



# SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

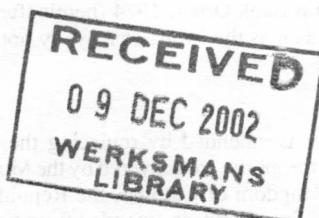
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# PART A

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## THE CENTRAL BANK OF SWAZILAND (AMENDMENT) BILL, 2002

(BILL NO. 5 OF 2002)

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(To be presented by the Hon. Minister for Finance)

### MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to amend the Central Bank of Swaziland Order of 1974 so as to provide for:

- (a) the promotion and operation of payment systems;
- (b) the establishment of the ombudsmen office;
- (c) the supervision of financial institutions;
- (d) the establishment of a Monetary Policy Consultative Committee;
- (e) the publication of policy directives by the Prime Minister;
- (f) the Banks accountability to Parliament; and
- (g) other matters incidental to the proposed legislation.

P. M. Dlamini  
*Attorney-General*

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### A BILL entitled

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

ENACTED by the King and the Parliament of Swaziland.

#### ***Short title and Commencement.***

1. This Act shall be cited as the Central Bank of Swaziland (Amendment) Act, 2002 and shall be read as one with the Central Bank Order, 1974 (hereinafter referred to as "the Order"), and shall come into operation on a date as the Minister may, by notice in the Gazette, appoint.

#### ***Amendment of Section 2.***

2. Section 2 of the Order is amended by replacing the definition "rand monetary area" with "Common monetary area" means the area covered by the Multilateral Monetary Agreement between the Governments of the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, as amended from time to time."

***Amendment of Section 4***

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

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

- (a) formulate and implement monetary policy to the end of promoting monetary stability;
- (b) issue and redeem currency which is legal tender within Swaziland under Section 23;
- (c) issue securities in its own account;
- (d) formulate and implement appropriate intervention policies in the foreign exchange market;
- (e) hold and manage the official foreign reserves of Swaziland;
- (f) promote, regulate and supervise the efficient and secure operation of payment systems;  
and
- (g) supervise banks, credit institutions and other financial institutions to the end of promoting a sound financial structure.”

***Amendment of Section 7***

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

***Amendment of Section 8***

5. Section 8 of the Order is amended by -

- (a) replacing subsection (2) with the following new subsection (2) -

“(2) After the appropriate allocation has been made to the general reserve under subsection (1), the remainder of the net profits for the financial year shall be applied to the redemption on behalf of the Government of any securities issued and outstanding under section 6(5) or 35(2).”;

- (b) adding the following new subsection 5 -

“(5) The general reserve established under subsection (1) may only be used to offset losses of the Bank after the application of any funds made available for this purpose under section 35(4).”

***Amendment of Section 11***

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

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

***Amendment of Section 14***

## 7. Section 14 of the Order is amended -

- (a) in paragraph (d) by deleting the word "or" at the end of the paragraph and insert "or" at the end of the paragraph (e).
- (b) in paragraph (e) by adding the word "or" at the end thereof.
- (c) by adding after paragraph (e) the following new paragraph (f) -

"(f) has incurred an unreimbursed loss attributable to a charged-off obligation at a financial institution licensed by the Bank."

***Amendment of Section 20***

## 8. Section 20 of the Order is amended -

- (a) in subsection (3) by replacing "E2000" with "E5000".
- (b) in subsection (4) by replacing "E100" with "E500".

***Addition of new Section 20 bis***

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

*"Indemnity from personal liability"*

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

***Amendment of Section 22***

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

***Replacement of Section 25***

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

*"Power to recall"*

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

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



***Amendment of Section 27***

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

***Amendment of Section 29.***

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

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

***Amendment of Section 32.***

14. Section 32 of the Order is amended -

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

***Addition of new Section 32 bis.***

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

***"Issuance of Notes and Coins***

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

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

***Replacement of Section 33.***

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

***"Exchange of Notes and Coins for Rand.***

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

***Amendment of Section 35.***

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

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

***Amendment of Section 37.***

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

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

***Amendment of Section 41.***

19. Section 41 of the Order is amended -

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

***Replacement of Section 41 bis.***

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

"Special funds.

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

***Replacement of Section 42.***

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

"Clearing facilities.

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

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

***Addition of new Section 42 bis.***

22. This Order is amended by adding after section 42 the following new section 42 bis -

"Ombudsman.

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

(2) The Ombudsman shall be a person of recognised experience in banking matters and banking law"

***Addition of new Section 43 bis.***

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

*"Monetary Policy Consultative Committee.*

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

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

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

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

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

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

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

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

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

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

***Amendment of Section 46.***

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

***Amendment of Section 51.***

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

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

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

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

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

***Amendment of Section 53.***

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

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

***Amendment of Section 54.***

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

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

***Deletion of Section 54 bis.***

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