to a fine not exceeding ten (10) thousand Emalangeni or imprisonment not exceeding five (5) years or both.

(3) A person who commits an offence under paragraph (c) of this section is, on conviction, liable to a fine not exceeding two (2) thousand Emalangeni or imprisonment not exceeding one (1) year or both.

Regulations.

69. (1) The Minister may make regulations for the better carrying into effect of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may provide for the-

- (a) prescription of the forms to be used under this Act;
- (b) prescription of the matters for which fees shall be paid and the rates of the fees;
- (c) prescription of registers and records to be maintained under this Act and for their inspection;

(d) any other matter conducive or incidental to the implementation of this Act.

Repeal, savings and transitional provisions.

70. (1) The Marriage Act No. 47 of 1964 is repealed.

(2) Notwithstanding subsection (1), any marriage in existence before the coming into operation of this Act shall continue in existence, and within six months of the commencement of this Act be subject to the provisions of this Act.

(3) Parties to a dual marriage shall at the commencement of this Act renounce one type of marriage of their choice in terms of section 37 of this Act.

Schedules

FIRST SCHEDULE

(under section 14)

PROHIBITED DEGREES OF RELATIONSHIP

Mother	Father
mother's daughter	father's son
daughter	son
father's mother	father's father
mother's mother	mother's father
son's daughter	son's son
daughter's daughter	daughter's son
sister	brother
wife's mother	husband's father
wife's daughter	husband's son
father's sister	father's brother
mother's sister	mother's brother
brother's daughter	brother's son
sister's daughter	sister's son
father's brother's daughter	father brother's son
mother's sister's daughter	mother sister's son
son's wife	daughter's husband
father's wife	mother's husband

The relationships prescribed in this Schedule apply whether they occur biologically or by adoption.

SECOND SCHEDULE

(under section 34)

Formula for solemnisation of a civil marriage.

1. The marriage officer shall put this question separately to the bride and the bridegroom: “Do you (name of bride or bridegroom) solemnly declare that you know of no legal impediment to your marriage to (name of bridegroom or bride) here present?”.

2. Upon receiving an affirmative answer to the question put to the bride and bridegroom under paragraph 1, the a marriage officer shall request the bridegroom and bride separately to repeat after him these words: “I (name of bride or bridegroom)call upon all persons here present to witness that I take (name of bride or bridegroom) to be my lawfully wedded (husband or wife)”;

3. where the parties are to use a wedding ring the marriage officer shall instruct the bridegroom to place the ring upon the wedding finger of the bride and shall thereafter instruct parties to join their right hands. The marriage officer shall then repeat the following formula-

“I declare that A.B. and C.D. here present are in the eyes of God and the civil law joined together in matrimony.”

THE MATRIMONIAL PROPERTY BILL, 2022

(Bill No. 9 of 2022)

(To be presented by the Minister responsible for Justice and Constitutional Affairs)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are to give effect to section 34 of the Constitution by regulating the property rights of spouses, in particular, to provide for-

- (a) equal access to the property of spouses jointly owned or acquired during the subsistence of a marriage;
- (b) the equitable distribution of matrimonial property between the spouses;
- (c) the abolition of marital power;
- (d) agreements regulating property rights of cohabitees;
- (e) accrual system in out of community of property;
- (f) protection of matrimonial home; and
- (g) incidental matters.

S.M. M. KHUMALO
ATTORNEY- GENERAL

ARRANGEMENT OF SECTIONS

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PRELIMINARY PROVISIONS

1. Short title and commencement
2. Interpretation
3. Abolition of marital power
4. Meaning of matrimonial property
5. Disposal of certain matrimonial property
6. Consent on lease or mortgage of matrimonial home
7. Protection from eviction from matrimonial home

PART II
IN COMMUNITY OF PROPERTY

8. Equal powers of spouses married in community of property

9. Powers of spouses
10. Want of consent, and suspension of powers of spouse
11. Litigation by or against spouses

**PART III
OUT OF COMMUNITY OF PROPERTY AND SUBJECT
TO ACCRUAL SYSTEM**

12. Marriages subject to accrual system
13. Antenuptial contract
14. Accrual system
15. Accrual of estate
16. Inheritances, legacies and donations excluded from accrual
17. Proof of commencement value of estate
18. Obligation to furnish particulars of value of estate
19. Power of court to order division of accrual
20. Forfeiture of right to accrual sharing
21. Deferment of satisfaction of accrual claim

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PROPERTY RIGHTS UNDER CUSTOMARY MARRIAGE**

22. Consideration of customary law principles
23. Property rights under customary marriage
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35. Distribution of matrimonial property upon dissolution of marriage for want of consent of parents or guardian
36. Offences
37. Regulations

**A BILL
Entitled**

AN ACT to regulate the property rights of spouses including property rights in common law marriages and provide for incidental matters.

ENACTED by the King and the Parliament of Eswatini.

**PART I
PRELIMINARY PROVISIONS**

Short title and commencement

1. (1) This Act shall be called the Matrimonial Property Act, 2022.

(2) This Act 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 indicates otherwise-

“cohabitation” has the meaning ascribed to it in the law regulating marriages;

“contribution” means monetary and non-monetary contribution;

“court” means the High Court;

“family business” means any business which-

- (a) is run for the benefit of the family by both Spouses or either spouse; and

- (b) generates income or other resources wholly or part of which are for the benefit of the family;

“household goods” means personal property

- (a) that is owned by one or both spouses, and
- (b) that was ordinarily used or enjoyed by one or both spouses or one or more of the children residing in the matrimonial home, for transportation, household, educational, recreational, social or esthetic purposes;

“joint estate” means the joint estate of a husband and a wife married in community of property;

“matrimonial home” means any property that is owned or leased by one or both spouses and occupied or utilised by the spouses as their principal residence, and includes any other attached property;

“matrimonial property” has the meaning assigned to it under section 4;

“non -monetary contribution” means the contribution made by a spouse for the maintenance welfare, advancement and endurance of the family other than by way of money and including-

- (a) domestic work and management of the matrimonial home;
- (b) child care;
- (c) companionship during the subsistence of the marriage;
- (d) management of family business or property; and
- (e) farm work; and
- (f) any other matter that may be deemed by the court to be such a contribution;

“separate property” means property which does not form part of a joint estate or property under section 24;

“spouse” means a husband or a wife including a former party and a party to a marriage notwithstanding that the marriage is void or voidable.

“universal partnership” means an arrangement between parties who act like partners that both contributes to the partnership for their joint benefits or enrichment with the aim of making a profit.

Abolition of marital power

3. (1) The common law rule in terms of which a husband obtains the marital power over the person and property of his wife is abolished.

(2) Subject to the provisions of this Act, the effect of the abolition of the marital power is to do away with the restrictions which the marital power places on the capacity of a wife to contract and to litigate.

(3) Any marital power which a husband has over the person and property of his wife immediately prior to the date of coming into operation of this Act, is abolished.

(4) The provisions of this Act shall apply to every marriage in community of property irrespective of the date on which such marriage was entered into.

(5) The abolition of the marital power under subsection (3) shall not affect the legal consequences of any act done or omission or fact existing before such abolition.

Meaning of matrimonial property

4. (1) For the purposes of this Act, matrimonial property means-

- (a) the matrimonial home or homes;
- (b) household goods and effects in the matrimonial home or homes; or
- (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

(2) Notwithstanding subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.

(3) Where immovable property has been ascertained as matrimonial property, if it is not already registered, it shall be registered in the names of the husband and wife; but where that property was registered in the name of one spouse, then notwithstanding any law to the contrary, it shall be deemed to be matrimonial property.

Disposal of certain matrimonial property

5. A transaction shall not be entered into in respect of any matrimonial property from which the family derives sustenance except with the written and informed consent of the other spouse.

Consent on lease or mortgage of matrimonial home

6. The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses.

Protection from eviction from matrimonial home

7. (1) A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court.

- (2) A spouse shall not be evicted from the matrimonial home by any person except-
 - (a) on the sale of any estate or interest in the matrimonial home in execution of a decree;
 - (b) by a trustee in bankruptcy; or
 - (c) by a mortgagee or charge in exercise of a power of sale or other remedy given under any other law.

PART II
IN COMMUNITY OF PROPERTY

Equal powers of spouses married in community

8. Subject to the provisions of this Act, a wife in a marriage in community of property has the same powers with regard to the disposal of the assets of the joint estate, the contracting of debts which lie against the joint estate, and the management of the joint estate as those which a husband in such a marriage had immediately before the commencement of this Act.

Powers of spouses

9. (1) Subject to the provisions of subsections (2) and (3), a spouse in a marriage in community of property may **not** perform any juristic act with regard to the joint estate without the consent of the other spouse.

(2) A spouse in a marriage in community of property shall not without the written consent of the other spouse-

- (a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;
- (b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;
- (c) alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, deposits or any similar assets, or any investment forming part of the joint estate;
- (d) alienate pledge or hypothecate any livestock, motor vehicle, any jewellery, coins, stamps, paintings or any other assets forming part of the joint estate;
- (e) alienate pledge or hypothecate or otherwise burden any furniture or other effects of the common household forming part of the joint estate;
- (f) bind that party as surety or enter into any loan or hypothecation agreement;
- (g) receive any money due or accruing to the other spouse or the joint estate by way of -
 - (i) remuneration, earnings, bonus, allowance, royalty, pension or gratuity, by virtue of his or her profession, trade, business, or services rendered by the other;
 - (ii) compensation for loss of income contemplated in subparagraph (i);
 - (iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse;
 - (iv) income derived from the separate property of the other spouse;
 - (v) dividends or interest on or the proceeds of shares or investments in the name of the other spouse;
 - (vi) the proceeds of any insurance policy or annuity in favour of the other spouse;

- (h) deal with or dispose of moneys received under paragraph (g);
- (i) donate to another person any asset of the joint estate.

(3) The consent required for the purposes of subsection (2) (b) to (g), may, except where it is required for the registration of a deed in a deeds registry, also be given by way of ratification within a reasonable time after the act concerned.

(4) The consent required for the performance of the acts contemplated in subsection (2) (a), shall be given separately in respect of each act and shall be attested by two competent witnesses.

(5) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2), or an order under section 10(2), and-

- (a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or while the power concerned of the spouse has not been suspended, as the case may be;
- (b) that spouse knows or ought reasonably to know that that spouse will probably not obtain the consent required in terms of the said subsection (2), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate.

Want of consent, and suspension of powers of spouse

10. (1) Where a spouse withholds the consent required in terms of section 9 (2) or section 11, or when that consent, can for any other reason not be obtained, a court may on the application of the other spouse give him or her leave to enter into the transaction without the required consent if it is satisfied, in the case where the consent is withheld, that such withholding is unreasonable or, in any other case, that there is good reason to dispense with the consent.

(2) Where a court is satisfied that it is essential for the protection of the interest of a spouse in the joint estate, it may on the application of that spouse suspend for a definite or an indefinite period any power which the other spouse may exercise under this Act.

Litigation by or against spouses

11. (1) A spouse married in community of property shall not without the written consent of the other spouse institute legal or proceedings against another person or defend legal proceedings instituted by another person, except legal proceedings-

- (a) in respect of his or her separate property;
- (b) for the recovery of damages, other than damages for patrimonial loss, by reason of the commission of a delict against him or her;
- (c) in respect of a matter relating to his or her profession, trade or business.

(2) A party to legal proceedings instituted or defended by a spouse may not challenge the validity of the proceedings on the ground of want of the consent required in terms of subsection (1).

(3) Where costs are awarded against a spouse in legal proceedings instituted or defended by him or her without the consent required in terms of subsection (1), the court may, with due regard to the interest of the other spouse in the joint estate and the reason for the want of consent, order that those costs be recovered from the separate property, if any, of the first-mentioned spouse and, in so far as those costs cannot be so recovered, that they be recovered from the joint estate, in which case the court may order that upon the division of the joint estate an adjustment shall be effected in favour of the other spouse.

(4) An application for the surrender of a joint estate shall be made by both spouses and, an application for the sequestration of a joint estate shall be made against both spouses, however that, no application for the sequestration of the estate of a debtor shall be dismissed on the ground that such debtor's estate is a joint estate if the applicant satisfies the court that despite reasonable steps taken by him or her he or she was unable to establish whether the debtor is married in community of property or the name and address of the spouse of the debtor.

(5) Where a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefor, and where a debt has been incurred for necessities for the joint household, the spouses may be sued jointly or severally therefor.

PART III OUT OF COMMUNITY OF PROPERTY AND SUBJECT TO ACCRUAL SYSTEM

Marriages subject to accrual system

12. Every marriage out of community of property in terms of an antenuptial contract by which community of property and community of profit and loss are excluded, which is entered into after the commencement of this Act, is subject to the accrual system specified in this Act, except in so far as that system is expressly excluded by the antenuptial contract.

Antenuptial contract

13. (1) The parties to an intended marriage may enter into an antenuptial contract before marriage to determine their property rights.

(2) A party to an antenuptial contract made under subsection (1) may apply to the court to set aside the antenuptial contract and the court may set aside the antenuptial contract where it determines that the antenuptial contract was influenced by fraud, coercion or is manifestly unjust.

Accrual system

14. (1) At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he or she is deceased, acquires a claim against the other spouse or his or her estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

(2) Subject to the provisions of section 19 (1), a claim in terms of subsection (1) arises at the dissolution of the marriage and the right of a spouse to share in terms of this Act in the accrual of the estate of the other spouse is during the subsistence of the marriage not transferable or liable to attachment, and does not form part of the insolvent estate of a spouse.

Accrual of estate

15. (1) The accrual of the estate of a spouse is the amount by which the net value of his or her estate at the dissolution his or her marriage exceeds the net value of his or her estate at the commencement of that marriage.

(2) In the determination of the accrual of the estate of a spouse-

- (a) any amount which accrued to that estate by way of damages, other than damages for patrimonial loss, is left out of account;
- (b) an asset which has been excluded from the accrual system in terms of the antenuptial contract of the spouses, as well as any other asset which the spouses acquired by virtue of the spouses' possession or former possession of the first mentioned asset, is not taken into account as part of that estate at the commencement or the dissolution of the marriage;
- (c) the net value of that estate at the commencement of the marriage is calculated with due allowance for any difference which may exist in the value of money at the commencement and dissolution of his or her marriage, and for that purpose the weighted average of the consumer price index as published from time to time in the *Gazette* unless there is proof of any change in the value of money.

(3) The accrual of the estate of a deceased spouse is determined before effect is given to any testamentary disposition, donation or succession out of that estate in terms of the law of intestate succession.

Inheritances, legacies and donations excluded from accrual

16. (1) An inheritance, a legacy or a donation which accrues to a spouse during the subsistence of the marriage, as well as any other asset which the spouses acquired by virtue of the spouses' possession or former possession of such inheritance, legacy or donation, does not form part of the accrual of the spouses' estate, except in so far as the spouses may agree otherwise in their antenuptial contract or in so far as the testator or donor may stipulate otherwise.

(2) In the determination of the accrual of the estate of a spouse a donation between spouses, other than a donation *mortis causa*, is not taken into account either as part of the estate of the donor or as part of the estate of the donee.

Proof of commencement value of estate

17. (1) Where a party to an intended marriage does not for the purpose of proof of the net value of his or her estate at the commencement of his or her marriage, declare that value in the antenuptial contract concerned, he or she may for such purpose declare that value before the marriage is entered into or within six (6) months in a statement, which shall be signed by the other party, and cause the statement to be attested by a notary and filed with the copy of the antenuptial contract of the parties with the notary before whom the antenuptial contract was executed.

(2) A notary attesting such a statement shall furnish the parties with a certified copy on which the parties shall certify that the original is kept by the notary together with the copy of the antenuptial contract of the parties or, where the person is not the notary before whom the antenuptial contract was executed, the notary shall send the original statement by registered post to that notary before whom the antenuptial contract was executed, or to its custodian, as the

case may be, and the last-mentioned notary or that custodian, shall keep the original statement together with the copy of the antenuptial contract of the parties.

(3) An antenuptial contract contemplated in subsection (1) or a certified copy, or a statement signed and attested in terms of subsection (1) or a certified copy contemplated in subsection (2), serves as proof of the net value of the estate of the spouse concerned at the commencement of the marriage.

(4) The net value of the estate of a spouse at the commencement of the marriage is deemed to be nil where-

- (a) the liabilities of that spouse exceed his or her assets at such commencement;
- (b) that value was not declared in his or her antenuptial contract or in a statement in terms of subsection (1) and the contrary is not proved.

Obligation to furnish particulars of value of estate

18. When it is necessary to determine the accrual of the estate of a spouse or a deceased spouse that spouse or the executor of the estate of the deceased spouse, as the case may be, shall within a reasonable time at the request of the other spouse or the executor of the estate of the other spouse, as the case may be, furnish full particulars of the value of that estate.

Power of court to order division of accrual

19. (1) A court may on the application of a spouse whose marriage is subject to the accrual system and who satisfies the court that his or her right to share in the accrual of the estate of the other spouse at the dissolution of the marriage is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the accrual concerned in accordance with the provisions of this Act or on such other basis as the court may deem just.

(2) A court making an order under subsection (1) may order that the accrual system applicable to the marriage be replaced by a matrimonial property system in terms of which accrual sharing as well as community of property and community of profit and loss are excluded.

(3) When an order is made under subsection (2), the Registrar the court shall send a copy thereof to the Registrar of Deeds concerned, who shall cause an appropriate reference to the new matrimonial property system to be made on the registry duplicate of the antenuptial contract concerned and on every copy thereof tendered to him or her for endorsement.

Forfeiture of right to accrual sharing

20. The right to share in the accrual of the estate of a spouse in terms of this Act is a patrimonial benefit which may on divorce be declared forfeit, either wholly or in part.

Deferment of satisfaction of accrual claim

21. A court may on the application of a person against whom an accrual claim lies, order that satisfaction of the claim be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of installments, and the delivery or transfer of specified, assets, as the court may deem just.

PART IV
PROPERTY RIGHTS UNDER CUSTOMARY MARRIAGE

Consideration of customary law principles

22. (1) During the division of matrimonial property between and among spouses in a customary marriage, the customary law shall, subject to the Constitution, be taken into account including-

- (a) the customary law relating to dissolution of that marriage;
- (b) the principle of protection of rights of future generations to community and ancestral land; and
- (c) the principles relating to access and utilization of ancestral land and the cultural home by a wife or wives or former wife or wives of that marriage.

(2) Notwithstanding the provisions of subsection (1), where it is clear by agreement of the parties that a wife shall have her matrimonial property with the husband separate from that of the other wives, then any such wife shall own that matrimonial property equally with the husband without the participation of the other wife or wives.

Property rights under customary marriage

23. (1) The proprietary consequences of a customary marriage in which a person is a spouse in more than one customary marriage, and which was entered into before the commencement of this Act shall be that the spouses in such a marriage have joint and equal-

- (a) ownership and other rights; and
- (b) rights of management and control, over the matrimonial property,

(2) The rights contemplated in subsection (1) (a) shall be exercised in respect of each matrimonial home with respect to the matrimonial property, by the husband and wife of the matrimonial.

(3) Each spouse retains exclusive rights over personal property.

Separate property

24. (1) A spouse married in a customary marriage may acquire and keep separate property during the subsistence of the customary marriage.

(2) Separate property in customary marriage includes-

- (a) property allocated to the separate house of a spouse during the marriage such as *liphakelo* (being a beast given to a wife by her husband);
- (b) *insulamnyembeti* beast (being a beast given to a wife upon the marriage of her daughter);
- (c) household utensils, livestock, dowry for a daughter, land allocated for dwelling or cultivation purpose;
- (d) self-acquired property and the proceeds and profits from the self-acquired property;

- (e) property acquired before marriage or property acquired by bequest, devise, inheritance or gift from a person other than the spouse;
- (f) property that was acquired by gift or inheritance from a third party after the marriage;
- (g) income from property referred to in paragraph (e) if the giver or testator has expressly stated that it is to be excluded from the spouse's joint property;
- (h) damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages;
- (i) a lump sum payment provided under a personal injury or similar plan;
- (j) proceeds or right to proceeds of an insurance policy payable on the death of the insured person;
- (k) property that the spouses have agreed is not to be included in the joint estate;
- (l) property which the spouses by agreement regard as separate property;
- (m) trust property except where the trust is a sham in which event the court may set the trust aside in the best interest of the vulnerable spouse; and
- (n) any other property that a spouse can prove is separate property.

Grant of exclusive possession of matrimonial home

25. (1) The court, on application by a spouse in a polygamous marriage, may by order do any one or more of the following-

- (a) direct that a spouse be given exclusive possession of the matrimonial home wherever located;
- (b) direct that a spouse be evicted from the matrimonial home;
- (c) restrain a spouse from entering or attending at or near the matrimonial home.

(2) In addition to making an order under subsection (1), the court may, by order, give a spouse possession of as much of the property surrounding the matrimonial home as is necessary, in the opinion of the Court, for the use and enjoyment of the matrimonial home.

(3) An order under this section may be made subject to any conditions and for any time that the court considers necessary.

(4) An order under this section may be varied by the court on application by a spouse.

Matters to be considered

26. In exercising its powers under section 25, the court shall have regard to-

- (a) the availability of other accommodation within the means of both the spouses;
- (b) the needs of children residing in the matrimonial home;

- (c) the financial position of each of the spouses, and
- (d) any order made by a court with respect to the property or the support or maintenance of one or both of the spouses.

PART V PROPERTY IN COHABITATION RELATIONSHIP

Property agreement in cohabitation

27. (1) A man and a woman in contemplation of cohabitation or who are cohabitating may make an agreement with respect to-

- (a) the ownership of the separate property of each party;
- (b) property acquired during the cohabitation, and
- (c) the distribution of property acquired during the cohabitation.

(2) The agreement may be for the settlement of any differences that may arise in relation to property owned by either or both parties.

(3) The particulars of the monetary and non-monetary contributions referred to in subsection (2) shall be in a prescribed form.

Distribution on termination of cohabitation

28. (1) Where the parties cease to cohabit, a court on application by either or both of the parties, shall distribute the property in accordance with the agreement or amounts of contribution made by either party.

(2) Where the parties to cohabitation fail to enter into an agreement, that fact shall not affect the rights of the parties but the burden to prove the facts of cohabitation or any contributions made shall be on the party alleging the existence of those facts.

(3) Where the court is satisfied that the parties cohabited, and that there was some contribution, the court may distribute the property equitably between the parties.

PART VI MISCELLANEOUS

Universal partnership

29. (1) Universal Partnership shall not, by itself, constitute a marriage or give rise to a presumption of marriage under this Act.

(2) Notwithstanding subsection (1), the following are the essential requirements of a universal partnership.

- (a) each partner brings something into the partnership whether it be money, labour or skill;
- (b) that the business should be carried on for the joint benefit of the parties; and

- (c) that the object is to make profit.

Certain damages excluded from community and recoverable from other spouse

30. Notwithstanding the fact that a spouse is married in community of property-

- (a) any amount recovered by each spouse by way of damages, other than damages for patrimonial loss, by reason of a delict committed against a spouse, does not fall into the joint estate but becomes that spouse separate property;
- (b) a spouse may recover from the other spouse damages in respect of bodily injuries suffered by that spouse, where such injuries are attributable either wholly or in part to the fault of that spouse and these damages do not fall into the joint estate but become the separate property of the injured spouse.

Power of court to order division of joint estate

31. (1) A court may on the application of a spouse, where it is satisfied that the interest of that spouse in the joint estate is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other spouse will not be prejudiced thereby, order the immediate division of the joint estate in equal shares or on such other basis as the court may deem just.

(2) A court making an order under subsection (1) may order that the community of property be replaced by another matrimonial property system, subject to such conditions as it may deem fit.

Change of matrimonial property system

32. (1) A husband and wife, whether married before or after the commencement of this Act, may jointly apply to a court for leave to change the matrimonial property system, including the marital power, which applies to the marriage, and the court may, where satisfied that-

- (a) there are sound reasons for the proposed change;
- (b) sufficient notice of the proposed change has been given to all the creditors of the spouses; and
- (c) no other person will be prejudiced by the proposed change,

order that such matrimonial property system shall no longer apply to their marriage and authorise the spouses to enter into a notarial contract by which their future matrimonial property system is regulated on such conditions as the court may think fit.

(2) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions of subsections (3) and (4), the spouses to a marriage out of community of property entered into before the commencement of this Act in terms of an antenuptial contract by which community of property and community of profit and loss are excluded may cause the provisions of this Act to apply in respect of their marriage by the execution and registration in a registry within two years after the commencement of this Act or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect.

(3) The provisions of this Act apply in such a case from the date of the conclusion of the marriage of the spouses or from the date of the execution of the notarial contract concerned, as the spouses may declare in that contract.

(4) For the purpose of proof of the net value of the respective estates of the spouses on the date on which the provisions of this Act so apply, they may declare that value either in the notarial contract concerned or in a statement as contemplated in section 17, and in the last-mentioned case the provisions of the said section 17 apply with necessary modification in respect of that statement.

(5) For the purposes of section 15 the commencement of the marriage concerned is deemed to be the date contemplated in that section.

(6) The inclusion of an asset in a statement contemplated in section 17 does not serve as proof of any right of any person with regard to that asset or for the purpose of any release in insolvency under a law regulating that.

Donations between spouses permissible

33. No transaction effected before or after the commencement of this Act is void or voidable merely because it amounts to a donation between spouses and, there shall be a rebuttable presumption that the property belongs absolutely to the recipient.

Liability of spouses for household necessities

34. (1) Any right of recourse which a spouse may have against the other spouse in terms of the common law or any law which is in force at the commencement of this Act or which was in force before that commencement, in respect of contributions made for necessities for the joint household of the spouses, lapses, subject to the provisions of subsections (3) and (4), at that commencement.

(2) A spouse married out of community of property before or after the commencement of this Act is liable to contribute to necessities for the joint household pro rata according to each spouse's financial means, and is deemed to have been so liable for the period from the beginning of the marriage until that commencement.

(3) A spouse married out of community of property before the commencement of this Act has a right of recourse against the other spouse in so far as he or she has contributed more in respect of necessities for the joint household than that for which he or she was liable in terms of subsection (2).

(4) In the absence of any agreement to the contrary between spouses, a spouse does not have a right of recourse against the other spouse to whom had married out of community of property after the commencement of this Act with regard to any contribution which was made in respect of necessities for the joint household.

(5) Spouses married out of community of property are jointly and severally liable to third parties for all debts incurred by either of them in respect of necessities for the joint household.

(6) Subsection (1) shall not be construed as conferring on a spouse a right to reclaim anything that has already been paid at the commencement of this Act in satisfaction of a right of recourse, and subsection (3) shall not be construed as conferring on a spouse a right to exercise the right of recourse referred to in that subsection in respect of any period with regard to which the spouse has already exercised a right of recourse on any other ground.

Distribution of matrimonial property upon dissolution of marriage for want of consent of parents or guardian

35. (1) Where a court dissolves a marriage to which a minor is a party on the ground of want of consent of the parents or guardian of that minor, or a commissioner of child welfare whose consent is by law required for the entering into a marriage, it may make such order with regard to the division of the matrimonial property of the spouses as it may deem just.

(2) Where such a marriage is not dissolved, the patrimonial consequences of the marriage are the same as if the minor were of age when the marriage was entered into and any antenuptial contract in terms of which the accrual system is included and which has been executed with a view to such a marriage is deemed to have been validly executed.

Offences

36. A person who contravenes any provision of this Act commits an offence and is upon conviction, liable to a fine not exceeding two years imprisonment or a fine not exceeding ten thousand Emalangeni (E10 000.00) or both.

Regulations

37. The Ministers may make regulations for the better implementation of this Act.

THE CIVIL AVIATION ACT 2022

(Act No. 4 of 2022)

**I ASSENT**

MSWATI III
 KING OF THE KINGDOM OF
 ESWATINI

Date: 23rd February, 2022

AN ACT
 Entitled

AN ACT to give effect to the International Convention on Civil Aviation of 1944; International Civil Aviation Organisation Standards and Recommended Practices; Hague Convention; Montreal Convention; provide for the separation of the role of the Civil Aviation Authority as a regulator of the civil aviation industry and as an operator of government owned airports; continuation of the Civil Aviation Authority; repeal of the Civil Aviation Authority Act No. 10 of 2009 and incidental matters.

ENACTED by the King and the Parliament of Eswatini.

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**PART I
PRELIMINARY PROVISIONS**

Short title and Commencement

1. (1) This Act may be cited as the Civil Aviation Act, 2022.

(2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Interpretation.

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

“aerodrome” means any defined area of land or water (including any buildings, installations and equipment) in Eswatini used, intended or designed to be used, either wholly or in part, for the landing, taking off, movement or servicing of aircraft;

“aeronautical product” means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft, and includes fuel and other consumable items necessary for the operation of the aircraft;

“agreement” means an agreement entered into under the Chicago Convention including an agreement that has the effect of transferring all or part of its functions or duties to another Contracting State;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

“airport” means an aerodrome that is certificated for international commercial air transport operations at which there are facilities available for immigration, customs and port health authorities;

“air traffic” means all aircraft in flight or operating on any manoeuvring area of an aerodrome;

“air traffic control service” means a service provided for the purposes of-

- (a) preventing collisions between aircrafts, and obstructions between aircrafts on any manoeuvring area;
- (b) expediting and maintaining an orderly flow of air traffic;
- (c) any aerodrome control service;
- (d) any area control service provided for controlled flights in such airspace of defined dimensions within which an air traffic control service is provided;

- (e) any approach control service provided for arriving or departing controlled flights;
- (f) any flight information service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;
- (g) any alerting service provided to notify appropriate organisations regarding aircraft in need of search and rescue from the air, and to assist such organisations as required; and
- (h) any other air traffic service considered by the Authority to be necessary or desirable for the safe and efficient operation of the civil aviation system;

“appointed date” means a date appointed by the Minister in terms of section 1;

“Authority” means the Civil Aviation Authority in terms of this Act;

“aviation-related service” means any equipment, facility, or service (including any air traffic service) operated in support of or in conjunction with the civil aviation system;

“aviation safety instrument” means any licence, permit, certificate, authorisation, approval or other document issued under or by virtue of this Act to, or in respect of, any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation-related service, but does not include an airport licence within the meaning of this Act or a permit referred to in section 34;

“aviation security” means a combination of measures involving human and material resources intended to safeguard civil aviation property against acts of unlawful interference;

“aviation security inspector” means an individual who is appointed under Section 72 (1) (e) as an aviation security inspector;

“Chicago Convention” means-

- (a) the Convention on International Civil Aviation done at Chicago on 7th December 1944;
- (b) the Protocols amending that Convention which Eswatini ratified; and
- (c) the Annexes to that Convention relating to international standards and recommended practices, being Annexes adopted in accordance with that Convention;

“command and control link” means the data link between a remotely piloted aircraft and a remote pilot station for the purposes of managing the flight of the remotely piloted aircraft;

“conduct” means any act or omission;

“Contracting State” means any country which is a party to the Chicago Convention;

“controlled flight” means any flight that is provided with or required by or under this Act to make use of an air traffic control service;

“crew”, in relation to an aircraft, includes every person having duties or functions on board the aircraft during the flight of the aircraft in connection with the flying or safety of the aircraft;

“damage or loss” includes, in relation to a person, loss of life and personal injury;

“Director-General” means the individual appointed as the Director General by the Minister in terms of section 19;

“erection of a structure” includes an addition or alteration to an existing structure;

“Eswatini operator” means an operator of aircraft whose principal place of business or permanent residence is at Eswatini;

“Eswatini registered aircraft” means an aircraft registered in Eswatini;

“foreign aviation authority” means the competent authority responsible for regulating civil aviation in a country or territory other than Eswatini;

“foreign registered aircraft” means an aircraft registered in a country or territory other than Eswatini;

“foreign state aircraft” means aircraft used in the military, customs or police services of a country or territory other than Eswatini;

“goods” and “articles” include mails and animals;

“ICAO” means the International Civil Aviation Organization established under the Chicago Convention, and includes any successor to that Organization;

“in service of the Government” means an aircraft in the service of Government for commercial purposes and to which the provisions of the Civil Aviation Act shall apply, however where the aircraft is used for State purposes the Act shall not apply;

“land” includes land covered with water and any right in or over land;

“maintenance” in relation to any aircraft or aeronautical product means any task required to ensure, or that could affect, the continuing airworthiness of an aircraft or aeronautical product, including any one or combination of overhaul, repair, inspection, replacement of an aeronautical product, modification or defect rectification;

“manoeuvring area” means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing, but excludes any area set aside for loading, unloading or maintenance of aircraft;

“military aircraft” means an aircraft used in the military service of any country or territory, and includes aircraft of the Eswatini Umbutfo Defence Force (including any aircraft that is being constructed for Eswatini Umbutfo Defence Force);

“Minister” means the Minister responsible for Civil Aviation in Eswatini;

“National Civil Aviation Security Committee” means the National Civil Aviation Security Committee appointed in terms of this Act;

“navigation installation” means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation, and includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection with any such building, facility, work, apparatus, equipment, or place;

“operate” in relation to an aircraft means to fly, use the aircraft or to cause the aircraft to fly, be used or be in any place, whether or not a person is present with the aircraft;

“operator” for an unmanned aircraft means a person engaged in or offering to engage in the operation of an unmanned aircraft, and where the unmanned aircraft is a remotely piloted aircraft, includes -

- (a) the person who causes the remotely piloted aircraft to fly; and
- (b) the remote pilot of the aircraft with duties essential to the operation of the remotely piloted aircraft, such as manipulating the flight controls as appropriate during flight time, if the remote pilot is not the operator;

“pilot-in-command” in relation to an aircraft means-

- (a) the pilot designated by the operator of the aircraft as being in command and charged with the safe conduct of a flight using that aircraft; and
- (b) if no such person under paragraph (a) is designated, a person who is, for the time being, in charge of the piloting of the aircraft without being under the 59 direction of any other pilot in the aircraft;

“remotely piloted aircraft” means an unmanned aircraft that is operated using a remotely piloted aircraft system;

“remotely piloted aircraft system” or “RPAS” for a remotely piloted aircraft means all of the following components -

- (a) the remotely piloted aircraft;
- (b) every remote pilot station associated with the remotely piloted aircraft in paragraph (a) containing the equipment used to pilot that aircraft;
- (c) the command and control links between the remotely piloted aircraft in paragraph (a) and its remote pilot station or stations and other command; and
- (d) any other components as specified in the type design to fly that aircraft;

“repealed Act” means the Civil Aviation Authority Act No. 10 of 2009;

“safety inspector” means a safety inspector appointed in terms of this Act and includes the Director General;

“security directive” means a directive issued by the Authority in terms of this Act;

“state aircraft” means-

- (a) aircraft of any part of the Eswatini Umbutfo Defence Force (including any aircraft that is commanded by a member of that Force in the course of his duties as such a member); and
- (b) aircraft used in the military, customs or Police Services of Eswatini or of a country other than Eswatini; and

- (c) aircraft owned or used by the State that serve exclusively non-commercial government functions;

“State of Registry” means the State on whose register the aircraft is entered;

“State of the Operator” means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence;

“structure” includes any house, warehouse, office, shop, school and any other building whether permanent or temporary and whether used for the purpose of human habitation or otherwise, and also any wall, fence, platform, staging, gatepost, pillar, paling, frame, hoarding, bridge, cable, wire or any other artificial obstruction raised above ground level;

“this Act” means this Act and any regulations made under it;

“unmanned aircraft” means an aircraft that may be flown or used without any individual on board the aircraft to operate it;

“unmanned aircraft system” means an unmanned aircraft and its associated elements;

“Warsaw or Hague Convention” means the Convention for the suppression of unlawful seizure of aircraft signed at the Hague on the 16th of December, 1970 as revised or amended; and

“working day” means any day except Saturday, Sunday or a public holiday.

(2) Any reference in this Act to any country or territory shall, unless the context otherwise requires, be construed as including a reference to the territorial waters, if any, adjacent to that country or territory.

Application of Act.

3. (1) This Act shall apply to and in relation to every -

- (a) civil aircraft registered whether within or outside of Eswatini;
- (b) foreign registered civil aircraft whilst in or over any part of Eswatini;
- (c) aircraft operator, flight crew member, maintenance organisation, aerodrome, aerodrome operator, aeronautical product, air service, air navigation service, aviation security provider or other aviation related service provider in Eswatini; or
- (d) holder of an aviation safety instrument whilst outside Eswatini and exercising privileges accorded by such instrument.

(2) This Act shall apply to and in relation to an aircraft belonging to or exclusively employed in the service of the Government.

(3) This Act shall not-

- (a) apply to any state aircraft or its navigation; or
- (b) limit the privileges or immunities of any foreign state aircraft, its officers and crew members.

(4) Notwithstanding subsection (3), a state aircraft shall, in the interest of safety, be subject to the provisions of Part VII of this Act and any aviation regulation relating to that Part.

Extra-territorial application of this Act.

4. (1) This Act extends to –

- (a) a foreign registered aircraft that is operated pursuant to an agreement that has the effect of transferring all or part of its functions or duties to Eswatini;
- (b) an aircraft registered in Eswatini if it is outside Eswatini, subject to any agreement relating to that aircraft that has the effect of transferring all or part of its functions or duties to another Contracting State;
- (c) a holder of an aviation safety instrument while outside Eswatini and exercising or purporting to exercise privileges accorded by that instrument;
- (d) a person in, or any of the crew members of, any Eswatini registered aircraft or Eswatini operator, wherever they may be, in so far as this Act prohibits, requires or regulates the doing of anything by that person in, or by any of the crew members of an Eswatini registered aircraft or an Eswatini operator; and
- (e) any other person wherever they may be, in so far as the provisions of this Act prohibit, require or regulate the doing of anything in relation to any Eswatini registered aircraft or Eswatini operator or by other persons.

(2) This Act shall apply to an aircraft that is registered in a Contracting State as if the aircraft was an aircraft registered in Eswatini if -

- (a) an agreement to which Eswatini is a party and which is in force has the effect of transferring a function or duty of the Contracting State as the State of Registry in respect of the aircraft to Eswatini;
- (b) the agreement states that the applied provision relates to that function;
- (c) the Authority has, as soon as practicable after entry into the agreement by Eswatini provided a copy to the International Civil Aviation Organization and published in the Gazette, a notice setting out all the following particulars of the agreement or its amendment-
 - (i) the Contracting State that is the other party to the agreement;
 - (ii) the date of commencement of the agreement or its amendment;
 - (iii) the aircraft to which the agreement or its amendment relates;
 - (iv) the functions of the State of Registry in respect of the aircraft that are transferred under the agreement or its amendment; and
 - (v) the provisions of this Act that are stated in the agreement or its amendment to be related to the functions.

(3) A reference in this Act, other than subsection (2), to or in relation to a Contracting State in which an aircraft is registered includes a reference to or in relation to another Contracting State to the registration of the State of Registry in respect of that aircraft has been transferred under an agreement that has effect of transferring a function or duty from a state to Eswatini in accordance with article 83*bis* of the Chicago Convention.

PART II ADMINISTRATION

Continuation of the Authority.

5. (1) There shall, upon coming into force of this Act, continue to be a body corporate known as the Civil Aviation Authority with perpetual succession, capable of suing and being sued in its corporate name; performing such other acts as a body corporate may by law perform and exercise; and perform the powers and functions as are conferred by or under this Act or other law.

(2) The rights, obligations, assets and liabilities which have accrued to the Civil Aviation Authority in terms of the repealed Act shall, upon coming into force of this Act, pass and vest in the Authority and be dealt with in terms of this Act.

Common seal.

6. (1) The Authority shall have a common seal, which seal may from time to time be broken, altered or made anew by the Authority, when deemed necessary.

(2) The deeds and all documents requiring the seal of the Authority shall be sealed with the common seal of the Authority and all instruments to which the common seal is affixed be signed by any two members generally or specially authorized by the Authority for that purpose, or by one member and the Director General.

(3) The courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and presume it duly affixed.

Functions of Authority as regulator.

7. (1) The function of the Authority is to regulate civil aviation in the kingdom of Eswatini.

(2) The Authority shall, in relation to the regulation of civil aviation-

- (a) licence, certify, promote competition, fair and efficient market conduct in the operation of airports and the provision of airport services, air services and facilities or, in the absence of a competitive market, to prevent the misuse or abuse of monopoly or market power;
- (b) act internationally as the national authority or body representing Eswatini in respect of matters relating to civil aviation;
- (c) discharge or facilitate the discharge of international obligations of the Government as a Contracting State or otherwise in respect of civil aviation;
- (d) collaborate and enter into agreements and arrangements with international, regional, and other organizations in respect of any matter relating to civil aviation and any other matter as the Authority may deem expedient;

- (e) advise the Government on all matters relating to civil aviation;
- (f) establish state safety program;
- (g) formulate policy on the use of the navigable airspace, air navigation services within Eswatini and provide assistance or information on aeronautical services; and
- (h) implement the global aviation safety plan at regional and national level.

Functions of the Operator.

8. (1) A Government entity shall be responsible for operating the airport until such time that the Authority approves a suitable operator in accordance with Section 7(2) (a).

(2) The function of the operator is to operate Government owned airports and be the air navigation services provider, subject to this Act.

(3) The operator shall, in relation to Government owned airports-

- (a) manage the operation of airports and the provision of airport services and facilities in Eswatini;
- (b) oversee, encourage, promote, facilitate, and assist in the use, development and improvement of airports. and aviation industries;
- (c) ensure the provision, in every airport, whether by itself or by any airport licensee, adequate and efficient airport services and facilities;
- (d) collaborate and enter into agreements and arrangements with international, regional, and other organizations in respect of any matter relating to provision of civil aviation services and any other matter .as the operator may deem expedient; and
- (e) implement and achieve the international, regional, and national airport infrastructure, facilities, and operational. service level standards.

(4) An operator providing air navigation services shall -

- (a) provide air traffic management;
- (b) formulate procedures for the use of the navigable airspace, air navigation services within Eswatini and provide assistance or information on aeronautical services;
- (c) provide or co-ordinate search and rescue services to aircrafts in distress within the Eswatini search and rescue region; and
- (d) implement the global aviation navigation plan inclusive at regional and national level.

Responsibility of Authority in relation to aviation security

9. (1) The Authority shall -

- (a) regulate the security of aerodromes, aircraft, regulate agents and catering operators, as the case may be, for purposes of –

- (i) protecting passengers, crew members, aerodromes and other aviation facilities, preventing acts of unlawful interference against the civil aviation, and
 - (ii) ensuring that appropriate action is taken where an unlawful act has occurred or is likely to occur against the civil aviation;
- (b) be responsible for the arrangement, in conjunction with other agencies of Government, of activities to prevent or deal with acts of unlawful interference with civil aviation; and
- (c) have jurisdiction over all aspects of aviation security in Eswatini;
- (2) For purposes of subsection (1), the Authority shall issue circulars, publications, requirements and directions prescribing any aviation security matter which may include –
- (a) requiring any owner or operator of a registered aircraft in Eswatini to establish, maintain and carry out an aerodrome, for the aircraft at the aviation facilities under the control of that owner or operator, to ensure that security measures are complied with in terms of this Act;
 - (b) requiring an operator of an aerodrome to maintain and carry out security measures at that aerodrome, including the recruitment of aviation security officers;
 - (c) the screening of passengers and cargo for security purposes;
 - (d) matters relating to submission by persons boarding an aircraft to search and screening by a police officer or aviation security officer or an authorised person;
 - (e) the security of aerodromes in Eswatini and of equipment and air navigation installations including those away from aerodromes;
 - (f) the monitoring of property of the Authority of a security force trained in aviation security; and
 - (g) the inspection of all aircraft in Eswatini territory, regardless of the place of registration or place of origin.

Appointment of committees and delegation.

10. (1) The Authority may establish any committees as it considers necessary to give effect to the provisions of this Act.

(2) The Authority may, subject to certain conditions or restrictions deemed necessary, delegate to an appointed committee, Director General or authorized person, any of the functions, duties or powers of the Authority under this Act or any other written law, except the power of delegation conferred by this section and the power to make any subordinate legislation.

(3) A function, duty or power delegated to a committee or authorized person may be performed or exercised by the delegated committee or person in the name and on behalf of the Authority.

(4) A delegation under this section shall not prevent the performance, discharge or exercise of any function, duty or power by the Authority.

International agreements and obligations

11. (1) The Authority shall, subject to section 238 of the Constitution, perform its functions in a manner consistent with the obligations of Eswatini under the Chicago Convention and agreements entered into by Eswatini with other States, on aviation safety or regulation of air transport services.

(2) Where the Authority finds it impracticable to apply any standard under the Chicago Convention, the Authority shall give immediate notice to the International Civil Aviation Organization of any difference between the standards of Eswatini and those contained under the Chicago Convention.

**PART III
BOARD OF AUTHORITY**

Continuation of Board of Authority.

12. (1) There shall continue to be a Board of the Authority, constituting the governing body of the Authority.

(2) The Board shall consist of not less than six (6) and not more than nine (9) persons comprising of-

- (a) a chairperson, having expertise in civil aviation;
- (b) a legal practitioner;
- (c) a qualified accountant;
- (d) an economist;
- (e) one (1) person with technical expertise in a field related to aviation;
- (f) a representative nominated by the Minister for Finance;
- (g) two (2) persons of high moral character and integrity in the conduct of public affairs, to be appointed by the Minister; and
- (h) the Director General to serve as an ex officio member.

(3) When a vacancy occurs on the Board, for any reason, the Minister shall, within three (3) months, appoint another person as may be necessary to ensure the composition of the Board remains in accordance with subsection (1).

Disqualifications from appointment as member of Board.

13. (1) Where a person is nominated for membership of the Board, the Minister shall be satisfied as to the fitness of the person to seat and discharge efficiently the duties vested in the Board and that the nominee possesses management or technical expertise in a field related to aviation.

(2) A person shall not be eligible for appointment as a member of the Board if that person -

- (a) is a Member of Parliament or a council of a Local Government Authority;
- (b) has any interest, whether monetary or otherwise, in any air transport-related enterprise, which conflicts or may conflict with the duties as a member; and
- (c) has been convicted of a criminal offence, whether in Eswatini or elsewhere involving theft, fraud, forgery, perjury, corruption or an act of terrorism.

Tenure of office.

14. (1) A member of the Board shall hold office for a period to be determined by the Minister, which may not be less than three (3) years and not exceeding five (5) years.

(2) Members of the Board shall be eligible for re-appointment at the discretion of the Minister.

Vacation of office.

15. A member of the Board shall vacate office-

- (a) upon expiry of the term of appointment, subject to re-appointed;
- (b) if incapacitated by physical or mental illness;
- (c) on election as a Member of Parliament or a councillor of a Local Authority;
- (d) on acquisition of any interest, whether monetary or otherwise, in any air transport related enterprise, which conflicts or may conflict with the duties of the member;
- (e) upon conviction of a criminal offence in Eswatini or elsewhere of theft, fraud, forgery, perjury, corruption or an act of terrorism; or
- (f) on resignation from office upon giving a written notice of one (1) month to the Minister.

Removal from office.

16. The Minister may remove a member of the Board from office-

- (a) on failure to perform the duties diligently or efficiently;
- (b) if the conduct of the member is detrimental to the efficient and proper performance of the functions of the Board;
- (c) for absenteeism without the permission of the chairperson for three (3) consecutive meetings of the Board, without good reason; or
- (d) upon failure to vacate office in accordance with section 21.

Functions and powers of Board.

17. The Board shall -

- (a) be accountable to the Minister;
- (b) exercise the powers, functions and duties of the Authority specified in this Act and other duties assigned to the Authority;
- (c) ensure that the Authority performs its functions in a proper, efficient and effective manner;
- (d) recommend the appointment and removal of the Director General;
- (e) give directives to the Director General;
- (f) consider and approve business plans prepared by the Director General, the annual budget, internal rules and regulations;
- (g) approve the annual report for submission to the Minister;
- (h) approve the internal rules and regulations of the Authority; and
- (i) give policy direction to the Authority.

Meetings of Board.

18. (1) The Board shall hold such meetings as are necessary for the efficient performance of its functions.

(2) The chairperson may convene a meeting at any time by giving two (2) weeks written notice to the members or upon receipt of a written request signed by at least two (2) members.

(3) The Board shall meet at determined times and places and is to observe the rules of procedure in regard to the transaction of the business at its meetings in accordance to its internal rules and regulations.

(4) The Board shall elect a deputy-chairperson at its first meeting to act as chairperson in the absence of the chairperson.

(5) A quorum for any meeting of the Board shall be two-thirds of the appointed members.

(6) The decisions of the Board shall be taken by a majority vote of the members, present and voting at the meeting, provided there is a quorum.

(7) In the event of an equality of votes, the chairperson shall have and exercise a casting vote.

(8) The Board may, for the purpose of dealing with any matter before it, determine its own internal rules and procedures.

**PART IV
STAFF OF AUTHORITY**

Appointment of Director General.

19. (1) The Minister shall, on the recommendation of the Board, appoint a Director General.

- (2) The Director General shall hold office for a period not exceeding three (3) years.
- (3) The Director General may vacate office or be removed from office for -
- (a) failure to perform the required duties diligently or efficiently;
 - (b) absence without the permission of the chairperson for three (3) consecutive meetings of the Board, without good reason;
 - (c) expiry of the term of office, unless re-appointed;
 - (d) incapacity by physical or mental illness;
 - (e) estate sequestration;
 - (f) appointment to Membership of Parliament or a Councillor of a Local Government Authority;
 - (g) acquiring any interest, whether monetary or otherwise, in any air transport related enterprise, which conflicts or may conflict with the duties of being a Director General; and
 - (h) being convicted in Eswatini or elsewhere, for criminal offences related to theft, fraud, forgery, perjury, corruption or an act of terrorism.
- (4) A Director General may be re-appointed after the expiration of the appointment.

Qualifications of Director General.

20. (1) The Director General shall be appointed with due regard to fitness for the efficient discharge of the powers and duties vested in the Authority and imposed by this Act.

(2) For the purposes of compliance with subsection (1), the minimum qualifications of the Director General shall be a degree in the relevant field or equivalent.

(3) The Director General shall, at the time of nomination have at least ten (10) years management experience in an aviation field or similar technical experience in a field related to aviation.

(4) The Director General shall have no monetary interest in or own any stocks or shares of any aeronautical enterprise nor engage in any other business, vocation or employment which is likely to create a conflict of interest with the position, without the prior approval of the Board.

Dismissal.

21. The Minister may not dismiss the Director General unless-

- (a) a notice setting forth the reasons for dismissal has been served on the Director General;
- (b) a fair hearing has been conducted before the Board; and
- (c) due consideration has been given to the recommendations made by the Board.

Powers and duties of the Director General.

22. (1) The Director General shall be the Chief Executive Officer of the Authority and is responsible for the exercise of the powers and the discharge of the duties of the Authority subject to the overall control and supervision of the Board.

(2) In the exercise of the powers of the Authority and subject to this Act, the Director General shall-

- (a) have control over the personnel and activities of the Authority;
- (b) perform acts, conduct investigations, issue and amend standards, orders and directives; and
- (c) make, amend special rules and procedures binding on any person engaged in civil aviation activities, navigable airspace and the operation of an aircraft registered in Eswatini.

(3) Without limiting the generality of subsection (2), the Director General shall have the power to issue-

- (a) circulars including advisory circulars, standards, orders, rules and directives issued in such form and manner as the Director General may deem necessary;
- (b) aeronautical information of a lasting or temporary nature, which shall be binding on any person engaged in civil aviation activities in Eswatini navigable airspace;
- (c) reports, technical guidance documents, procedures, instructions and aeronautical information and other incidental matters, including an aeronautical information publication;
- (d) aeronautical charts; and
- (e) meteorological information.

(4) The duties of Director General shall, include but not limited to the following-

- (a) represent the Authority in all its dealings with third parties and in legal proceeding brought by or against the Authority;
- (b) develop economic policies and strategies with respect to air transport;
- (c) co-ordinate air transport policy and regulation with other governmental entities such as those responsible for trade and commerce, tourism, financial controls, taxation, national development and any other field;
- (d) prepare and after approval by the Board, submit to the Minister, policies, programmes and detailed annual budgets and ensure their implementation;
- (e) follow-up, study operational activities relating to civil aviation and submit reports and proposals, after the approval by the Board, to the Minister;
- (f) conduct hearings and investigations necessary to the performance of duties under this Act;

- (g) collect, regularly, information and statistics relating to civil air transport;
- (h) effect payments in accordance with the approved annual budget and work programme of the Authority;
- (i) prepare and submit to the Board the fees and charges to be collected by the Authority and implement the collection upon approval of the Minister through publication in the appropriate aeronautical information publication;
- (j) co-ordinate policy and legal issues relating to civil aviation; and
- (k) perform other functions as may be assigned by the Board.

Assignment, authorisation and delegation by the Director General

23. (1) The Director General may where necessary—

- (a) assign functions in writing to management or other employees with appropriate corporate skills, to assist in the management and control of the Authority;
- (b) delegate, in writing, any of the Director General’s powers and functions, specified under this Act, to an employee of the Authority or any authorized person, save for those powers referred to in section 22(2) (a);
- (c) instruct in writing, any suitably qualified and competent employee of the Authority to perform any of the powers and functions of the Director General specified under this Act, save for those powers referred to in section 22(2) (a).

(2) The assignment, delegation or instruction issued under subsection (1) shall be subject to imposed terms and conditions issued by the Director General of which may not divest any power to exercise and perform the functions personally.

(3) The Director General may delegate any of the powers save for those powers referred to in Section 22(2) (a) and functions specified under this Act to any properly qualified person or entity, subject to such regulations, conditions, supervision and review as may be prescribed;

(4) The Director General shall ensure that the powers and functions are not delegated in manner that air operators, personnel responsible for aerial work or general aviation operators and operators of maintenance facilities in effect regulate themselves.

Protection from personal liability.

24. (1) An action shall not be instituted against-

- (a) the Authority, any member, officer or employee of the Authority; or
- (b) any authorized officer or other person acting under the directions of the Authority,

for anything which is done in good faith in the course of employment or agency of that person or intended to be done in the execution or purported execution of this Act or any other law conferring or imposing a function, power or imposing a duty on the Authority.

(2) For purposes of section (1) any action shall be in respect of any of the following –

- (a) loss of, or damage to, an aircraft or airport during the seizure of an aircraft in accordance with section 66;
- (b) loss of, or damage to, an aircraft so seized while it is in the custody, possession or control of the Authority or of any member, officer or employee of the Authority; or
- (c) any economic loss suffered by a person as a result of a seizure.

(3) If the loss or damage is caused wilfully or negligently there shall be no protection from personal liability.

Preservation of secrecy.

25. (1) Where it is for the purpose of the performance of official duties, by an order of court or provisions of any other law, a person who is or has been-

- (a) a member, an officer, an employee, an adviser or an agent of the Authority;
- (b) a member of a committee of the Authority or an Appeals Tribunal; or
- (c) an authorised officer or a responsible person for information obtained by an authorised person in the performance of the duties or exercise of the functions of the authorised person under this Act,

shall not disclose any information relating to the affairs of the Authority or of any other person, which has been obtained in the performance of duties or the exercise of functions under this Act.

(2) A person who contravenes subsection (1), commits an offence and shall, on conviction, be liable to a fine not exceeding forty-thousand Emalangeni (E40,000) or to imprisonment for a term not exceeding (2) years or to both.

(3) For the purposes of this section, the responsible person for information obtained by the authorized person in the performance of the duties or exercise of the functions of the authorized person under this Act is-

- (a) the employee of the authorized person to whom the information was disclosed or who has access to it; and
- (b) if the information is stored-
 - (i) on a database, the employee of the authorised person who has day-to-day control of the database; or
 - (ii) otherwise, the employee of the authorised person who has day-to-day responsibility for the system under which the information is stored.

**PART V
FINANCIAL PROVISIONS**

Financial year

26. The financial year of the Authority shall begin on 1st April of each year and end on 31st March of the succeeding year.

Funds and property of Authority

27. (1) The funds and property of the Authority include -

- (a) moneys appropriated by Parliament;
- (b) all levies, fees, charges, fines, composition sums and financial penalties payable to the Authority under this Act;
- (c) all moneys paid to, and all other moneys and property lawfully received by, the Authority for the purposes of the Authority;
- (d) all moneys paid to the Authority by way of grants, subsidies, donations, gifts and contributions;
- (e) all moneys received by the Authority by way of charges and fees for services rendered by the Authority to any person;
- (f) all moneys, dividends, royalties, interest or income received from any transaction made pursuant to the powers conferred on the Authority under this Act or any other written law;
- (g) all moneys borrowed by the Authority under this Act; and
- (h) all accumulations of income derived from any such property or money.

(2) The moneys of the Authority shall be applied only in payment of expenditure incurred by it in the discharge of its functions, duties, obligations and liabilities and in making any payment that it is authorised or required to make by or under law.

(3) The Authority shall continue to maintain one or more accounts with any bank or banks as the Authority may deem fit, and every account shall be operated by the person as may from time to time, be authorised on behalf of the Authority.

(4) It shall be the duty of the Authority to exercise and perform its functions under this Act so as to ensure that the total revenues of the Authority are sufficient, taking one financial year with another, to meet its total outgoings, including depreciation and interest on capital and to meet a reasonable proportion of the cost of performing the functions and duties of the Authority.

Accounts of Authority

28. (1) The Authority shall –

- (a) keep proper accounts and records of its transactions and affairs;
- (b) ensure that all payments are correctly made and properly authorized;
- (c) ensure that adequate control is maintained over the assets of, or in the custody of the Authority and over the expenditure incurred;
- (d) provide for the annual auditing of the accounts of the Authority by appointed auditors.

(2) A person shall not be qualified for appointment as an auditor under section, unless registered as an auditor with the Eswatini Institute of Accountants.

(3) The remuneration of the auditor shall be paid out of the funds of the Authority.

Annual financial statements

29. (1) The Authority shall, as soon as the accounts and financial statements are audited transmit to the Minister a copy of the audited financial statements, signed by the chairperson together with a copy of the auditor's report.

(2) Where the Auditor-General is not the auditor of the Authority, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor-General at the same time they are submitted to the Authority.

(3) The Minister shall, as soon as practicable, cause a copy of the audited financial statements and of the auditor's report referred to in subsection (1) to be presented to Parliament.

Annual reports

30. (1) The Authority shall, as soon as practicable after the end of each financial year, cause to be prepared and transmitted to the Minister a report dealing generally with the activities of the Authority during the preceding financial year, containing information relating to the proceedings and policy of the Authority as the Minister may from time to time direct.

(2) The Minister shall, as soon as practicable, cause a copy of the report to be presented to Parliament.

Symbol, design or representation of Authority

31. (1) The Authority shall have the exclusive right to use any symbol, design or representation as it may select or devise in connection with its activities or affairs.

(2) A person who, without the prior permission of the Authority, uses a symbol, design or representation identical with that of the Authority or which so resembles the symbol, design or representation so as to deceive or cause confusion or be likely to deceive or cause confusion, commits an offence and shall, on conviction, be liable to a fine not exceeding thirty five thousand Emalangeni (E35,000) or to imprisonment for a term not exceeding twelve (12) months or to both.

Restrictions on disposal of lands of Authority

32. The Authority shall not, without the consent of the Minister, sell, exchange or otherwise dispose of any land, any interest acquired by it or vested in it under this Act or repealed Act.

Borrowing powers

33. (1) The Authority for the performance of its functions or discharge of its duties under this Act or any other law may, from time to time with the approval of the Minister and subject to the provisions of the law on public finance management, raise loans within or outside Eswatini from any source as the Minister may direct by-

(a) mortgage, overdraft or other means, with or without security;

- (b) charge, whether legal or equitable, on any property vested in the Authority or on any other revenue receivable by the Authority under this Act or any other written law; or
- (c) the creation and issue of debentures, bonds or any other instrument as the Minister may approve.

(2) For the purposes of this section, the power to raise loans shall include the power to make any financial agreement whereby credit facilities are granted to the Authority for the purchase of goods, materials or other necessities.

PART VI LICENSING AND MANAGEMENT OF AIRPORTS

Licence authorising operation of airport

34. (1) A person shall not operate an airport, unless that person is authorized by -

- (a) an airport licence; or
- (b) an exemption granted by the Authority in terms of this Act.

(2) An airport licence granted in this section shall be in the prescribed form and manner and for a period determined by the Authority.

(3) The Authority may, in accordance with the terms of a general authority given by the Minister, grant or extend an airport licence.

(4) In determining whether or not to grant or extend an airport licence to or for a particular person, the Authority shall consider the following:

- (a) the ability of that person to finance the operation of the airport;
- (b) the experience of that person in operating the airport;
- (c) the ability to perform the duties imposed under this Act and the airport licence; and
- (d) the functions and duties of the Authority under section 7.

(5) If airport licences have been granted or extended under this Part, the licences shall, continue to be in force for the period as may be specified in the airport licence, unless revoked or suspended.

(6) A person that contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding one million Emalangeni (E1,000,000) or imprisonment for a period not exceeding twenty five (25) years and, in the case of a continuing offence, to a further fine not exceeding twenty five thousand (E25,000) for every day or part of it during which the offence continues after the conviction.

Conditions of airport licence:

35. (1) An airport licence may include conditions, whether or not relating to the activities authorized by the airport licence, as appear to the Authority to be requisite or expedient having regard to the purpose of this Act.

(2) Without prejudice to the generality of subsection (1), an airport licence may include conditions requiring the airport licensee-

- (a) to enter into agreements or arrangements with any other person, class of persons or another airport licensee for -
 - (i) the interconnection with, access to and use of any facility needed for carrying on any activity authorized by the airport licence (wherever situated and whether or not used for the purpose of carrying on those activities); and
 - (ii) any other purpose as may be specified in the airport licence, and on any conditions as may be agreed to by the airport licensee and any other person or in default of agreement, as may be determined by the Authority.
- (b) to prepare itself to deal with any public emergency;
- (c) to pay to the Authority a fee on the grant of the airport licence or periodic fees during the existence of the airport licence or both, of such amount as may be determined by or under the airport licence;
- (d) to comply with any direction, determination, order or decision of the Authority as to such matters as are specified in the airport licence or are of a description so specified; and
- (e) to do or not to do the things as are specified in the airport licence or are of a description so specified.

(3) The conditions in an airport licence may include provisions-

- (a) requiring the airport licensee to provide to authorized persons or to the Authority, in a manner and at times as may be specified, information as appears to the Authority to be a requisite or expedient for the purpose of facilitating the exercise by those persons or the Authority of the functions or duties assigned to them or as may be reasonably required for that purpose;
- (b) requiring the airport licensee to furnish to the Authority financial information including regulatory accounts in respect of the period and on such basis as may be specified;
- (c) requiring the airport licensee to comply with the requirements as to capital expenditure in relation to the airport or airport services and facilities as specified or described in the airport licence;
- (d) providing for the determination by the Authority of any questions arising under the airport licence, or under any document specified or described in the airport licence;
- (e) imposing requirements by reference to designation, acceptance or approval by the Authority;
- (f) providing for references in the conditions of the airport licence to any document specified or described in the airport licence to operate as references to that document as revised or re-issued from time to time;

- (g) requiring the airport licensee to provide a performance bond, guarantee or any other form of security on such terms and conditions as the Authority may determine; and
- (h) providing that the conditions of the airport licence shall have effect or cease to have effect at such times and in such a manner and circumstances as may be determined by or under the conditions of the airport licence.

(4) A payment required by subsection (2) to be rendered to the Authority may be recovered by action in any court of competent jurisdiction as if it were a simple contract debt.

Modification of conditions of airport licence

36. (1) Subject to this section, the Authority may modify the conditions of an airport licence.

(2) The Authority shall, give notice to the airport licensee before making any modifications to the conditions of an airport licence in relation to the following-

- (a) stating that it proposes to make the modifications in the manner as specified in the notice and the compensation payable for any loss or damage suffered or expense reasonably incurred as a direct result of the modification; and
- (b) specifying the time (not being less than twenty eight (28) days from the date of service of notice on the licensee) within which written representations with respect to the proposed modifications may be made.

(3) Where the Authority receives written representation referred to in subsection (2), the Authority shall-

- (a) reject the representations; or
- (b) amend the proposed modifications or compensation payable in accordance with the representation.

(4) Notwithstanding subsection (3), the Authority shall, issue a direction in writing to the airport licensee requiring that effect be given to the proposed modifications specified in the notice or to the modifications as subsequently amended by the Authority within a reasonable time.

(5) If an airport licensee appeals to the Appeals Tribunal against a decision of the Authority under this section, the decision, direction or other issue appealed against shall be complied with until the final determination of the appeal.

(6) Where no written representations are received by the Authority within the time specified in subsection (2) or if subsequently withdrawn, the Authority may immediately implement the modifications as specified in the notice.

Revocation or suspension of airport licence

37. (1) The Authority shall revoke or suspend an airport licence, if-

- (a) an airport licensee is contravening, or is likely to contravene or has contravened -

- (i) any of the conditions of its airport licence;
 - (ii) any provision of this Act applicable to the airport licensee, for which no criminal penalty is prescribed for a contravention; or
 - (iii) any code of practice or standard of performance applicable to the airport licensee.
- (b) an airport licensee has been convicted of an offence under this Act;
- (c) an airport licensee has not complied with any direction or requirement issued by the Authority;
- (d) any existence of a circumstance specified in an airport licence giving rise to the Authority's power to revoke or suspend the licence;
- (e) an airport licensee has gone or is likely to go into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;
- (f) an airport licensee has made an assignment to or composition with, its creditors; and
- (g) the public interest or national security of the Kingdom of Eswatini require the Authority to do all or any of the following-
- (i) revoke or suspend its airport licence for a period as the Authority may deem fit, except in a case of a contravention or likely contravention of any code of practice or standard of performance applicable to the airport licensee;
 - (ii) require the payment of a financial penalty not exceeding one million (E1,000,000) Emalangeni or the prescribed amount; and
 - (iii) impose other directions the Authority considers may deem appropriate in order to restrict the airport licensee's business of operating the airport.

(2) The Authority shall not exercise its powers under subsection (1), unless an opportunity to be heard is afforded to the licensee through a representative or by counsel against which the Authority intends to exercise its powers, being a period of not less than fourteen (14) days but not more than twenty eight (28) days.

(3) Where the Authority has made any decision in terms of subsection (1) against any airport licensee, it shall serve on the airport licensee a notice of the decision.

(4) Subject to subsection (6), a decision by the Authority under subsection (1) against any airport licensee shall not take effect until the expiration of fourteen (14) days after the Authority has served the notice of the decision on the airport licensee.

(5) Where the airport licensee concerned has appealed to the Appeals Tribunal against the decision of the Authority under this section, the decision shall not take effect, unless the decision is for any reason dismissed by the Appeals Tribunal or withdrawn.

(6) The revocation or suspension of any airport licence under this section shall not prejudice the enforcement by any person of any right or claim against the airport licensee or former airport licensee.

(7) In this section-

“aeronautical revenue” means the payments received or to be received by an airport licensee for an airport from part of its services which are essential to the operation of the airport as may be prescribed;

“the prescribed amount” means-

- (a) where the ground for exercising any power under subsection (1) relates to any capital expenditure in relation to an airport or the airport services and facilities of an airport - 1% (or such other percentage as the Minister may, by order published in the Gazette, prescribe) of the amount of the gross aeronautical revenue from an airport licensee’s business of operating an airport received, or to be received, for each year during which the contravention or non-compliance occurred; or
- (b) where the ground for exercising any power under subsection (1) relates to aeronautical charges (within the meaning of sections 49 and 50) being in excess of the maximum prices set or approved under section 50(1) -120% (or such other percentage as the Minister may, by order published in the Gazette, prescribe) of the total aeronautical charges in excess for each year during which those charges are in excess.

(8) If an order is made in terms of subsection (7), that order shall be presented to Parliament as soon as possible after publication in the Gazette.

Security deposit against contraventions by airport licensee

38. (1) If the Authority is satisfied that an airport licensee is contravening, or is likely to contravene or has contravened -

- (a) any condition of its airport licence;
- (b) any provision of any code of practice or standard of performance applicable to the airport licensee;
- (c) any of the provisions of this Act applicable to the airport licensee, for which no criminal penalty is prescribed for the contravention; and
- (d) any direction issued to, or applicable to, the airport licensee under sections 37(3), 58(2) or 69(1) or any direction under this section,

the Authority may, by notice in writing, direct the airport licensee to do, or not to do, the things as are specified in the direction.

(2) In addition to any powers conferred under section 37, if the Authority is satisfied that an airport licensee is contravening, is likely to contravene or has contravened-

- (a) any condition of its airport licence;
- (b) any provision of any code of practice or standard of performance applicable to the airport licensee;

- (c) any provision of this Act for which no criminal penalty is prescribed for a contravention; and
- (d) any direction, including a direction under this section, issued by the Minister or the Authority to, or applicable to, the airport licensee,

the Authority may, by direction in writing to the airport licensee, require the licensee to provide or further provide a performance bond, guarantee or other form of security of appropriate amount and on the terms and conditions the Authority may determine.

(3) An airport licensee to whom a direction is issued under this section shall comply with the direction.

Restriction on transfer of airport licence

39. (1) An airport licence shall not be transferred to any person without the prior consent in writing of the Authority.

(2) The purported transfer of an airport licence in contravention of this section shall be invalid and be of no effect.

Airport licensee not to carry on non-airport business

40. (1) An airport licensee shall not, except with the prior approval of the Authority, carry on substantial trading or financial activities other than in respect of the following-

- (a) relating to the operation of the airport;
- (b) incidental to the operation of the airport; and
- (c) that are consistent with the lease for the airport site and the master plan for that airport.

(2) Subsection (1) shall not apply to a person that acquires the lease for an airport site by way of the enforcement of a loan security.

(3) The contravention of this section shall not affect the validity of any transaction and exemption from the requirement to hold an airport licence.

Exempted airport licensee

41. (1) The Authority may, with the approval of the Minister and by order published in the Gazette, exempt a person from complying with section 35(1) for any specified period generally or to the extent as may be specified in the order, either unconditionally or subject to conditions as may be specified.

(2) Without prejudice to the generality of subsection (1), the conditions for an exemption may require the exempted airport licensee, operating an airport to-

- (a) comply with any direction given by the Authority as to the matters specified in the exemption order or are of a description so specified;

- (b) do or not to do the things as are specified in the exemption order or are of a description so specified, except in so far as the Authority consents to the airport licensee doing or not doing the things; or
- (c) refer for determination by the Authority the questions arising under the exemption as are specified in the exemption order or are of a description so specified.

(3) An exemption order under subsection (1) shall continue in force, unless it is revoked for a period as may be specified in the order.

(4) Any exempt airport licensee who fails to comply with any direction referred to in subsection (2) (a) shall, on conviction, be liable to pay a fine not exceeding thirty five thousand Emalangeni (E35,000) or to imprisonment for a term not exceeding twelve (12) months or to both.

(5) Without prejudice to subsection (4), if any condition of an exemption granted to an exempted airport licensee, is not complied with, the Authority may give to that exempt airport licensee a notice declaring the exemption revoked, to the extent and from the date as may be specified in the notice.

Codes of practice or standards of performance

42. (1) The Authority may, from time to time-

- (a) issue one or more codes of practice or standards of performance applicable to airport licensees;
- (b) approve as a code of practice or standard of performance applicable to airport licensees any document prepared by a person other than the Authority, if the Authority considers the document as suitable for that purpose; or
- (c) amend or revoke any code of practice or standard of performance issued under paragraph (a) or approved under paragraph (b), with respect to all or any of the following -
 - (i) the operation of an airport;
 - (ii) the provision of airport services and facilities;
 - (iii) the quality of the aspects of airport services and facilities as are prescribed in regulations;
 - (iv) competition, abuse of a dominant position in the operation of airports and fair market conduct in the provision of airport services and facilities; and
 - (v) any acquisitions or consolidations involving an airport licensee and any other person (whether an airport licensee or otherwise).

(2) A code of practice may, in particular, specify the duties and obligations of any airport licensee in relation to the business operation in so far as it relates to the provision of airport services and facilities in Eswatini.

(3) Where a provision in any code of practice or standard of performance is inconsistent with any provision of this Act, that provision, to the extent of the inconsistency shall-

- (a) have effect subject to the provisions of this Act; or
- (b) having regard to the provisions of this Act, be of no effect.

(4) Where a code of practice or standard of performance is issued, approved, amended or revoked by the Authority under subsection (1), the Authority shall-

- (a) publish a notice of the issue, approval, amendment or revocation, as the case may be, of the code of practice or standard of performance in the manner as to secure adequate publicity for the issue, approval, amendment or revocation;
- (b) specify in the notice referred to in paragraph (a) the date of the issue, approval, amendment or revocation, as the case may be; and
- (c) ensure that, so long as the code of practice or standard of performance remains in force, copies of that code or standard, and of all amendments to that code or standard, are available for inspection by airport licensees free of charge and for their purchase at a reasonable price.

(5) A code of practice, standard of performance, amendment to an approved code of practice, standard of performance and any revocation of an approved code of practice or standard of performance, shall have any force or effect as an approved code of practice or standard of performance until the notice relating to it is published in accordance with subsection (4).

(6) The code of practice or standard of performance issued or approved under this section shall not have legislative effect.

(7) Subject to subsection (8), an airport licensee shall comply with the relevant codes of practice and standards of performance issued or approved under this section.

(8) The Authority may, either generally or for the time as the Authority may specify, waive the application of any code of practice or standard of performance, or part of it, issued or approved under this section to any airport licensee.

(9) The Authority shall give a copy to the Minister of each approved code of practice, standard of performance and amendment, revocation of an approved code of practice or standard of performance.

(10) A failure to comply with this section in respect of any approved code of practice, standard of performance, amendment or revocation of it, shall not invalidate the approved code of practice or standard of performance, the amendment or revocation, as the case may be.

(11) In this section, “dominant position” means a dominant position in any market for airport services and facilities, whether in Eswatini or elsewhere.

Directions affecting airport licensee

43. (1) The Authority may give directions to be observed by airport licensees to ensure the following-

- (a) reliability of the provision of any airport services and facilities to the public;
- (b) fair and efficient market conduct by airport licensees;
- (c) the technical compatibility and safety of operation of any equipment or system used in the provision of airport services and facilities;
- (d) co-ordination and cooperation on the terms the Authority may specify, with any other person in the use or sharing of any facility, installation, plant or system, or part of it, owned or used by the airport licensee for the provision of any airport services and facilities;
- (e) protection of public interests and the interests of the security of civil aviation; and
- (f) as may be necessary to allow the Authority to carry out any of its functions or duties S61 under section 7.

(2) A direction under subsection (1) shall-

- (a) require the airport licensee concerned (according to the circumstances of the case) to do, or not to do, the things as are specified in the direction or are of a description as specified in the direction;
- (b) take effect at the time, being the earliest practicable time, as is determined by or under that direction; or
- (c) be revoked at any time by the Authority.

(3) The Authority shall, before giving a direction to an airport licensee under subsection (1), unless the Authority in respect of any particular direction considers that it is not practicable or desirable to do so, give notice -

- (a) stating that the Authority proposes to make the direction and setting out the effect; and
- (b) specifying the time within which representations or objections to the proposed direction may be made for consideration by the Authority.

(4) The airport licensee shall comply with any direction of the Authority given in terms of this section.

Advisory guidelines

44. (1) The Authority may issue advisory guidelines concerning any aspect of airport services and facilities.

(2) The advisory guidelines, issued in terms of subsection (1) may concern-

- (a) any matter in respect of which codes of practice and standards of performance may be made under section 42; or
- (b) the use, construction, design or performance of anything relating to airport services and facilities.

(3) The Authority shall give a copy of each advisory guideline to the Minister, and publish each advisory guideline in a manner the Authority deems fit.

(4) The failure to comply with subsection (3) in respect of any advisory guidelines shall not invalidate the advisory guidelines.

Master plan for each airport

45. (1) A person who develops an airport shall submit a master plan for approval by the Authority for each airport under section 47-

- (a) to establish the strategic direction for efficient and economic development at the airport over the planning period of the plan;
- (b) to provide for the development of additional uses of the airport site; and
- (c) to reduce potential conflicts between the use of the airport site and to ensure that uses of the airport site are compatible with the areas surrounding the airport.

(2) The master plan for an airport operated or to be operated by an airport licensee shall specify -

- (a) the airport licensee's development objectives for the airport;
- (b) the airport licensee's planning principles and assumptions;
- (c) the airport licensee's policies and practices for safeguarding the obstacle surfaces of the airport and the operating environment;
- (d) the airport licensee's assessment of the future needs of civil aviation users of the airport, and other users of the airport for airport services and facilities relating to that airport;
- (e) the airport licensee's intentions for land use and related development of the airport site, including in particular any major airport development at the airport site and for any adjacent area that may become part of the airport site;
- (f) the airport licensee's provision of airport services and facilities relating to the airport and the users of any area adjacent to the airport site;
- (g) the airport licensee's airport development plan; and
- (h) any other relevant matters (if any) as are prescribed in the regulations.

(3) The master plan for each airport approved under section 47 shall, remain in force until a draft master plan that is to replace the approved master plan comes into force for that airport.

(4) At least once every five (5) years after the approval under section 46 of the master plan for an airport, the airport licensee shall review the approved master plan for the airport and submit to the Authority a report of the review together with proposals for additions and alterations to the master plan which the airport licensee may consider expedient, including a draft master plan that is to replace the approved master plan in force for that airport.

Approval of master plan for airport

46. (1) The Authority on receipt of any submission by an airport licensee of any draft master plan of an airport, including a draft master plan that is to replace an approved master plan for an airport, any additions and alterations to the master plan in force for the airport, may-

- (a) approve the draft master plan, the additions and alterations to the master plan in force; or
- (b) refuse to approve the draft master plan, the additions and alterations to the master plan in force, as the case may be.

(2) In deciding whether or not to approve the draft master plan for an airport, the Authority shall have regard to the following matters-

- (a) the extent to which the plan achieves the purposes of a master plan as described in section 46(2);
- (b) the extent to which carrying out the plan would meet present and future requirements of civil aviation users of the airport, and other users of the airport for airport services and facilities relating to the airport concerned;
- (c) the effect that carrying out the plan would be likely to have on the use of land within the airport site and in areas surrounding the airport;
- (d) the consultations undertaken in preparing the plan including the outcome of the consultations; and
- (e) the safety aspects and operational aspects of the airport, but nothing in this subsection shall limit the matters to which the Authority may have regard.

(3) Where the Authority approves a draft master plan for an airport, the plan becomes a master plan for that airport and shall come into force at the time of the approval.

(4) The Minister may make rules prescribing the content, form and procedure to be followed in connection with the preparation, giving and approval of additions and alterations to the master plan in force for an airport or a draft master plan that is, or to replace the approved master plan, for that airport, including -

- (a) requiring the airport licensee to publish in prescribed circumstances a notice of the submission of any draft master plan (including a draft master plan that is to replace the approved master plan for that airport) or proposal of additions and alterations to the master plan in force for an airport, and of the place or places where copies of the draft master plan or the proposal may be inspected;
- (b) providing for objections and representations made in accordance with the rules to be considered, either at a public or other hearings in such cases as may be prescribed to be held before an airport licensee for an airport submission relating to any draft master plan for the airport, including a draft master plan that is to replace the approved master plan for that airport or any additions and alterations to the master plan in force for the airport to the Authority or before the Authority makes a decision under subsection (1); and

(c) prescribing the penalty to be imposed for a contravention of the rules.

(5) A master plan approved by the Authority immediately upon the commencement of this Act for any airport or any part of it shall be deemed to be a master plan approved under, and in accordance with rules made under this section for that airport.

Major airport development in accordance with master plan

47. (1) An airport licensee for an airport shall not carry out any major airport development relating to the airport, cause or permit to be carried out any major airport development relating to the airport, unless the carrying out of the development is in accordance with the master plan for that airport.

(2) A person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to pay a fine not exceeding fifty Emalangeni (E50,000) or suspension of the licence.

(3) In this section -

“development” means the carrying out of any building works, engineering, mining or earthworks or other operations in, on, over or under land, or the making of any material change in the use of any building or land;

“major airport development” means a development that is carried out at an airport site that consists of -

- (a) constructing a new runway or extending the length of a runway;
- (b) constructing a new building wholly or principally for use as a passenger terminal;
- (c) extending a building that is wholly or principally for use as a passenger terminal;
- (d) constructing a new taxiway where the extension significantly increases the capacity of the airport to handle movements of passengers, cargo or aircraft;
- (e) constructing a new parking apron for loading and unloading of aircraft passengers or cargo;
- (f) constructing a new cargo terminal;
- (g) constructing new hangars, fuel farms, buildings used for in-flight catering, fire-fighting services, or aircraft maintenance facilities; or
- (h) such other development as may be prescribed by regulations.

Charges

48. (1) Subject to subsections (2) and (3), an airport licensee for an airport may set the charges from time to time for the use of the airport or for other airport services and facilities provided by the airport licensee as may be prescribed.

(2) An airport licensee for an airport shall not be entitled to demand or take from any person using or otherwise enjoying the benefit of the airport or any airport service and facilities provided by the airport licensee any aeronautical charge in excess of the maximum prices as may be set or approved from time to time by the Authority under section 49.

(3) An airport licensee for an airport used by or for the use of any Eswatini aircraft engaged in flights for the purpose of public transport or instruction in flying shall not be entitled to demand or take from any person using or otherwise enjoying the benefit of the airport or any airport service and facilities provided by the airport licensee any charge for or in respect of the use of the airport by aircraft registered in any Contracting State that is in excess of the charge demanded for or in respect of the use of the airport by Eswatini aircraft.

(4) The charges set under this section may be charged to persons or classes of persons owning or operating an aircraft, or to persons or classes of persons using or otherwise enjoying the benefit of the airport operated or managed by the airport licensee or any airport service and facilities provided by the airport licensee, or to any other person.

(5) In this section and section 49, “aeronautical charge” means any charge imposed by an airport licensee for an airport for the provision of any of the following services-

- (a) any service that is essential to the operation of the airport;
- (b) any service which the Authority certifies as a service that the airport licensee, which has the market power of a monopoly or near monopoly in Eswatini, as a provider of the service; and
- (c) any other service prescribed for the purposes of subsection (1) by regulations.

Maximum prices for aeronautical charges

49. (1) In respect of aeronautical charges, maximum prices may be approved by the Authority having regard to one or more of the following terms-

- (a) by reference to a general price index;
- (b) the cost of production or delivery of a service;
- (c) the level of revenue;
- (d) a rate of return on assets or any other factor;
- (e) by reference to quantity, location or period of supply of the airport services and facilities; and
- (f) any other terms the Authority considers appropriate.

(2) The Minister may make rules prescribing the content, form and procedure to be followed, and the methodology or other matters to be included in connection with the preparation, setting and approval of maximum prices for the purposes of subsection (1).

(3) The maximum price approved by the Authority immediately upon the commencement of this Act in respect of any aeronautical charges at any airport shall be deemed to be maximum prices approved by the Authority under, and in accordance with rules made under this section in respect of those aeronautical charges of the airport licensee for that airport.

Accounts and statements

50. (1) An airport licensee shall -

- (a) in respect of the whole or part, as the case may be, of the financial year, prepare such accounts and statements as are specified in, or ascertained in accordance with the regulations;
- (b) retain the accounts and statements prepared in accordance with paragraph (a) for five (5) years after the end of the period to which they relate;
- (c) within the prescribed period after the accounting period, give the Authority those accounts and statements duly audited by an auditor approved by the Authority; and
- (d) keep and retain records, where the records are relevant to the preparation of the accounts and statements of the airport licensee referred to in paragraph (a), for such period and in such manner as prescribed in the regulations.

(2) The airport licensee shall not prepare any accounts or statements in a way that correctly records and explain the matters or things to which they relate.

(3) An airport licensee who is subject to any requirement under subsection (1) or (2) and who contravenes that requirement shall be liable to an administrative penalty as the Authority may impose.

Record-keeping and giving information on quality of service

51. (1) An airport licensee or a person that provides airport services and facilities under an agreement with an airport licensee, shall -

- (a) keep and retain for such period as may be prescribed records, where the records are relevant to a matter that is relevant to monitoring or evaluating, under this Part, the quality of any aspect of airport services and facilities as prescribed in the regulations; and
- (b) give to the Authority within the period and in the manner prescribed in the regulations, specified information that is relevant to a matter that is relevant to monitoring or evaluating, under this Part, the quality of any aspect of airport services and facilities as prescribed in the regulations.

(2) A person under this section shall not, in purported compliance with a requirement under subsection (1), make a record of any matter or thing in a manner that does not correctly record the matter or thing.

(3) An airport licensee or a person that provides airport services and facilities under an agreement with an airport licensee who-

- (a) is subject to any requirement under subsection (1) or (2); and
- (b) contravenes any such requirement,

shall, on conviction, be liable to pay a fine not exceeding thirty five thousand Emalangi (E35,000) or to imprisonment for a period not exceeding twelve (12) months or to both.

PART VII
CIVIL AVIATION SAFETY AND SAFETY INSTRUMENTS

Fit and proper person

52. (1) In this Part, in determining whether a person is a fit and proper, the Authority shall, having regard to the degree and nature of the person's proposed involvement in the Eswatini civil aviation system, have regard to, and give weight as the Authority may consider appropriate to, all of the following matters-

- (a) the person's compliance history with aviation safety regulatory requirements;
- (b) the person's relevant knowledge, competency and experience;
- (c) any history of physical or mental health or serious behavioural problems;
- (d) any conviction for any offence, whether or not the conviction was at Eswatini Court and whether or not the offence was committed before the date of commencement of this Act
- (e) any evidence of the exercise of any power under any one or more of sections 82, 83, 84, 87, 89, 90, 91 and 94 in relation to a person for committing an aviation safety offence or for contravening the provisions of this Act; and
- (f) whether the person is or was disqualified under section 86 from holding the same aviation safety instrument or any other related aviation safety instrument as the Authority shall specify by order under the section.

(2) Subsection (1) applies to a body corporate with the following modifications-

- (a) paragraphs (a), (b), (d) and (e) of that subsection shall be read as if they refer to the body corporate and its officers; and
- (b) paragraphs (c) and (f) of that subsection shall be read as if they refer only to the officers of the body corporate.

(3) For the avoidance of doubt the Authority shall not-

- (a) be confined to the consideration of the matters specified in subsection (1) and may take into account other matters and evidence as may be relevant; or
- (b) take into account any reportable safety matter notified under section 70 by a person for the purpose of determining whether or not that person is a fit and proper person.

(4) The Authority may seek and receive other relevant information, including medical reports, as the Authority deems fit or consider as information obtained from any source.

(5) Where the Authority proposes to take into account any information that is or may be prejudicial to a person, the Authority shall, subject to subsection (6), as soon as is practicable, disclose that information to the person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) requires the Authority to disclose any information, the disclosure of which would endanger the safety of any person.

(7) In this section -

“aviation safety offence” means an offence under this Act;

“aviation safety regulatory requirement” shall not include any security directive or other requirement imposed by or under Part VI.

Appointment of safety inspectors and delegation

53. (1) The Authority may in writing appoint as safety inspectors any –

- (a) employee of the Authority with suitable qualifications and experience to properly exercise the powers of a safety inspector; or
- (b) individual who is not an employee of the Authority and has suitable qualifications and experience to properly exercise the powers of a safety inspector.

(2) The Authority shall issue to a safety inspector an identification card, which shall be carried at all times by the safety inspector when exercising powers under any provision in this Part.

(3) The Director General may appoint a competent authority, a regional safety organisation or a third party organisation to carry out specified tasks, such as inspections and assessments, in support of any of the Authority’s regulatory functions and may issue a certificate, licence or other document on the basis of reports received from that competent authority, regional safety organisation.

Requirement for aviation safety instrument

54. (1) An aviation safety instrument shall be required by or in respect of all or any of the following –

- (a) aircraft operators;
- (b) aircraft owners;
- (c) aircraft pilots and flight crew members;
- (d) air traffic service personnel;
- (e) aircraft maintenance personnel;
- (f) air traffic services, search and rescue services and aeronautical information services;
- (g) aerodromes, aerodrome operators and aerodrome rescue and fire-fighting services;
- (h) navigation installations;
- (i) aviation training organisations;
- (j) aircraft design, manufacture, and maintenance organisations;
- (k) aeronautical procedures;

- (l) aeronautical meteorological services;
- (m) aeronautical telecommunications services;
- (n) such other persons, aircraft, aeronautical products, aviation-related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation-related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in this Act; or
- (o) any person who is an aviation examiner or medical assessor.

(2) A person shall not operate, maintain or service, or do any other act in respect of an aircraft, aeronautical product or aviation related service referred to in subsection (1) for which an aviation safety instrument is required under this Act unless-

- (a) the person holds an aviation safety instrument that is in force and authorizes that person to do an act or do an act without the aviation safety instrument; or
- (b) the person is authorized by or under the regulations to do a particular act.

(3) A person that contravenes subsection (2) commits an offence and shall, on conviction, be liable to pay a fine not exceeding fifty thousand Emalangeni (E50,000) or imprisonment of a period not exceeding five (5) years and in the case of a subsequent conviction for the same offence, to a fine not exceeding hundred thousand Emalangeni (E100,000) or imprisonment for a period not exceeding ten (10) years.

(4) Subject to this Act, an aviation safety instrument may be issued by the Authority for a specified period and subject to conditions as the Authority may deem appropriate.

Grant and renewal of aviation safety instruments

55. (1) An application for the grant or renewal of an aviation safety instrument shall be made to the Authority in the prescribed form and manner or form the Authority may require.

(2) Where an application is made in terms of subsection (1), the authority may upon satisfaction grant the application if -

- (a) all things in respect of which the aviation safety instrument is sought meet the relevant requirements prescribed under this Act; or
- (b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the aviation safety instrument-
 - (i) either holds the relevant qualifications and experience prescribed under this Act or holds foreign qualifications or certifications, licences or permits issued by a foreign aviation authority as are acceptable to the Authority under subsection (3);
 - (ii) is a fit and proper person to have control or hold the aviation safety instrument; and
 - (iii) meets all the requirements prescribed under this Act.

- (c) the applicant is not disqualified under this section from being a holder of an aviation safety instrument; and
- (d) it is not contrary to the interests of aviation safety for the aviation safety instrument to be granted or renewed.

(3) For the purpose of this section and subject to this Act, the Authority may accept foreign qualifications or recognise issued certifications, licences or permits by a foreign aviation authority.

(4) It shall be a condition that holders of a current aviation safety instrument that the holder of, and any person who has or is likely to have control over the exercise of the privileges under an aviation safety instrument, continue to satisfy the fit and proper person test specified in subsection (2)(b)(ii).

(5) Where the Authority refuses to grant an application for the grant or renewal of an aviation safety instrument, the applicant may appeal against that decision to the Appeals Tribunal within the time and in the manner prescribed under this Act.

(6) The decision of the Appeals Tribunal on appeal shall be final.

General duties of holder of aviation safety instrument

56. (1) A person who is required by the regulations for or in respect of any matter in section 55(2) to hold an appropriate aviation safety instrument, that person shall ensure that the appropriate aviation safety instrument, all the necessary qualifications and related documents are held by the holder, before that person does anything for which the aviation safety instrument is required, unless otherwise provided by the applicable regulations.

(2) Where the person referred to in subsection (1) holds an aviation safety instrument, that person shall—

- (a) comply with this Act, and the conditions attached to the relevant aviation safety instrument;
- (b) ensure that the activities or functions for which the aviation safety instrument has been granted are carried out, and by all persons for whom the person is responsible for, safely and in accordance with the relevant safety standards and practices required under this Act; and
- (c) where the aviation safety instrument authorizes the provision of a service within the civil aviation system —
 - (i) if so required under this Act, establish and follow a management system that will ensure compliance with the relevant safety standards prescribed under this Act and the conditions attached to the aviation safety instrument;
 - (ii) provide training and supervision to all employees of the person who are engaged in doing anything to which the aviation safety instrument relates, so as to maintain compliance with the relevant safety standards prescribed under this Act and the conditions attached to the aviation safety instrument and to promote safety; and

- (iii) provide sufficient resources to ensure compliance with the relevant safety standards prescribed under this Act and the conditions attached to the aviation safety instrument.

Power to suspend or impose conditions on aviation safety instrument

57. (1) The Authority may suspend or impose conditions in respect of any aviation safety instrument if -

- (a) there is consideration that the action is necessary to ensure compliance with the provisions of this Act;
- (b) there is satisfactory evidence that the holder of the aviation safety instrument has failed to comply with any condition of the aviation safety instrument and the provisions of this Act;
- (c) the Authority considers that the privileges and duties for which the aviation safety instrument has been granted are being carried out by the holder in a careless or incompetent manner; and
- (d) in the case of an aviation safety instrument in the interest of safety, relating to the use of any aircraft, aeronautical product, or the provision of any service, the Authority considers that there is reasonable doubt as to the airworthiness of the aircraft in relation to the quality or safety of the aeronautical product or service to which the aviation safety instrument relates.

(2) The suspension of any aviation safety instrument and any conditions imposed under subsection (1) shall remain in force until the Authority determines the action, if any, referred to in subsection (3) to be taken, but the suspension or conditions shall expire ten (10) working days after the date of imposition provided, before the expiration the Authority extends the suspension or conditions for a further specified period.

(3) The Authority may in terms of this section take one or more of the following actions-

- (a) impose conditions in respect of the aviation safety instrument for a specified period;
- (b) withdraw the conditions in respect of the aviation safety instrument;
- (c) suspend any aviation safety instrument in whole or part for a specified period;
- (d) revoke or partially revoke the aviation safety instrument under section 58; or
- (e) impose permanent conditions under section 58.

(4) A person whose aviation safety instrument has been suspended or made subject to conditions under subsection (3) shall forthwith produce that document to the Authority for appropriate endorsement.

(5) The holder of an aviation safety instrument who is aggrieved by any decision of the Authority under this section may appeal to the Appeals Tribunal in the manner prescribed under this Act and the decision of the Appeals Tribunal on appeal shall be final.

Power to revoke or impose permanent conditions on aviation safety instrument

58. (1) The Authority may, if it considers it necessary in the interests of aviation safety and after an inspection, monitoring, and investigations have been carried out under this Part, revoke or impose permanent conditions on an aviation safety instrument.

(2) Without prejudice to the generality of subsection (1), the Authority may revoke or impose permanent conditions on an aviation safety instrument if the Authority considers that the revocation or imposition of permanent conditions is necessary in the interests of aviation safety.

(3) Revocation under this section may be in respect of the whole or any part of an aviation safety instrument.

(4) The Authority shall, before exercising any powers under this section, give notice to the holder of the aviation safety instrument concerned stating the following-

- (a) that it proposes to revoke or impose permanent conditions on the aviation safety instrument in the manner as specified in the notice; and
- (b) specifying the time (being not less than twenty eight (28) days from the date of service of the notice on the holder) within which written representations may be made to the Authority with respect to the proposed revocation or the imposition of permanent conditions to be imposed on the aviation safety instrument, as the case may be.

(5) Upon receipt of any written representation referred to in subsection (4) (b), the Authority shall consider the written representation and may –

- (a) reject the written representation; or
- (b) amend the proposed permanent condition in accordance with the written representation,

in either case, the Authority shall give notice in writing to the holder of the aviation safety instrument concerned of the decision.

(6) A person whose aviation safety instrument is revoked or made subject to permanent conditions under this section shall if-

- (a) the aviation safety instrument is made subject to permanent conditions or revoked in part, immediately produce the document to the Authority for appropriate endorsement; and
- (b) the whole aviation safety instrument is revoked, immediately surrender the document to the Authority.

(7) The holder of an aviation safety instrument who is aggrieved by any decision of the Authority under this section may appeal to the Appeals Tribunal in the manner prescribed under this Act, and the decision of the Appeals Tribunal on appeal shall be final.

Provisional orders to avoid imminent danger

59. (1) Subject to subsection (4), where it appears to the Authority that a holder of an aviation safety instrument is contravening, or is likely to contravene any condition of the aviation safety instrument and that there are reasonable grounds to believe there is a serious and imminent risk to air safety, the Authority may take appropriate or requisite action by way of a provisional order to avoid any actual or imminent occurrence that endangers or threatens the safety of the public, the Authority shall, instead of taking any decision under section 57 or 58, by provisional order make any provision as appears necessary for securing compliance with the condition of the aviation safety instrument.

(2) A provisional order in this section shall-

- (a) require the holder of an aviation safety instrument to whom it relates (according to the circumstances of the case) to do, or not to do, the things as are specified in the provisional order or are of a description so specified;
- (b) take effect at the time, being the earliest practicable time, as is determined by or under the provisional order; and
- (c) may be revoked at any time by the Authority.

(3) In determining whether it is appropriate or requisite that a provisional order be made, the Authority shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the condition of an aviation safety instrument, is likely to be done, or omitted to be done, before a decision under section 57 or 58 may be made.

(4) Subject to subsections (5), (6) and (7), the Authority shall, by notice in writing, confirm a provisional order, with or without modifications, if –

- (a) the Authority is satisfied that the holder of an aviation safety instrument to whom the order relates has contravened, or is likely to contravene any condition of the instrument; or
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition.

(5) The Authority shall not confirm a provisional order in relation to a holder of an aviation safety instrument if it is satisfied-

- (a) that the duties imposed on the Authority under this Act preclude the confirmation of the provisional order;
- (b) that the holder of an aviation safety instrument has agreed to take or is taking all the steps as it appears to the Authority for the time being to be appropriate for the holder of that instrument to take for the purpose of securing or facilitating compliance with the condition in question; and
- (c) that the contraventions were or the apprehended contraventions are, of a trivial nature.

(6) The Authority shall, before confirmation of a provisional order, give notice to the holder of an aviation safety instrument concerned stating the following -

- (a) that the Authority proposes to confirm the provisional order and setting out its effect;
 - (b) setting out –
 - (i) the relevant condition of the aviation safety instrument for the purpose of securing compliance with which the provisional order is to be confirmed;
 - (ii) the acts or omissions which, in the Authority’s opinion, constitute or would constitute contraventions of that condition; and
 - (iii) the other facts which in the Authority’s opinion justify the confirmation of the provisional order.
 - (c) specifying the period (being not less than twenty-eight (28) days from the date of service of the notice) within which representations or objections with respect to the proposed confirmation may be made for consideration by the Authority.
- (7) The Authority shall not confirm a provisional order with modifications unless-
- (a) with the consent of the holder of an aviation safety instrument to whom the order relates;
 - (b) upon service on the holder of an aviation safety instrument the notice of the proposal to confirm the provisional order with modifications and in that notice, specifying the period (being not less than twenty eight (28) days from the date of service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) representations or objections which are duly made and not withdrawn have been considered by the Authority.

(8) In this section, “provisional order” means an order under this Section which, if not previously confirmed in accordance with subsection (5), shall cease to have an effect at the end of such period, not exceeding three (3) months, as is determined by or under the order.

Criteria for action

60. (1) For the purpose of determining whether an aviation safety instrument may be suspended, subject to conditions under section 57, revoked or made subject to permanent conditions under section 58, or whether a provisional order should be made under section 59 in respect of the holder, or whether the holder is to be disqualified under section 61, the Authority may have regard to, and give weight as it considers appropriate to -

- (a) the person’s compliance history with aviation safety regulatory requirements;
- (b) any conviction for an offence, whether or not the conviction was by a Court in Eswatini and whether or not the offence was committed before the appointed date; and
- (c) any evidence that the person has committed an aviation safety offence or has contravened the provisions of this Act.

(2) Notwithstanding subsection (1), the Authority shall take into account other matters, evidence, seek and receive relevant information obtained from any source deemed fit and necessary.

(3) If the Authority proposes to take into account any information that is or may be prejudicial to any person, the Authority shall, subject to subsection (4), as soon as is practicable, in the case of suspension or imposition of an aviation safety instrument under section 57, no later than five (5) working days after the suspension or imposition of conditions, disclose that information to that person and give that person a reasonable opportunity to refute or comment on the issues.

(4) Nothing in subsection (3) shall compel the Authority to disclose any information, the disclosure of which would endanger the safety of any person or before exercising any power under section 57.

(5) In this section –

“aviation safety offence” means an offence under this Act;

“aviation safety regulatory requirement” shall not include any security directive or requirement imposed by or under Part VI.

Disqualification from holding aviation safety instrument

61. (1) Where an aviation safety instrument is wholly revoked under section 58, the holder of that aviation safety instrument shall also be disqualified from holding the same aviation instrument or related safety instrument for a period as may be specified by order of the Authority.

(2) A person who applies for or obtains an aviation safety instrument while disqualified by an order of the Authority under this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Emalangeni (E50, 000) or imprisonment for a period not exceeding five (5) years.

(3) An aviation safety instrument obtained in contravention of subsection (2) shall be of no legal force and effect.

(4) If a former holder of an aviation safety instrument is aggrieved by a decision of the Authority under this section, that person may appeal to the Minister in the manner prescribed under this Act.

(5) The decision of the Minister on appeal in terms of this section shall be final.

Directives affecting a holder of an aviation safety instrument

62. (1) Subject to subsection (5), the Authority may, whether or not any administrative proceedings are instituted under Sections 57, 58 or 59, give a directive to the holder of an aviation safety instrument, according to the circumstances of the case, to do, or not to do, the things as are specified in the directive or are of a description as specified in the directive if -

- (a) the Authority considers the action necessary in the interests of promoting or protecting the safety and health of the public in ensuring environmental sustainability;

- (b) upon satisfaction that the holder of the aviation safety instrument has failed to comply with any condition of the aviation safety instrument;
- (c) on consideration that the privileges and duties for which the aviation safety instrument has been granted are being carried out by the holder in a careless or incompetent manner; or
- (d) in the case of an aviation safety instrument relating to the use of an aircraft, aeronautical product, the provision of any service, or impose conditions in respect of any document, where the Authority considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the aviation safety instrument relates.

(2) If a directive under subsection (1) is given it shall, take effect immediately to the holder of an aviation safety instrument concerned or on a later date specified in the directive.

(3) A directive under this section in respect of the holder of an aviation safety instrument shall not be inconsistent with the provisions of this Act or the conditions of the aviation safety instrument.

(4) The Authority may at any time revoke any directive given under this section.

(5) The Authority shall give notice, before the issue of a directive to a holder of an aviation safety instrument under subsection (1), unless the Authority in respect of the particular directive considers that it is not practicable or desirable.

(6) A notice in terms of subsection (1) shall-

- (a) state that the Authority proposes to make the directive and setting out its effect; and
- (b) specify the time within which representations or objections to the proposed directive may be made and for the Authority to make a determination on the issues raised.

(7) Where the holder of an aviation safety instrument is subject to administrative proceedings under section 57, 58 and 59, after a given directive to the holder in connection with those proceedings, and the holder of the aviation safety instrument further fails to comply with the directive of the Authority under this section, the failure shall constitute a new ground for administrative proceedings under section 57 or 58 for every day or part of it that the failure continues after the first administrative action.

Emergency directives

63. (1) Subject to subsection (2), the Director General may from time to time and in accordance with subsections (3), (4) and (5), make emergency directives of general application necessary to alleviate or minimise the risk of the death of, or a serious injury to a person or of damage to any property.

(2) The Director General shall not make any emergency directive of general application unless it is impracticable in the circumstances of the particular case for the Authority to make or amend any provision under this Act to effectively alleviate or minimise the risk concerned.

(3) Once an emergency directive of general application is made, the Director General shall cause the directive to be published in the Gazette, except that where for reasons of safety or security it is impracticable to notify the emergency directive by publication in the Gazette, the Director General shall notify the person as deemed appropriate or necessary in the circumstances.

(4) An emergency directive of general application shall, come into force immediately on publication in the Gazette and if the notification is by service on the person in terms of subsection (3), immediately upon service of the notification upon that person and in respect of that person only.

(5) An emergency directive of general application made under this section may be in force for a period not exceeding ninety (90) days, unless earlier revoked under subsection (6), and may be renewed by the Director General once only for a further period not exceeding thirty (30) days.

(6) The Authority may, at any time when an emergency directive of general application made under subsection (1) is in force, revoke that directive by publishing notice of revocation in the Gazette.

(7) If an emergency directive of general application is inconsistent with this Act, that emergency directive shall prevail.

Safety inspections and monitoring.

64. (1) The Authority may, by notice, require –

- (a) any holder of an aviation safety instrument; or
- (b) any person who operates, maintains or services, (or does any other act in respect of, any aircraft or aeronautical product, or who provides any aviation-related service or air traffic service, to undergo an inspection or monitoring as the Authority may consider, on reasonable grounds, to be necessary in the interests of civil aviation safety.

(2) For the purposes of any inspection or monitoring under subsection (1), the Director General or a safety inspector may in respect of the person described in subsection (1) (a) or (b), by notice in writing, require from that person information as the Director General or safety inspector may consider relevant to the inspection or monitoring.

(3) A person to whom a notice under subsection (1) or (2) is given, who without a reasonable excuse fails to comply with the requirements of the notice, commits an offence and shall, on conviction, be liable to pay a fine not exceeding fifty thousand Emalangeni (E50,000) or to imprisonment for a term not exceeding five (5) years.

Investigating holder of aviation safety instrument

65. (1) Without prejudice to sections 78 and 80, the Director General or a safety inspector may require the holder of an aviation safety instrument to undergo an investigation if-

- (a) there are reasonable grounds to believe that the holder has failed to comply with any condition of the aviation safety instrument;

- (b) the privileges and duties for which an aviation safety instrument has been granted are being carried out by the holder in a careless or incompetent manner; or
- (c) there exist reasonable grounds that an investigation is necessary in the interests of civil aviation safety.

(2) A Director General or a safety inspector that requires a holder of an aviation safety instrument to undergo an investigation under this section shall-

- (a) inform the holder in writing of the date on which the investigation is to commence;
- (b) conclude the investigation as soon as reasonably practicable; and
- (c) inform the holder in writing of the results of the investigation, including the recommendations and the grounds arising out of the investigation.

Power to detain aircraft and aeronautical products

66. (1) The Director General in order to promptly prevent any danger shall-

- (a) prohibit or impose conditions on the operation of the aircraft or all aircrafts of that class;
- (b) prohibit or impose conditions on the use of the aeronautical product of that class; or
- (c) detain the particular aircraft or seize the particular aeronautical product where necessary in order to prevent their operation or use,

if there exist reasonable grounds that the operation or use of any class of aircraft or aeronautical product may endanger persons or property.

(2) The Authority shall-

- (a) detain the aircraft or any aircraft of that class;
- (b) seize the aeronautical products of that class; or
- (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class, or any aeronautical product of that class,

where the Director General notifies the Authority of the existence of reasonable grounds that the operation or use of any class of aircraft or aeronautical product may endanger persons or property.

(3) The detention or seizure under subsection (1) or (2) shall be maintained for only the time as is necessary in the interest of safety, but if the aircraft, aeronautical product or parts of it are required as evidence for the purposes of prosecution, the detention period for the item or article may be determined by the court.

(4) The Director General or the Authority shall, provide in writing the reasons for the detention or seizure of an item or article, upon request by the owner or the person in charge of a detained aircraft or aeronautical product seized.

(5) For the purpose of subsections (1) and (2), the Director General or the Authority shall notify in writing to the persons concerned, the prohibitions or conditions as considered necessary, whether or not are of a permanent nature, in the appropriate circumstances.

(6) A person who is aggrieved by a decision of the Director General or the Authority under this section may lodge an appeal to the Minister, in the manner prescribed by the order made under this Act.

(7) The decision made by the Minister on appeal lodged in terms of subsection (5) shall be final.

Power to obtain information

67. (1) A safety inspector for purposes of investigating issues of compliance with this Act or regulations shall, by notice require the holder of an aviation safety instrument or other person to furnish all relevant documents and information within the knowledge, custody or control of that holder or person, within a reasonable period and in the form and manner as may be specified in the notice.

(2) The power to act in terms of subsection (1) shall include -

- (a) to require that person or any individual who is or was an officer or employee of that person to -
 - (i) provide an explanation of the document or any information given; or
 - (ii) appear before a safety inspector for an interview and to answer any question and give a statement about the document or information given;
- (b) if the document or information is not furnished, to require that person to state to the best of that person's knowledge and belief, where it is; and
- (c) if the information is recorded otherwise than in legible form, to require the information to be made available to the Authority in legible form.

(3) If a person is required to appear before a safety inspector for an interview, the safety inspector shall-

- (a) record by writing the person's answers or statement during the interview;
- (b) read over the written record in paragraph (a) of the person's answers or statement, if the person is for any reason unable to understand or communicate in spoken English sufficiently, use an interpreter to inform the person about the contents of the written record; and
- (c) then require the person to sign that written record.

(4) A person who, without reasonable excuse, fails to comply with the provision under subsection (1) commits an offence and shall, on conviction, be liable to pay a fine not exceeding fifty thousand Emalangenani (E50,000) or to imprisonment for a term not exceeding five (5) years or to both.

(5) A person that-

- (a) intentionally alters, suppresses or destroys a document or information which has been required by a notice under subsection (1) to be furnished; or
- (b) in furnishing any document or information required under subsection (1), makes any statement which that person knows in particular to be false in material or recklessly makes the statement, commits an offence and shall, on conviction, be liable to pay a fine not exceeding fifty thousand Emalangeni (E50, 000) or to imprisonment for a term not exceeding five (5) years.

(6) If a person fails to comply with a notice under subsection (1), the court may on application by the Authority grant an order with costs to secure compliance with the notice.

(7) The Authority or a safety inspector shall be entitled without payment to keep the document or information, or any copy or extract of the document or information, furnished under subsection (1).

Power of entry to premises, aircraft

68. (1) The Director General, Director of Flight Safety Standards and Safety Inspector shall, for purposes of investigating issues of compliance with this Act, have the right of access at any reasonable time to the following -

- (a) any aircraft, aerodrome, building or place; and
 - (b) documents or records concerning an aircraft, aeronautical product, or aviation related service.
- (2) If there exist suspicious reasonable grounds that-
- (a) any breach of any provision in this Part or the applicable provision in this Act is being or about to be committed;
 - (b) a condition imposed under any aviation safety instrument is not being complied with;
 - (c) a situation exists within the civil aviation system or is about to exist that constitutes danger to persons or property; or
 - (d) there is on or in an aircraft, aerodrome, building or place an item or article which may be of evidential material relevant to an offence under this Act,

the Director of Flight Safety Standards or the Safety Inspector may enter at any reasonable time the aircraft, aerodrome, building, or place and exercise any powers referred to in subsection (4) to determine whether or not a matter referred to in subsection (2) (a), (b) and (c) exists.

(3) The Director General or the Safety Inspector is authorized to enter any aircraft, aerodrome, building or place only if the occupier of the property or premise has consented to the entry or after giving six (6) hours' prior notice of the entry.

(4) A person authorized to have access to or to enter an aircraft, aerodrome, building, or place under subsection (1) or (2) may-

- (a) require a person who is in possession of an aviation safety instrument, certificate, book, manual, record, list, notice, or other document that is required to be kept by or under this Act, relating or reasonably believed to relate to the commission of an offence or the non-compliance with a condition to take and retain extracts or copies of it to produce or surrender it;
- (b) compel any person who is able to operate any equipment at the premises to do so for the purpose of enabling the authorized person to ascertain whether the equipment, or a disk, tape or other storage device that can be used or associated with the equipment, contains information that is relevant to the investigation;
- (c) if information is found in the exercise of the power in paragraph (b), produce, or compel the production of, the information in documentary form, and keep or copy the documents so produced or transfer, or compel the transfer of, the information to a disk, tape or other storage device, and remove it from the premises;
- (d) require any person in possession of, or having control of, any machinery, equipment or other thing relating to the maintenance, operation or servicing of any aircraft or aeronautical product, or the provision of air traffic service or aviation-related services to produce the machinery, equipment or other thing for inspection and to answer questions or provide information relating to the machinery, equipment or other thing;
- (e) inspect and test any machinery, equipment or other thing referred to in paragraph (d);
- (f) if the Director General or Safety Inspector considers it necessary to do so for the purpose of obtaining evidence of the contravention of any provision of this Part or any applicable aviation safety subordinate legislation, or any condition of an aviation safety instrument, seize any machinery, equipment, substance, record or any other material thing;
- (g) inspect, examine and take samples of any substance or thing on or in the aircraft, aerodrome, building, or place; or
- (h) photograph, or make sketches of, the aircraft, aerodrome, building, or place and any substance or thing on or in the aircraft, aerodrome, building, or place.

(5) If the Director General or Safety Inspector seizes anything under this section, it may be detained until the completion of any proceedings (including proceedings on appeal) in which it may be evidence but, in the case of records, the person from whom the records were seized shall be permitted to inspect and make copies of the records.

(6) Subsection (5) ceases to have effect in relation to things seized if, on the application of a person aggrieved by the seizure, the court issues an order for the release of the seized items.

Obligation to notify on reportable safety matters

69. (1) If a responsible person has knowledge of any reportable safety matter, that person shall, when required to do so under this Act, notify the Authority of the reportable safety matter including its particulars, in the manner prescribed.

(2) A responsible person is not excused from giving information required in compliance with subsection (1) on the ground that the disclosure of the information might tend to incriminate the person or expose the person to a penalty.

(3) Where a responsible person claims before giving the information required in subsection (1), that the disclosure of that information might be self-incriminatory any information, document or thing obtained as a direct or indirect consequence of the giving of the information shall, not be admissible in evidence against that person in any criminal proceedings, except proceedings for an offence under section 97.

(4) In this section-

“reportable safety matter” means safety matter that is prescribed under this Act to be a reportable safety matter;

“responsible person” in relation to a reportable safety matter means;

- (a) a person who operates, maintains, services, or does any other act in respect of, any aircraft, aeronautical product or aviation related service; or
- (b) any other person, who is prescribed under this Act for the purposes of this definition in relation to the reportable safety matter concerned;

“safety matter” means -

- (a) the occurrence of any incident involving any Eswatini registered aircraft or Eswatini aircraft operator which endangers or which, if not corrected, would endanger an aircraft, its occupants or any other person, including and not limited to defects or malfunctioning of the aircraft or any part of the aircraft;
- (b) the occurrence of any incident involving any facility on the ground used or intended to be used for purposes of or in connection with the operation of an aircraft, which endangers or which, if not corrected, would endanger an aircraft, its occupants or any other person, including and not limited to defects or malfunctioning of the facility or any part of the facility;
- (c) any information that relates to compliance, or failure to comply, with any provision of this Act or with the law of any Contracting State in which the aircraft operates; or
- (d) any other occurrence that affected, is affecting, or might affect safety of transport by air as may be prescribed under this Act to be a safety matter.

(5) A responsible person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable for a fine not exceeding forty thousand Emalangeni (E40,000) or imprisonment not exceeding ten (10) years.

Exemption of aircraft and parts from seizure on patent claims

70. (1) Subject to subsection (2), the importation into or storage in Eswatini of spare parts and spare equipment for an aircraft to which this section applies and the use and installation of the parts and spare equipment in the repair of an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Eswatini on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

(2) This subsection shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Eswatini or are exported from Eswatini for sale or distribution.

(3) This section applies to an aircraft, other than an aircraft used in military, customs or police service, registered in any country or territory in the case of which there is for the time being in force any regulation made by the Minister, with a view to the fulfilment of the provisions of the Chicago Convention to which this section relates, that the benefits of those provisions apply to that country or territory, and to such other aircraft as the Minister may, by order, specify.

PART VIII CIVIL AVIATION SECURITY

Interpretation of this Part

71. (1) In this Part, unless the context otherwise requires-

“act of unlawful interference” means the doing or attempting to do anything such as to jeopardise the safety of civil aviation and air transport, and includes any of the following –

- (a) unlawful taking control of an aircraft by force, threat of force or other form of intimidation, trick or false pretence;
- (b) destroying an aircraft that is in service;
- (c) hostage-taking on board an aircraft or at an airport;
- (d) forcible intrusion on board an aircraft at an airport or on the premises of an aeronautical facility that puts the safety of the aircraft or any person on board or outside the aircraft at risk;
- (e) introducing on board an aircraft or at an airport a weapon, hazardous device or material intended for criminal purposes;
- (f) use of an aircraft in service for the purpose of causing death, serious bodily injury or serious damage to property or the environment;
- (g) putting the safety of an aircraft in flight or on the ground or of passengers, crew, ground personnel or the general public at an airport or on the premises of a civil aviation facility at risk by communicating false or misleading information;

“aviation industry participant” means –

- (a) an airport licensee who holds an airport certificate under this Act or who is exempted from holding such a license under section 44;
- (b) an aircraft operator;
- (c) an air cargo agent;
- (d) the Authority;
- (e) a person who occupies or controls an area of an airport (whether under a lease, sublease or other arrangement); or

- (f) a contractor who provides services to any person mentioned in paragraphs (a) to (e);

“aviation security incident” means a threatened act of unlawful interference or an act of unlawful interference;

“in service”, in relation to an aircraft, includes the period the aircraft is in flight;

“passenger” includes an intending passenger;

“security programme”, in relation to an aviation industry participant means a programme prepared under this Act;

(2) For the purposes of this Part, a reference to an aviation industry participant shall not include a reference to the-

- (a) Police Service; and
- (b) Umbutfo Eswatini Defence Force.

Civil Aviation Security.

72. (1) In regulating civil aviation security, the Authority shall-

- (a) define and allocate tasks and co-ordinate activities between aviation industry participants, persons engaged in civil aviation related activities, the departments, agencies and organisations of Eswatini and other entities concerned with or responsible for the implementation of various aspects of the National Civil Aviation Security Quality Control Programme;
- (b) require the aviation industry participants as are prescribed under this Act to have an aviation security programme to develop, and comply with, aviation security programmes in accordance with the requirements in those regulations and to review and approve those aviation security programmes;
- (c) ensure the development and implementation of a programme known as the National Civil Aviation Security Training Programme and for the training of personnel of all entities involved with or responsible for the implementation of various aspects of aviation ;
- (d) to develop, implement and maintain a civil aviation security quality control programme to determine compliance with this Act and other programmes;
- (e) appoint aviation security inspectors to the extent required to fulfil functions of the Authority in accordance with this Part and other civil aviation security quality control programme;
- (f) advise and make recommendations to the Minister on matters relating to civil aviation security, including the implementation of international conventions entered into by or on behalf of Eswatini and any revision to any written law arising from that implementation; and
- (g) carry out other functions relating to aviation security as may be prescribed under this Act.

(4) A Notice of every appointment made under subsection (1) shall be published in the Gazette.

(5) The Authority may, in writing, and subject to conditions or restrictions deemed necessary, delegate all or any of its powers under this Part or under this Act to any Aviation Security Inspector, officers or employees who carry on activities that relate to national security, except the power of delegation conferred by this section.

(6) The power delegated under subsection (5) to an Aviation Security Inspector, officer or employee of the Authority may be performed or exercised in the name and on behalf of the Authority.

(7) The delegation under this section shall not prevent the performance or exercise of any function, duty or power by the Authority.

(8) The Authority shall issue to an Aviation Security Inspector appropriate credentials, to be carried at all times when exercising powers under any provision in this Part or Act.

National Civil Aviation Security Committee

73. (1) The Minister shall establish a committee to be known as the National Civil Aviation Security Committee, comprising of persons the Minister may consider appropriate and whose function is to -

- (a) advise the Authority on civil aviation security policies, strategic matters and decisions and the measures necessary to meet threats to civil aviation;
- (b) review measures and make recommendations for changes in response to information on new threats, developments in aviation security technology and techniques and other relevant factors;
- (c) co-ordinate aviation security measures among aviation industry participants, persons engaged in civil aviation related activities, departments, agencies and organisations of Eswatini and other entities concerned with or responsible for the implementation of various aspects of a civil aviation security programme;
- (d) promote security considerations in the design of new airports or alterations to existing facilities;
- (e) promulgate and co-ordinate the implementation of changes in national aviation security policies in consultation with the Authority; and
- (f) consider recommendations made by the aviation industry participants and where appropriate recommend changes to civil aviation security programmes, airport security programmes or operator security programmes to the Authority.

(2) If a member of the National Civil Aviation Security Committee dies, resigns or is removed from office by the Minister, to fill the vacancy another person may be appointed to serve for the remainder of the term for which the vacating member was appointed.

(3) Subject to the provisions of this Act, the National Civil Aviation Security Committee may determine its own procedure.

(4) The National Civil Aviation Security Committee may appoint from among its own members or other persons sub-committees as an when necessary in order to perform efficiently and effectively its mandate.

Powers of aviation security inspectors

74. (1) The Authority or any aviation security inspector appointed under section 72 (1) (e) may exercise the powers specified in subsection (2), for -

- (a) determining whether a person is complying with any provision of this Act or requirements under this Part or prescribed under this Act;
- (b) investigating a possible contravention of any provision of or requirements under this Part or prescribed under this Act; or
- (c) determining whether a security directive should be issued to any person referred to in section 75.

(2) For the purposes of subsection (1), the Authority or any person authorized by it and an Aviation Security Inspector may-

- (a) enter and inspect-
 - (i) any part of an airport;
 - (ii) any area, building (other than a residence) or vehicle under the control of an aviation industry participant or person 57 referred to in section 63(1)(b); and
 - (iii) if an aviation industry participant or a person referred to in section 82(1) (b) operates from a residence or part of it;
- (b) inspect equipment in a place or vehicle mentioned in paragraph (a);
- (c) observe the operating procedures of an aviation industry participant or person referred to in section 82(1) (b);
- (d) discuss the procedures referred to in paragraph (c) with an employee of the aviation industry participant or person referred to in section 82 (1) (b) or with another aviation industry participant or relevant persons;
- (e) inspect, photograph or copy a document or record made or kept by an aviation industry participant or person referred to in section 82 (1)(b);
- (f) operate equipment at a place mentioned in paragraph (a) for the purposes of gaining access to a document or record made, or kept by an aviation industry participant or person referred to in section 82(1)(b);
- (g) enter and inspect an aircraft at an airport;
- (h) inspect equipment in the aircraft mentioned in paragraph (g);
- (i) observe the operating procedures for the aircraft (whether carried out by the crew or some other person);

- (j) discuss the procedures referred to in paragraph (i) with a person carrying them out or with another aviation industry participant or person referred to in section 82(1)(b); or
- (k) inspect, photograph or copy a document or record held in an aircraft that relates to a passenger or an item of cargo.

(3) The Authority or Aviation Security Inspector may exercise a power specified in subsection (2)-

- (a) if the power is exercised within the boundaries of an airport at any time and without notice;
- (b) at any time and without notice, if the power is exercised outside the boundaries of an airport and is a power specified-
 - (i) in subsection (2)(a)(ii), (c) or (d);
 - (ii) in subsection (2)(e) to the extent that it relates to subsection (2)(a) or (d); or
 - (iii) in subsection (2)(f) to the extent that it relates to subsection (2)(a) (iii);
- (c) upon giving the aviation industry participant concerned reasonable notice.

(4) A person may be authorized to assist the Authority or Aviation Security Inspector exercising any power under the provisions in this Part or prescribed under this Act.

Security measures

75. (1) The Authority may, in writing through a security directive issued under this Act, require -

- (a) an aviation industry participant or class of aviation industry participants; or
- (b) a person who is not an aviation industry participant or any class of persons who are not aviation industry participants -
 - (i) who operate, maintain, service or do any other act in respect of an aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure (whether or not at an airport); or
 - (ii) who have access to the airside, protected area or protected place within an airport, for the purposes of any business carried on or service provided by the person or persons,

to carry out, within the time determined by the Authority, the prescribed security measures as the Authority may specify.

(2) Notwithstanding subsection (1), the requirement for security measures need not be in writing in cases of extreme urgency in order to respond rapidly to-

- (a) any specific aviation security incident requiring immediate action or additional security measures; or

- (b) a change in the nature of an existing general threat of an act of unlawful interference requiring immediate action or additional security measures, and in that case, the Authority may issue a verbal security directive which shall be confirmed in writing as soon as practicable afterwards.

(3) In this section, “security measure” includes-

- (a) any measure, equipment and procedure to carry out screening or re-screening and clearing of -
 - (i) any person boarding an aircraft;
 - (ii) any baggage, cargo or other thing to be carried on an aircraft;
 - (iii) diplomats or other special passengers, diplomatic bags and baggage;
 - (iv) passengers with reduced mobility or a medical condition;
 - (v) transit passengers, passengers in custody and suspect behaviour in passengers;
or
 - (vi) anomalies in passenger reconciliation that may arise during check-in or boarding point;
- (b) The security measures and procedures to be used within an airport include but not limited to the following-
 - (i) to control access at the airport and maintain the integrity of access control systems;
 - (ii) to deter and detect unauthorized access into the airside area by people, aircraft, vehicles or other effects;
 - (iii) to deter and detect unauthorised access into the airside security zone by people, aircraft, vehicles or other effects;
 - (iv) to deter and detect unauthorised access into a landside security zone by people, vehicles or other effects;
 - (v) to assess, identify and respond to unknown substances;
 - (vi) to investigate, secure, and remove unattended or suspect vehicles, aircraft or other effects including baggage and cargo; or
 - (vii) to ensure the security of passwords, keys and key lists, electronic access cards and other security privileges;
- (c) any measure to deter unauthorised possession of firearms, weapons and other prohibited items in an airport or aircraft, including procedures -
 - (i) for dealing with surrendered firearms, dangerous weapons and prohibited items;
 - (ii) for handling and movement of firearms and dangerous weapons; or

- (iii) for using firearms and other dangerous weapons in the airside area or landside security zones;
- (d) any measure and procedures for responding to and investigating aviation security incidents, threats and breaches including measures by an aircraft operator or the pilot-in-command of an aircraft in Eswatini and to-
 - (i) hold the aircraft in a particular position or within a particular area until specified actions are taken or until a specified event occurs;
 - (ii) ensure that the aircraft leaves a particular place or a particular area;
 - (iii) ensure that the aircraft lands at a particular place or within a particular area; or
 - (iv) ensure that the aircraft lands outside of a particular area;
- (e) any measure and procedures-
 - (i) for reporting aviation security incidents or security breaches, including occurrences that threaten the security of the airport or any aircraft in the airport;
 - (ii) for evacuation and emergency management in case of an aviation security incident, security threat or breach of security, including an aircraft hijacking, a bomb threat or a failure of critical security equipment; or
 - (iii) for responding to any security directive verbally given under subsection (5), including procedures to communicate the directive within the airport;
- (f) any measure and procedures to undertake reasonable searches of -
 - (i) a person boarding an aircraft;
 - (ii) anything to be carried on an aircraft;
 - (iii) an aircraft or class of aircraft, aerodrome or class of aerodromes or a navigation installation or class of navigation installations specified in a security directive; or
 - (iv) any unattended item, substance, or vehicle in an aerodrome or aircraft within an aerodrome;
- (g) any measure to seize any item or substance specified in a security directive if the person given the security directive (or the person's agent) has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft; or
- (h) any measure by an aircraft operator or the pilot-in-command of an aircraft in Eswatini and that is not in flight to-
 - (i) hold the aircraft in a particular position or within a particular area until specified actions are taken or until a specified event occurs;

- (ii) take particular actions or ensure that particular actions are taken, on or in relation to an aircraft;
- (iii) take particular actions or ensure that particular actions are taken in relation to a person or thing on or to be carried by an aircraft; or
- (iv) to allow any person, an Aviation Security Inspector or other authorized person to inspect the aircraft.

(4) Where a person fails to comply or do anything required of that person by the Authority under this section, the person commits an offence and shall, on conviction, be liable to a fine not exceeding hundred thousand (E100,000) or to imprisonment for a term not exceeding ten (10) years or to both.

Requirement for security programme.

76. (1) An aviation industry participant shall develop and apply a security programme.

(2) For the purposes of this Part, if the Authority approves a security programme in respect of an aviation industry participant, that programme comes into force at the time specified in the notice of approval.

(3) An aviation industry participant who fails to comply with this section commits an offence and shall, on conviction, be liable to pay a fine not exceeding hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding ten (10) years.

**PART IX
AIR ACCIDENTS AND INCIDENTS INVESTIGATION**

Interpretation of this Part.

77. In this Part, unless the context otherwise requires-

“accident” means an accident associated with the operation of any aircraft involving circumstances defined in and prescribed by regulations made for the purposes of this Part;

“accredited representative” means a person appointed by a Contracting State, on the basis of that persons qualifications, for the purpose of participating in an investigation conducted by another State, and includes any other person so recognised under Annex 13 of the Chicago Convention;

“aviation safety issue” means any conduct, transaction, process, practice, occurrence, circumstance or matter that affects, might affect aviation safety, but not any of the following -

- (a) any accident or serious incident;
- (b) any conduct, transaction, process, practice, occurrence, circumstance or matter that may constitute an offence as may be prescribed by the voluntary reporting rules;
- (c) any reportable safety matter under section 70;
- (d) matters showing a serious and imminent threat to a person’s health or life;
- (e) any act of unlawful interference within the meaning of section 72; or

- (f) any other conduct, transaction, process, practice, occurrence, circumstance or matter that is prescribed by the voluntary reporting rules to be excluded from this definition;

“cause” in relation to any accident or incident means any action, omission, event, condition, or a combination of any action, omission, event or condition, which led to the accident or incident, the identification of which does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

“civil aircraft” means aircraft that is a registered aircraft in Eswatini and any other aircraft that is not a military aircraft;

“designated person” means a person designated by the Minister for the purposes of the voluntary reporting scheme established by the voluntary reporting rules;

“flight recorder” means any type of recorder installed in the aircraft for the purpose of complementing accident or incident investigation;

“flying display” means a civilian organised event (including any rehearsal for the event) which;

- (a) consists, wholly or partly, of an exhibition of flying of any civil or military aircraft; and
- (b) takes place at an aerodrome or premises other than a naval, military or air force aerodrome or premises;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of the operation;

“non-ContractingState” means any State which is not a party to the Chicago Convention;

“serious incident” means an incident involving circumstances prescribed by regulations made for the purposes of this Part;

“state of design” means the State having jurisdiction over the organisation responsible for the type design of the aircraft;

“state of manufacture” means the State having jurisdiction over the organisation responsible for the final assembly of the aircraft;

“voluntary reporting rules” means rules made under section 86.

Investigation of Air Accidents and incidents

78. (1) The Minister may appoint an independent agency, commission, board or other body to conduct an aircraft accident and serious incident investigations, deemed fit for the purpose.

(2) The agency, commission, board or other body appointed under subsection (1) shall institute and have jurisdiction over -

- (a) the investigation of any accident or incident arising out of, or in the course of air navigation, either occurring in or over Eswatini or elsewhere to an aircraft registered in Eswatini; and

- (b) the collection, evaluation, processing, storing and dissemination of reports of any accident or incident.

(3) This Part applies to an investigation of any air accident or serious incident that is instituted in accordance with subsection (1) -

- (a) that occurs in Eswatini;
- (b) that occurs outside Eswatini, that involves Eswatini operator or Eswatini registered aircraft and if either of the following apply-
 - (i) the occurrence is in any non-Contracting State which does not intend to carry out an investigation of the accident or serious incident in accordance with Annex 13 to the Chicago Convention; or
 - (ii) the investigation has been delegated to Eswatini by another Contracting State by mutual arrangement and consent;
- (c) that occurs in a location which cannot be definitely established as being in the territory of any State and that involves Eswatini operator or Eswatini registered aircraft.

Air Accident Investigators

79. (1) For the purposes of this Part, the Minister shall appoint one or more persons who have suitable qualifications and experience, as Air Accident Investigators to properly exercise the powers of an Air Accident Investigator under this Part.

(2) The Minister shall, amongst the appointed persons in subsection (1), appoint a Chief Air Accident Investigator or Investigator in Charge.

(3) The Chief Air Accident Investigator appointed under subsection (2) shall-

- (a) carry out investigations into any accident or incident as determined by the Minister -
 - (i) that occurs in Eswatini from which air safety lessons may be derived; or
 - (ii) that occurs outside Eswatini, that involves Eswatini operator or Eswatini registered aircraft, and from which air safety lessons may be derived;
- (b) publish a report and discharge the function which is incidental or conducive to the attainment or furtherance of the purposes of this Part and prescribed by regulations.

(4) The Minister shall, as soon as practicable after the investigation has been completed publish, by electronic or other means, a report in relation to the investigation.

Purpose of an investigation under this Part

80. (1) The purpose of an investigation of an accident or incident under this Part shall be to establish the probable cause of an accident or incident and prevent accidents or incidents, it is not to apportion blame or liability.

(2) Where an investigation is carried out under this Part, it shall be independent and separate from any judicial or administrative proceedings intended to apportion blame or liability.

Powers of Investigators

81. (1) The Air Accident Investigator shall, when conducting investigations under this Part and where the whole or any part of the investigation is carried out in Eswatini-

- (a) have free and unhampered access to the site of the accident or incident as well as to the aircraft, its contents or wreckage;
- (b) be granted immediate and unrestricted access to and use of the contents of the flight recorders, air traffic service provider's records and any other recordings;
- (c) allowed access to and be provided with the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of the victims;
- (d) have immediate access to and be provided with the results of examinations of the persons involved in the operation of the aircraft or of tests made on samples taken from the persons;
- (e) allowed free access to any relevant information or records held by any relevant person within the meaning of section 87, any maintenance contractor or sub-contractor of an operator of an aircraft, the hirer, the designer or the manufacturer of the aircraft, and by the authorities for civil aviation, airport operation or air traffic Services;
- (f) by summons issued by the Air Accident Investigator call and examine any person deemed relevant in the investigations to-
 - (i) answer any question or furnish material information or produce any books, papers, documents and articles deemed relevant;
 - (ii) make copies of and retain the books, papers, documents and articles until completion of investigation; or
 - (iii) take statements and require the persons to sign and make declaration of the truth of the statement made;
- (g) on production, if required, of the credentials, enter and inspect any place, building or aircraft the entry or inspection of which appears to be necessary for the purposes of the investigation;
- (h) on production of credentials, remove, test, take measures for the preservation of or otherwise deal with any aircraft other than an aircraft involved in the accident or incident where it appears to be necessary for the purposes of the investigation;
- (i) take possession of, examine, remove, test or take measures for the preservation of any object or evidence;
- (j) require an immediate listing of evidence and removal of debris or components for examination or analysis purposes;

- (k) require the readout of the flight recorders;
- (l) in the case of a fatal accident, require a complete autopsy examination of fatally injured flight crew, and, when necessary, passengers and aviation personnel by a pathologist, and if a pathologist experienced in the investigation of aircraft accidents is available, by that pathologist, and require the autopsy report or reports to be submitted to an Inspector;
- (m) where appropriate, require the medical examination or toxicological examination of the crew, passengers and aviation personnel involved in the accident or incident by a medical practitioner, and if a medical practitioner experienced in the investigation of aircraft accidents is available, by the medical practitioner, and require the medical report or toxicological report or both, as the case may be, to be submitted to an Inspector;
- (n) require the crew, passengers and aviation personnel involved in the accident or incident to undergo other tests (including a breathalyser test), and require the test report or reports to be submitted to an Inspector; and
- (o) have such other powers as may be prescribed in regulations made for the purposes of this Part.

(3) Without prejudice to the generality of subsections (1), an Air Accident Investigator may request another Contracting State to provide information, facilities or experts as the investigator may consider necessary for the purposes of an investigation.

(4) A person to whom a summons or requirement is given by an Air Accident Investigator in accordance with this section commits an offence if the person-

- (a) fails to attend before the said Investigator in accordance with the summons or requirement;
- (b) refuses to take an oath or make an affirmation when required by the said Investigator to do so;
- (c) refuses or fails to answer a question lawfully put to the person; or
- (d) fails to produce to the investigator the specified evidential material in accordance with the summons or requirement,

and shall, on conviction, be liable to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding ten (10) years or both.

(5) A person is not excused from answering a question or from producing evidential material in response to a summons or requirement made by an investigator under this Part on the ground that the answer or the production of the material might be self- incriminatory.

(6) Where an individual claims self-incrimination in terms of subsection (5)-

- (a) that answer or evidential material;
- (b) the giving of the answer or the production of evidential material; and

- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the answer or the production of evidential material,

shall not be admissible in evidence against that individual in any civil proceedings or any criminal proceedings other than proceedings for an offence in respect of the falsity of the answer or evidential material produced.

- (7) Subsection (6) shall apply notwithstanding any other law.

Appointment of accredited representative, adviser and expert

82. (1) Where an accident or incident occurs outside Eswatini in a Contracting State and where -

- (a) Eswatini is the State of Registry, State of the Operator, State of Manufacture or State of Design of the aircraft involved in the accident or incident; or
- (b) Eswatini, at the request of the Contracting State conducting the investigation, is requested to provide information, facilities or experts to that Contracting State in connection with the investigation,

the Minister may appoint an accredited representative and one or more advisers to assist the accredited representative in the conduct of the investigation.

(2) The Minister may also appoint an expert to participate in the investigation into an accident which occurs in another Contracting State where Eswatini has a special interest in the accident by virtue of fatalities or injuries to citizens of Eswatini.

(3) The accredited representative and any adviser appointed by the Minister under subsection (1) may, for the purposes of the investigation in which they are participating, exercise the rights and powers of an investigator in respect of any aircraft, records, information, documents, objects, witnesses or other evidence in Eswatini or held by any person in Eswatini specified in this Part.

Obstructing investigations

83. (1) Where-

- (a) a person knowingly engages in conduct or is reckless as to whether the conduct, will adversely affect an investigation conducted at the time or at a later period, under this Part;
- (b) the conduct has the result of adversely affecting an investigation whether or not the investigation has commenced; or
- (c) the conduct is not authorised by the Chief Air Accident Investigator, investigator or any person acting under the authority of the Minister, Chief Investigator or investigator under this Part,

that person commits an offence and shall, on conviction, be liable to pay a fine not exceeding forty thousand Emalangenani (E40,000) or to imprisonment for a term not exceeding two (2) years or to both.

(2) Subsection (1) shall not apply if the person has a reasonable excuse, the burden of proof of which lies with that person.

Limitations on disclosure of records of investigation

84. (1) In this section, “restricted information” means—

- (a) all statements, whether oral or in writing, obtained from persons by an investigator, or by a person acting under the authority of the Minister or Chief Air Accident Investigator, in the course of an investigation under this Part including any record of any statement;
- (b) all communications between any persons having been involved in the operation of an aircraft that is being or has been investigated under this Part;
- (c) all medical or private information regarding persons, including deceased persons, involved in the accident or incident that is being or has been investigated under this Part;
- (d) any cockpit voice recording and any transcript from such recording;
- (e) any air traffic services recording and any transcript from such recording;
- (f) any cockpit airborne image recording and any part or transcript from such recording;
- (g) records of the analysis of and opinions about information or evidential material acquired in the course of an investigation under this Part, including flight recorder information, made by the Chief Air Accident Investigator or investigator in charge and accredited representatives in relation to the accident or incident;
- (h) the draft Final Report of an accident or incident investigation;
- (i) information that is contained in a report of an aviation safety issue made under the voluntary reporting rules;
- (j) information that is obtained or generated by a designated person in the course of considering a report of an aviation safety issue made under the voluntary reporting rules; and
- (k) records of the analysis of information contained in a report of an aviation safety issue made under the voluntary reporting rules, including opinions expressed by a person in that analysis.

(2) The records listed in subsection 1(i) shall be included in any final report or its appendices only when pertinent to the analysis of the accident or incident, and any parts of the records not relevant to the analysis are not be disclosed.

(3) Subject to subsection (4), a person who is or has been an investigator, a member of the investigation team, an accredited representative or an adviser, or who has or has had access to any restricted information, shall not disclose or make available any restricted information for purposes other than accident or incident investigation.

(4) Subsection (3) shall not apply to —

- (a) anything done by a person in performing functions or exercising powers under, or in connection with, this Part or the subordinate legislation made for the purposes of this Part;
- (b) disclosure to a court in criminal proceedings for an offence under any provision of this Part or the subordinate legislation made for the purposes of this Part or under section 97; or
- (c) disclosure where the High Court determines that the benefits resulting from the disclosure or use outweigh the likely adverse domestic and international impact the disclosure may have on that or any future investigation.

(5) Where a person is prohibited by this section from disclosing any restricted information, then the person cannot be required by any court to disclose the information, and any information disclosed by the person in contravention of this section shall not be admissible in any civil proceedings or any criminal proceedings, other than proceedings against the person under this section.

(6) A report of the Minister, Chief Air Accident Investigator, Investigator-in-Charge and Investigator, relating to an accident or incident investigation shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in the report.

(7) The Minister, Chief Air Investigator, Investigator-in-Charge and Investigator shall not be required to hold aircraft records or factual information concerning an accident or incident that is being or has been investigated under this Part beyond the time as is necessary for the completion of the investigation and reports.

Compulsory reporting of accidents and serious incidents.

85. (1) Where a relevant person has knowledge of –

- (a) an accident or a serious incident occurring in Eswatini;
- (b) an accident or a serious incident outside Eswatini involving Eswatini operator or Eswatini registered aircraft; or
- (c) an occurrence, not being an accident or serious incident,

that person concerned shall give notice of the accident, serious incident or occurrence to the air accident investigation coordinator.

(2) For the purposes of subsection (1) a relevant person means-

- (a) the owner, operator or pilot-in-command of the aircraft at the time of the accident or serious incident;
- (b) where the accident or serious incident occurs on or adjacent to an aerodrome in Eswatini and close to the vicinity of the owner or operator of the aerodrome;
- (c) where the accident or serious incident occurs in Eswatini airspace, the provider of air traffic services;
- (d) where the accident or serious incident occurs during a flying display in Eswatini, the organiser of the flying display; and

- (e) in all other accidents, serious incidents or incidents, such persons as may be prescribed by regulations made for the purposes of this Part.

(3) A relevant person who, without reasonable excuse, contravenes subsection (1) (a) or (b) commits an offence and shall, on conviction, be liable to pay a fine not exceeding hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding five (5) years or to both.

(4) A relevant person who, without reasonable excuse, contravenes subsection (1) (c) commits an offence and shall, on conviction, be liable to pay a fine not exceeding forty thousand Emalangeni (E40,000.00) or to a term of imprisonment not exceeding two (2) years or to both.

Voluntary reporting scheme.

86. (1) Voluntary reporting rules may be made by the Authority under this section to establish a scheme -

- (a) for the voluntary and confidential reporting of aviation safety issues;
- (b) to identify deficiencies and problems arising out of such reports; and
- (c) to provide data for safety improvements to the Eswatini aviation system.

(2) The voluntary reporting rules shall prescribe-

- (a) the voluntary and confidential reporting of aviation safety issues to one or more persons designated in the rules (referred to in this Part as a designated person);
- (b) the manner in which such reports are to be made;
- (c) the use and disclosure by a designated person of information contained in such reports and information the designated person obtains or generates in the course of considering any such report, which shall not be inconsistent with section 97; and
- (d) any other matters necessary or incidental to the establishment or operation of a scheme in accordance with subsection (1).

(3) The voluntary reporting rules made under this section shall be published in the Gazette.

Protection for reporting aviation safety issues.

87. (1) Subject to subsection (4) -

- (a) a report of an aviation safety issue made by a reporter to a designated person in accordance with the voluntary reporting rules or any evidence of the contents of the report; and
- (b) the fact that the a report of an aviation safety issue was made by the reporter to a designated person,

shall not be admissible in evidence against the reporter in any administrative proceedings before any tribunal, civil or criminal proceedings before any court under this Part.

(2) A person shall not take disciplinary action against an employee using information derived from a report of an aviation safety issue made by the employee to a designated person.

(3) A tribunal shall not make a decision of an administrative nature, whether or not in the exercise of its discretion, under any law against a reporter using information derived from a report of an aviation safety issue made by that reporter to a designated person in accordance with the voluntary reporting rules.

(4) For the avoidance of doubt, this section does not prevent the use of information derived from a source that is not a report of an aviation safety issue made to any designated person in accordance with the voluntary reporting rules.

(5) In this section-

“tribunal” includes the Appeals Tribunal or any person or body of persons constituted and vested by or under any written law to make a decision of an administrative character; and

“reporter” means a person who reports on an aviation safety.

PART X AIR TRANSPORT LICENSING, LIABILITY AND INSURANCE

Restriction of carriage by air for reward

88. (1) An aircraft shall not be used for the carriage by air of passengers, cargo for hire, remuneration or other valuable consideration, unless the operator of the aircraft-

- (a) holds an air transport licence; and
- (b) complies with the terms of the air transport licence -
 - (i) so far as they relate to any flight; and
 - (ii) which are required to be complied with before or during any flight.

(2) Subsection (1) applies to a flight conducted in any part of the world by an aircraft registered in Eswatini and to a flight beginning or ending in Eswatini by an aircraft registered in a foreign State.

Grant and refusal of air transport licence.

89. (1) An application for the grant of an air transport licence shall be made in writing to an Air Transport Licensing Committee established by the Authority and is to contain the particulars specified by the Air Transport Licensing Committee.

(2) The Air Transport Licensing Committee may grant a licence to the applicant in the terms requested in the application or in the terms requested with modifications as the committee deem necessary.

(3) An Air Transport Licensing Committee shall refuse to grant an application made by a Liswati air operator, if not satisfied that-

- (a) the applicant is a Liswati or a body incorporated under the laws of Eswatini which is substantially owned and effectively controlled by Emaswati;

- (b) the resources of and any financial arrangements made by the applicant are adequate for discharging the applicant's actual or potential obligations in respect of the proposed business activities that the applicant intends to engage in if the licence is granted as applied for; and
- (c) the applicant is a fit person to operate an aircraft under the authority of the licence which the Air Transport Licensing Committee considers should be granted to the applicant, having regard to -
 - (i) the applicant's and the employees' experience in the field of aviation and their past activities generally; or
 - (ii) to the applicant if it is a body corporate, the experience in the field of aviation and past activities generally of the persons appearing to the Air Transport Licensing Committee to control that body.

(4) Where a person is aggrieved by the decision of the Air Transport Licensing Committee in respect of the grant or refusal to grant an air transport licence, an appeal shall be lodged with the Appeals Tribunal on questions of law only.

(5) The Minister may make regulations prescribing the procedure regulating appeals from decisions of the Air Transport Licensing Committee under subsection (4).

Revocation, suspension and variation of air transport licence.

90. (1) An application for the revocation, suspension or variation of an air transport licence may be made to the Air Transport Licensing Committee at any time by in a manner as may be prescribed in regulations made under this Act.

(2) The Air Transport Licensing Committee may at any time revoke, suspend or vary a licence, if the committee considers it appropriate to do so, whether or not an application relating to the licence has been made under subsection (1).

(3) An Air Transport Licensing Committee may revoke, suspend, or vary a licence, if it is not or is no longer satisfied that-

- (a) the holder of the licence is a fit person to operate aircraft under the authority of the licence;
- (b) the resources and financial arrangements of the holder are adequate for discharging the holder's actual or potential obligations relating to the business activities engaged in; and
- (c) the holder of the licence remains a Liswati or a body corporate substantially owned and effectively controlled Emaswati.

Reasons for refusal of air transport licence

91. (1) The Air Transport Licensing Committee shall, if it decides to grant, refuse to grant, vary, suspend or revoke a licence, provide a statement of the reasons for the decision to the following persons-

- (a) the applicant for the licence, the licence holder or former holder; or

- (b) any other person who in accordance with the regulations has entered an objection or representation in a case or who has requested a statement.

(2) In this section the Air Transport Licensing Committee may not provide a statement of reasons in a case where no objection, representation or request has been made and the decision is taken in the terms applied for by the applicant or the holder of the licence.

(3) The Air Transport Licensing Committee may publish in a manner and form deemed appropriate, particulars of and the reasons for any decision taken with respect to a licence or an application for a licence.

Information as to air transport undertakings.

92. (1) The Authority may request the holder of an air transport licence to provide information relating to the business conducted under the licence as may be prescribed.

(2) If information, relating to a particular undertaking, is obtained under this section, that information shall not, without the consent of the person carrying on the undertaking, be disclosed other than in connection with the execution prescribed under this Act.

(3) Nothing in subsection (2) shall apply to the disclosure of information for the purposes of legal proceedings which may be taken by virtue of this section or regulations made under this section, or for the purposes of any report of such proceedings.

(4) A person that contravenes this section shall, upon conviction, be liable to a fine not exceeding thirty five thousand Emalangenani (E35,000) or imprisonment not exceeding two (2) years.

Recovery of damages from an air carrier

93. (1) The recovery of damages from an air carrier as a result of liability imposed on it under the Warsaw or Hague and Montreal Conventions shall be an exclusive remedy and be in lieu of any other legal remedy which would, but for the Conventions, be available.

(2) A sum in special drawing rights mentioned in Article 23 of the Montreal Convention shall, for the purposes of an action against the air carrier, be converted into the currency of Eswatini in accordance with the terms established by the Minister of Finance.

(3) If in the event of the death of a passenger, the air carrier's liability shall be enforceable for the benefit of the members of the passenger's family as sustained loss or damage by reason of the passenger's death.

(4) An action to enforce liability may be brought by the representative of the passenger or by a person for whose benefit the liability is enforceable but only one action may be brought before a Court in Eswatini in respect of the death of any one passenger and every other action shall be for the benefit of all affecting persons.

(5) The amount which may be recovered in any action shall not exceed the actual and prospective loss resulting from the death to the members of the passenger's family.

(6) In this section the expression "members of the passenger's family" includes, but is not limited to a wife, husband, child, parent or those members' of the family who have been financially dependent upon the passenger.

Contributory negligence.

94. The liability imposed under the provisions of this section may be reduced or eliminated if the party so liable proves that the damages incurred were caused or contributed to by the negligence of the injured party.

Minimum insurance requirements.

95. (1) Air carriers or air transport enterprises to which an air transport operating licence has been issued under section 89 shall, secure and maintain in force an insurance policy to which minimum amounts are to be deposited, as may be determined by the Financial Services Regulatory Authority, covering the various liabilities set out in this Act, applicable conventions or in other agreements governing liability.

(2) The failure to comply subsection (1) shall, in addition to any other civil or criminal penalty which may be imposed, constitute the basis for the grounding of an aircraft, revocation or suspension of an issued licence for public transportation.

Rules in the public interest.

96. The Director General may make rules in respect of liability under this Part, not inconsistent with the provisions of this Act, as may be necessary in the public interest.

**PART XI
MISCELLANEOUS AND GENERAL PROVISIONS**

Restriction on disclosure of confidential information.

97. (1) This section shall apply if -

- (a) the information or document is given by a person to the Authority or an authorized officer under this Act; and
- (b) at the time the information or document is given, the person notifies the Authority or authorized officer in writing that it is of a confidential or commercially sensitive nature.

(2) The Authority or an authorized officer shall not disclose to any person the information or the contents of a document to which this section applies unless-

- (a) the Authority or authorised officer is of the consideration that -
 - (i) the disclosure of the information or the contents of the document would not cause detriment to the person supplying it or to any other person who is aware of the information or document; or
 - (ii) although the disclosure of the information or the contents of the document would cause detriment to the person supplying it or to any other person who is aware of the information or document, the public benefit in disclosing it outweighs that detriment;
- (b) the Authority or authorised officer gives written notice to -

- (i) the person who supplied the information or document; and
- (ii) any other person whom the Authority or authorized officer is aware has supplied the information or document to the person referred to in sub-paragraph (i), where the identity of the other person is known to the Authority or authorised officer, as the case may be, stating that the Authority or authorized officer intends to disclose the information or contents of the document, specifying the nature of the intended disclosure, setting out detailed reasons why the Authority or authorized officer intends to make the disclosure and setting out a copy of this section; and

(c) An appeal shall not be lodged with the Appeals Tribunal under this Part.

(3) Subsection (2) shall not prevent the Authority from disclosing any information or the contents of any document -

- (a) to any member, officer or employee of the Authority, authorized officer, agent, consultant, committee or panel acting for or under the direction of the Authority;
- (b) to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister;
- (c) when required by an order of court or under any law;
- (d) for the purposes of any criminal proceedings; or
- (e) for any other purpose the disclosure of which is required or authorized by law.

(4) For the purposes of this section, the disclosure of any information or the contents of a document already in the public domain at the time the Authority or authorized officer, as the case may be, intends to disclose it cannot cause detriment to any person referred to in subsection (2)(a).

Appeal against decisions of authorized officers or persons.

98. (1) A person aggrieved by a decision of an authorized officer or authorized person under this Act may appeal against that decision to the Director General.

(2) An appeal under subsection (1) shall be lodged with the Director General within fourteen (14) days after receipt of the decision.

(3) The Director General shall, within seven (7) days of receiving an appeal, in writing, confirm, amend or withdraw the decision and make a new decision and furnish written reasons to the appellant for the decision taken.

(4) In adjudicating an appeal lodged under subsection (1), the Director General may afford the appellant-

- (a) a reasonable opportunity to make representations;
- (b) the opportunity to present and dispute information and arguments; and
- (c) the opportunity to appear in person.

(5) An appeal lodged under this section shall not suspend the decision of the authorized officer or authorized person.

(6) Subject to this section, the Minister shall prescribe the procedure for the lodging and hearing of appeals under this section.

Appeals Tribunal.

99. (1) The Minister may, by Notice published in the gazette, appoint an Appeals Tribunal, for the adjudication and determination of appeals from decisions of the Director General.

(2) The Appeals Tribunal shall be appointed for a term not exceeding three (3) years and be composed of-

- (a) an admitted attorney of not less than ten (10) years' experience; and
- (b) two (2) persons qualified in the aviation industry.

Filing of appeals to Appeals Tribunal.

100. (1) A person aggrieved by a decision taken by the Director General under this Act, regulations, orders, notices, circulars, requirements or directives issued under this Act, may file a written appeal with the Appeals Tribunal against the decision within thirty (30) days after receipt of the decision.

(2) The Appeals Tribunal shall determine the manner and procedure for filing appeals to the Appeals Tribunal.

Appeals

101. A person who makes an appeal under this Part shall-

- (a) state as concisely as possible the circumstances under which the appeal arises, the issues and grounds for the appeal; and
- (b) submit to the Minister all relevant facts, evidence and arguments for or against the appeal, as the case may be.

Compliance pending appeal

102. Where an appeal is lodged under this Part, the decision, direction or issue appealed against shall be complied with until the determination of the appeal.

(1) The Appeals Tribunal may determine an appeal under this section-

- (a) by confirming, varying or reversing any decision, notice or direction of, or code of practice or standard of performance issued by, the Authority; or
- (b) by directing the Authority to reconsider its decision, notice, direction, code of practice or standard of performance, as the case may be.

General penalties.

103. A person who commits an offence under this Act or rules for which no penalty is expressly provided shall, on conviction, be liable on to pay a fine not exceeding forty thousand Emalangeni (E40, 000) or to imprisonment for a term not exceeding two (2) years.

Customs, immigration, health and other facilitation services

104. (1) The Government shall make available, or cause the Authority or licensee to make available, suitable facilities to relevant Government authorities and agencies at Eswatini airports, whenever necessary, for the provision of customs, immigration, health and other facilitation services in accordance with this Act or any other law.

(2) The provision of customs, immigration and health services shall not be the responsibility of the Authority but of other Government authorities and agencies concerned, except that the advisory role of the Authority shall be incorporated on all travel documents.

Regulations

105. (1) The Minister may, by notice in the Gazette, make regulations to give effect to the provisions of this Act.

Savings and transitional provisions

106. (1) On the appointed date, persons who, immediately before that date, held office as -

- (a) a member of the Authority under the repealed Act; or
- (b) the Director General of the Authority under the repealed Act,

shall continue holding the appointments.

(2) A regulation made under the repealed Act shall continue in force with the modification, adaptations consistent with this Act or until repealed.

Repeal

107. The Civil Aviation Authority Act No. 10 of 2009 is repealed.