



The Swaziland Investor Roadmap

Submitted by:

**Sutherland Miller III
Theo Lyimo
Trina Rand of
The Services Group, Inc.**

Submitted to:

**Regional Center for Southern Africa,
U.S. Agency for International Development**

Gaborone, Botswana

May 2005

USAID Contract No. 690-M-00-04-00309-00 (GSA no. GS 10F-0277P)

Table of Contents

Executive Summary		i
<hr/>		
Chapter 1	Introduction	
I	Project Context	1
II	Roadmap Goals and Methodology	2
III	Report Outline	4
<hr/>		
Chapter 2	Employing	
I	Introduction	5
II	Acquiring Visas and Work Permits	5
III	Labour Regime	17
IV	Mandatory Registrations with Social Agencies	22
<hr/>		
Chapter 3	Reporting	
I	Introduction	25
II	Company Registration	25
III	Obtaining Licenses	29
IV	Acquiring Incentives	48
<hr/>		
Chapter 4	Locating	
I	Introduction	64
II	Land Acquisition	65
III	Site Development	88
IV	Utilities Connection	103
V	Environmental Compliance	113
<hr/>		
Chapter 5	Operating	
I	Introduction	118
II	Income Tax, Miscellaneous Other Taxes, Fees, Charges and Levies	118
III	Importing and Exporting	134
IV	Complying with Currency Controls	141
V	Hosting Labour Inspections	148
<hr/>		
Annex A	List of Interviewees	

Executive Summary

I. Overarching Issues

The Government of the Kingdom of Swaziland (GoKS) has committed to attracting investment, both indigenous and foreign direct investment (FDI). As part of this effort, the Swaziland Investment Promotion Agency (SIPA) has requested assistance in pinpointing administrative, procedural, and regulatory impediments that may deter investment in Swaziland and developing recommendations for change. The result of this request is the Swaziland Investor Roadmap – a detailed accounting of the steps, costs, timeframes, and submission requirements related to starting up and operating a business in Swaziland and corresponding analysis of weaknesses. The findings of the Investor Roadmap reveal that despite recent, albeit declining success in attracting FDI, there are numerous issues that command urgent attention by the GoKS and SIPA to improve the investment climate.

In assessing the administrative regime governing investment in Swaziland, some general observations that are common to all four Process Group Areas studied – Employing, Reporting, Locating, and Operating procedures – are worth noting. In general terms, procedural transparency in Swaziland regarding investment is lacking. With few exceptions, agencies lack procedural guides and websites that would inform an investor of the legal necessities, submission requirements, timeframes, and costs associated with business startup and operations. These overarching issues are highlighted below:

General lack of procedural transparency. Among the top constraints facing investors in Swaziland is the general lack of transparency regarding investment related procedures. Although SIPA has a website with much useful information, at the level of describing how to startup and operate a business in a step-by-step fashion there is little reliable information available. Further little procedural information, much less forms and legislation, is available on line. Therefore, would-be investors must physically come to Swaziland in person and stay for some time to find out the basics of what might be required to legally operate a company.

Poor policy and administrative coordination. In several procedural areas, policy and administrative coordination among Swazi government agencies and departments is poor. Investors note of several instances where one regulator will approve of a particular permission and another will not. While SIPA and other agencies seem committed to attracting FDI, the way other agencies administer investment related procedures suggests that wooing investors is not a priority.

Review the current investment focus and incentive policy and publish a national investment policy document. In view of new global developments like the expiry of the Multi Fiber Agreement and domestic challenges like high unemployment and persistent poverty, Swaziland needs to diversify its economy. To do so, the country needs to review the current investment focus and incentives policy and to publicize the new policies. The review should lead to agreement on other investment opportunities in the country that should be given priority in the investment promotion effort, and on a package of incentives for foreign and local investors and the conditions for qualifying for them. It should also include the role of the various institutions currently concerned with trade and investment promotion and the possibility of merging them.

Shift toward more automatic and transparent incentives. International best practice suggests that incentives that are clear and automatic are easier to administer. If the criteria to access incentives are clear, decisions about which firms qualify should be more or less

automatic. Such a system helps companies plan more effectively and reduces perceptions of favoritism.

SIPA's capacity to serve investors is questionable. SIPA aims to be a one-stop shop for investment – a notoriously difficult task to fulfill – but lacks the legal mandate, staffing, and resources to do so. Several investors note that despite SIPA's best efforts to help smooth the way for investors, other agencies frequently offer bureaucratic resistance and delay approval procedures. Further, some investors suggest that SIPA's facilitation services for existing investors are not well developed and do not effectively encourage existing companies to expand operations.

Increase SIPA's efforts to promote local investment. SIPA should give more publicity to its efforts to promote local investment especially in small and medium enterprises. This will correct the impression that government investment efforts target only foreign investment.

Need for image building. Several existing investors note that Swaziland has to do a better job of image building, including at the highest levels of government. In particular, inconsistency in decision-making by the top officials in government and recent labor strife were cited several times as creating a negative impression of the country for FDI.

II. Overview of Findings

Among the four Process Group Areas examined, investors find issues related to Employing and Reporting most problematic. Locating procedures, while in some cases hard to understand and weakly regulated, do not significantly impede investor startup or operations. Operating processes are generally not considered problematic save certain trade facilitation issues that are more directly related to policies and procedures administered by the customs department of the South African Revenue Services.

The most significant administrative, procedural, and regulatory investment constraints and recommendations identified during the Roadmap are detailed below.

A. Employing

Eliminate health inspection and Trading License from Entry Permit process. The most glaring bottleneck in the process of investor startup in Swaziland is the requirement to obtain a Trading License to get an Entry Permit and to simultaneously acquire an Entry Permit to obtain the Trading License. The Entry Permit process and its procedural dependencies related to the process of registering a company and obtaining a mandatory Trading License is one of the most problematic aspects of investor startup in Swaziland. Technically, it is impossible to complete the requirements for obtaining an Entry (work) Permit and Trading License because to obtain the former an investor needs the latter and vice versa. In practice, an investor must negotiate with both the Department of Immigration and the Ministry of Enterprise and Employment to reach an informal agreement as to which permission will be granted first, thereby creating opportunities for rent seeking.

Shorten and standardize approval timeframe for Entry Permits for employees. Some investors complain that the review of applications for employee Entry Permits are variable and employers cannot often predict if and when an employee can legally work in the country. The criteria used to judge whether an expatriate possesses a skill unavailable in Swaziland lack clarity, and therefore administering the Entry Permit renewal process for employees lacks consistency. If the localization policy is to be retained, better criteria for judging what employees deserve an Entry Permit should be developed in consultation with the private sector. These criteria should be sensitive to the investor's preferences in personnel and ensure that previous management experience and company loyalty can be weighed

appropriately. Investors that can maximize control over their enterprise, including in staffing decisions, are more likely to invest and expand.

Improve administrative and policy coordination among SIPA, Immigration, and Labour. Given the domestic investment resources available and significant unemployment rate in Swaziland, the GoKS should be committed to a policy of attracting FDI and domestic investment on equal terms. This policy should be reflected in immigration policy as well. In Swaziland, it seems that the case for pursuing FDI has not been accepted by some in government and policy making circles, and SIPA may need to better articulate the value of FDI to secure greater cooperation from other regulatory agencies that impact on investment. If supported by the top decision makers in government, the finalization of a national investment policy and supporting investment code might help clarify that facilitating inward investment, including through ensuring that Entry Permits are not a source of insecurity among foreign investors, is a national priority. Immigration, Labour, and SIPA should improve coordination at the administrative level as well. For example, Immigration and SIPA should agree on what items need to be submitted as part of the application process and SIPA should be included as part of the Immigration Board. Files should be transmitted electronically and tracked. A single version of the process should be developed to guide investors through the process and disseminated by all three agencies and put on a government website. It is anticipated that these outcomes could be achieved by undertaking a multi-agency Process Improvement Workshop with decision-makers from each agency.

B. Reporting

Improve customer service at the Registrar. While company registration is not high among investor complaints in Swaziland, the process is characterized by poor service, unresponsive civil servants, and a lack of centralized information. The Companies Law dates from 1912. Only one form and no process information are provided by the Registrar; forms are available for purchase elsewhere for a nominal amount. The Registrar of Companies should undertake a reform program designed to improve the quality of its services. This reform should address three critical elements: improving transparency and customer service, standardizing approval timeframes, and expanding the use of information technology. The desired outcomes of these reforms would be to create an agency that accurately and helpfully guides investors through the company registration process, registers companies in a quick and consistent manner, and computerizes all records and posts forms, regulations and guidelines on the internet.

Consider abolishing the Trading License or reverting to previous Master Business License system. All companies in Swaziland, regardless of size or function, are required to obtain a Trading License annually. The license is not linked to any monitoring or oversight mechanism and is not linked to protecting any public purpose, such as a license to ensure that a restaurant confirms to minimum food hygiene standards. Further, the Trading License changed several years ago to move from a master license that would allow a business entity to receive a single license specifying several permissible activities to a myriad of licenses for each activity the investor does. This imposes a series of nuisance procedures and costs on investors. Since the Trading License does not regulate a vital public interest in a meaningful manner the government should consider abolishing the requirement. If the government does choose to maintain a Trading License system it should revert to the previous system whereby an investor applies for a Master Business License rather than multiple licenses for each business activity. A Master Business License is better for the investor – more efficient in terms of application time and often less costly. Moreover, a single license would not necessarily represent a revenue loss if the government adjusts the price. International practice suggests that investors prefer to pay for a single though more expensive license than for numerous less expensive ones.

De-link health inspection from acquiring a Trading License. While it is certainly appropriate for companies to undergo a readiness inspection for occupational health and safety issues, it should not be done as part of the initial process of acquiring a Trading License. Rather, it should be linked to the start of a company's production and also be scheduled and concluded so as not to needlessly leave a completed factory idle. While providing more information to the Ministry of Health earlier in the process for comments may be helpful, the Ministry must be sensitive to not becoming an obstacle to business startup.

Improve conduct of health inspections. The Ministry of Health should review its training and procedures related to health inspections. The process is widely criticized by investors and considered a serious barrier to business startup and operations. In particular, inspectors need to know what they should be evaluating and when they should be inspecting. Further, public-private dialogue is needed to help health inspectors improve their technical capacity to inspect a wide range of modern machinery, procedures, and remediation systems.

Improve mining license policy and process. Attracting investment in Swaziland's minerals sector requires several reforms at both the policy and administrative level. At the policy level, requiring a government/Tibiyo share in a mining enterprise is a serious impediment. At the administrative level, according to investors and other stakeholders there is no indication of what process must be followed to obtain a mining license. The process should be improved by drafting and publishing application guidelines, improving customer service and access to decision-makers, and revisiting committee structure and appointment process.

Prepare a handbook for investors and establish a website. SIPA should spearhead preparation of a detailed "Investor's Handbook for Swaziland" which would explain the special incentives in detail and the process for obtaining them. The handbook should also include the various forms required. The work should involve the various institutions that are responsible for administering relevant legislation, like Income Tax and Customs Departments.

Improve transparency regarding issuance of the DAO. Currently the responsibility for deciding on applications for Development Approval Orders is vested in the Minister of Finance, although responsibility for assessing projects is with SIPA, which is under the Ministry of Employment and Enterprise. This leads to confusion and conflict. An advisory committee that assesses applications assists the Minister. The decision making authority should be streamlined, perhaps by vesting it with SIPA, and transparency in the allocation process should be improved.

C. Locating

Establish and publish definitive procedures for approval of government title deed land (TDL) purchase. The government should set consistent approval procedures for the purchase of government TDL. Each ministry that sells government land, including the Ministry of Enterprise and Employment (MoEE), should be governed by the same procedures to increase transparency in the site acquisition process. Moreover, purchase deposit amounts should be harmonized across all ministries and local authorities and should be consistent with what is written in the relevant regulations. Since the Crown Lands Disposal Regulations are recent (2003), it is likely the acquisition procedures they outline are more recent than those currently in use at MoEE and in the Mbabane City Council. If this is true, MoEE and Mbabane should change their procedures to reflect the current regulations.

This report does not cover Swazi National Land (SNL) acquisition; however, since sources noted that the SNL acquisition process is wholly non-transparent the government should

consider defining approval criteria for this land as well, and setting out approval process guidelines. Moreover, since over 50% of Swazi government owned land is SNL the government might consider shifting some of this land to government TDL for purchase by investors.

Implement recommendations in Draft National Land Policy. The government has already completed an analysis of land acquisition and development issues. It should implement a number of the recommendations, including the unification of land administration under a single ministry, whether that is the existing MHUD or a new land ministry, and end the existing gender bias in land ownership.

Enact legislation to effectively regulate building industry. As Swaziland continues to develop it is imperative that the government develop and implement a means for regulating the building industry. Beyond harmonizing and enforcing consistent permitting and inspection requirements the government must develop legislation to govern the registration of building professionals: architects, engineers, surveyors, and contractors. The government should work with the Swaziland Association of Architect, Engineers, and Surveyors to establish and regulate industry standards.

Improve SEA outreach to investors and local authorities. Environmental compliance, including regular inspections, is important for any country hosting investment, particularly industrial projects. SEA should boost its profile through informational outreach to all government agencies involved in site acquisition and site development. Brochures on the agency and its requirements and application process should be readily available at MHUD, MoEE, SIPA, and all local authorities. Moreover, SEA should send brochures and its website link to all building professionals in the country.

Beyond that the government should determine whether or not SEA approval is required for building permit approval and require local authorities to include this in the application materials if it is. MHUD's website describing the building application process does not mention SEA approval and neither does the Standard Building Regulations, 1969.

D. Operating

Introduce VAT replace the number of taxes that are now in force and to replace Government Sales Tax. The Ministry of Finance should expedite the enactment of a Value Added Tax legislation to widen the tax base and to replace the various miscellaneous taxes. This would also be in keeping with what other Southern African Customs Union (SACU) countries have done, and will facilitate harmonization of internal taxes within SACU.

Phase out Provisional Tax. The requirement that new businesses pay provisional corporate tax after six months of commencing business is a heavy financial burden for such companies. Swaziland should phase out provisional tax in order to ease the burden of new businesses. This is likely to promote investment especially by local people.

Establish a Tax Appeals Tribunal. There is no tax appeals tax tribunal in Swaziland to appeal from decisions of the Commissioner of Taxes. The taxpayer can only appeal to a judicial court. Court procedures for civil cases are too technical for the taxpayer, and the courts usually have a backlog of cases. In order to afford the taxpayer a simple and fast means of settling disputes, Swaziland should establish a Tax Appeals Tribunal.

Expedite the establishment of the proposed Revenue Authority. There is need to modernize the revenue services, and particularly the Customs. However, since the Ministry of Finance is also establishing a Revenue Authority, the task of modernizing the revenue services should be left to the authority. To expedite the establishment of the authority the

Ministry should establish a project team headed by the appointed consultant which will oversee the project. The team should prepare a project plan with activities, outputs, and timeframes. This will enable the Ministry to assess a realistic date for completing the project and the resources required to implement it. It will also facilitate the monitoring of progress through periodic reports with clear outputs achieved.

Establish a project team to oversee the computerization of Customs clearance. Swaziland Customs is introducing the South African CAPE system for processing Customs clearance. The Commissioner of Customs should appoint a project team to oversee the implementation of the project. The team should include officials from other government agencies and from the private sector, so that the team can ensure that the system has potential for catering for the interests of all stakeholders. The team should prepare a project plan with activities, outputs, and timeframes, which will enable the Department to assess a realistic date for completing the project and the resources required to implement it. It will also facilitate the monitoring of progress through periodic reports with clear outputs achieved.

Establish a Customs team to review the Customs regulations in the light of those of South African Revenue Services (SARS). Concurrently with the introduction of the CAPE system, the Department should review the Customs regulations and update them by adopt modern provisions introduced by the SARS. A number of Forms need to be updated, and certain features like the accreditation system of Customs Clearing Agents and transporters need to be considered for use in Swaziland too. The team should also prepare a training package suitable for Customs officials and the private sector.

Establish a project to modernize the compilation of trade statistics. The production of Trade statistics in Swaziland is several years in arrears. There is need for concerted efforts among producers and users of statistics to address the delay in the production of trade statistics. The task cannot be left to the Customs and the Statistical Office alone. Stakeholders should therefore establish a project that will identify the constraints and implement solutions for removing them. The project team can learn much from the countries in the region that are up to date with their statistics. Donor assistance is also readily available.

Negotiate and agree with SARS on the best way of controlling transit traffic. SARS intercepts goods in transit to and from Swaziland and cause unnecessary costs and delays. The Commissioner of Customs should lead negotiations with SARS to agree on the best measures for controlling transit traffic to and from Swaziland. If bilateral consultations fail the Commissioner should bring up any outstanding issues in the appropriate SACU organs. The Commissioner should be seen to represent the interests of Swazi exporters and importers while at the same time making sure that the latter comply with agreed SACU procedures.

Labor inspections considered professional. Most investors credited the Department of Labour with conducting workplace safety and labor inspections in a professional and non-obtrusive manner. Labor inspectors are cited as knowing what they need to look for and following the regulations closely. However, labor officials concede that they presently lack the staff and resources to monitor compliance with labor standards and regulations as effectively as they should.

Chapter 1: Introduction

I. Project Context

Like many small developing countries, Swaziland faces several challenges in attracting the investment needed to develop the economy. Yet, Swaziland has managed to develop a fairly open economy with exports of goods and services accounting for 83.5% of GDP.¹ With GNI per capita for 2003 of US \$1,350 Swaziland is classified as a lower middle income country.² Industry and services each contribute approximately four times more to GDP than does agriculture. Major exports include sugar, wood pulp, edible concentrates, and textiles apparel. Based in part on opportunities afforded by the Africa Growth and Opportunity Act (AGOA) and import quotas imposed by the United States on

such producers as China, Swaziland was among the African countries that saw significant investment in the textiles and apparel sector.

Swaziland at a Glance: 2003 Data Profile	
Population	1.1 million
Life expectancy	43.7 (2002)
Annual population growth	1.6%
GDP	US \$1.8 billion
GNI per capita	US \$1,350
Annual GDP growth	2.2%
Annual inflation rate	9.0%
Value added agriculture	11.3% of GDP
Value added industry	47.8% of GDP
Value added services	40.8% of GDP

Source: The World Bank Group's "Data Profile"

Being mostly surrounded by South Africa, Swaziland depends heavily on South Africa for market access. South Africa absorbs an estimated 60% of Swaziland's exports and provides 86% of its imports.³ In addition, South Africa accounted for 63% of Swaziland's foreign direct investment (FDI) in 2003.⁴ Swaziland is also an active participant in several regional trading and economic arrangements, including the Southern African Customs Union (SACU), the Southern African Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA). Receipts from the SACU, comprised of Swaziland, South Africa, Lesotho, Botswana, and Namibia, contribute 50% of the country's total revenue in 2003/2004.⁵

Despite its successes today Swaziland faces several serious development challenges. With unemployment hovering at 40%, the country faces considerable pressure to provide jobs at a quick pace year to year.⁶ The country has seen recent declines in FDI beginning in 2003 when total FDI shrank by 10.5% from the previous year to E 4,584 million (US \$804,246).⁷ The phasing out of the Multi Fiber Agreement (MFA) and increasing quota-free global competition have negatively affected Swaziland's textile and apparel sector, one of the country's most import sectors for FDI. Similarly, the reform of the European Union sugar regime resulting in the reduction of tariffs and in the margins of preferences enjoyed by African, Caribbean, and Pacific (ACP) sugar exporters is expected to have serious consequences on Swaziland's traditional sugar sector as a result of a loss of export markets. Like other countries in the region, Swaziland is also confronting a serious HIV/AIDS epidemic, inadequate educational infrastructure, and other socio-economic problems.

¹ The World Bank Country Data Profile.

² Ibid.

³ Central Bank of Swaziland, Annual Report 2004, pgs. 14-15.

⁴ Op cit, pg. 15.

⁵ Op cit, pg. 9.

⁶ Swaziland Chamber of Commerce estimate.

⁷ Op cit, pg. 17.

It is therefore a particularly opportune moment for Swaziland to develop an economic strategy that can help promote investment and growth in sectors other than textiles and apparel and sugar in order to mitigate the impact of such trade policy changes. A critical part of this strategy is to evaluate whether there are administrative, procedural, and regulatory barriers to investment that would frustrate the Swaziland Investment Promotion Agency's (SIPA) investment promotion efforts.

II. Roadmap Goals and Methodology

A critical question is to what extent the administrative systems, regulations, and procedures that govern investment are efficient and well aligned with the country's overall policy goals. In many countries administrative barriers arise that can have a negative effect on the economy by deterring investment and raising the cost of doing business. Individually these administrative constraints may seem like mere nuisances, but looked at as a whole they can become overwhelming. These administrative barriers undermine a country's competitiveness in such was as:

- Contributing to the "transaction costs" of conducting business – real and opportunity – thereby eroding firm competitiveness;
- Increasing economic, political, and regulatory risk, thereby raising the cost of capital and ultimately deterring investment and economic diversification;
- Creating unpredictability and frustrate firm planning; and
- Contributing to comparative disadvantages of countries while they compete globally for investors.

With support from USAID, SIPA requested the assistance of The Services Group, Inc. to undertake an Investor Roadmap analysis to identify the administrative constraints to investment in Swaziland and craft recommendations for addressing these barriers. The Investor Roadmap is at once an analytic tool, detailed prescriptive document, and a catalyst for meaningful change. The Investor Roadmap examines the individual procedures that represent the critical path to business start up and operations and creates a series of Action Plans to eliminate the red tape that imposes costs on entrepreneurial activity. Consistent with this methodology, the Investor Roadmap of Swaziland has five related goals. These are to:

- Identify and analyze all of the steps, timeframes, costs, and submission requirements involved with starting up and operating a business in Swaziland;
- Collect and review the relevant legislation establishing the various administrative procedures considered;
- Create a document that can contribute to the development of a procedural investment guide for the country;
- Analyze the efficiency of the present investment regime in Swaziland; and
- Craft recommendations for meaningful, practical reform.

Conceptually, the methodology is derived from an understanding that although first-tier macroeconomic and legal reforms are necessary to create an enabling environment for private sector activity, in most cases these policy shifts and legislative changes are insufficient. The best policies and laws have no impact if not implemented appropriately. Creation of a truly supportive enabling environment requires improvement in the *implementation* of policy to eliminate administrative and other constraints that impede investment and business operation and deter formalization. As such, the Roadmap focuses on the procedural steps, regulatory requirements, and legal infrastructure that govern the day-to-day interaction between government and investors at the startup and operational phases. Furthermore, some second-tier administrative reforms can often be adopted more

quickly and easily (i.e., without legislative change and a large commitment of new funds) and produce an impact that can more rapidly benefit investors.

The Roadmap methodology segments the critical path of business startup and operations into four Process Group Areas – Employing, Reporting, Locating, and Operating – as elaborated below:

- **Employing** procedures, including securing visas, obtaining residency and work permits for foreign investors and expatriates workers, and procedures for hiring and dismissing local employees;
- **Reporting** to government, including company registration, obtaining local or sectoral business licenses and permits, and acquiring incentives;
- **Locating** issues, including site acquisition, site development procedures, obtaining utility hook-ups, and environmental compliance;
- **Operating** which includes tax registration and payment, import/export clearance, adhering to mandatory standards, and complying with currency controls.

The diagnostic phase of the Roadmap involves the consultation of many data sources to present an accurate, qualitative snapshot of the regulatory environment at the time the research is conducted. One major source of data is public sector officials who are directly responsible for administering the procedures being represented in the report. For the Swaziland Investor Roadmap meetings were held with 58 public officials from 30 government agencies and departments. Based on these meetings and a review of official documents, including forms and process guides, the consulting team produced a series of draft descriptions of the procedures. After these procedural descriptions were drafted the relevant regulators were given the chance to review and validate the write-ups. An additional source of public sector source of information reviewed for the report is relevant legislation.

To inform the analysis, interviews were held with several of the leading investors in the country representing several different sectors and international as well as domestic owners to discuss their experience with completing individual procedures and perspective on leading constraints. These company interviews were supplemented by interviews with a number of “facilitators,” including lawyers, accountants, customs brokers, and real estate agents, who are familiar with completing procedures for investors. In total, some 32 businesspeople were interviewed, as were the representatives of the country’s major business associations. Input from the entrepreneurs interviewed is central in informing the analysis of constraints facing business identified in this report. This analysis is supplemented by interviews with representatives of three other stakeholders, including economic and business specialists at foreign embassies and individuals working on relevant donor projects. Additionally, a review of relevant literature was also conducted, including reports sponsored by the donor community, Central Bank, and private sector analysts.

The issues identified in the Roadmap report’s analysis are not assumed to be exhaustive, but rather represent an accounting of constraints based on the data available. The Roadmap analysis is based on three main sources: a) the expressed perception of barriers as voiced by the private sector; b) an assessment of procedural efficiency; and c) where appropriate, a comparison of procedures and practices in Swaziland with international best practice. Similarly, while the recommendations are designed to be practical, readily implementable, and based on international experience in administrative reform, they should not be considered definitive. Rather, the recommendations should be seen as proposals for implementing change and should be reviewed and revised to suit local conditions and

resource constraints. As demonstrated by TSG's experience implementing administrative changes in other countries, in some cases different approaches emerge in a reform process that can achieve the same outcomes advocated in a Roadmap report.

This draft report was prepared by a three-person Roadmap team that conducted a two-week assessment mission in Swaziland in February and March, 2005. The team members included Sutherland Miller III, Theodore Lyimo, and Trina Rand.

The Swazi emalangeni is pegged to the value of the South African rand. This report used a conversion rate of E 1 = US \$0.15 (US \$1 = EC \$5.70).

III. Report Outline

Corresponding to the Process Group Areas, this report is comprised of four major chapters, plus the Executive Summary and this Introduction. Chapter 2 addresses the Employing related procedures, including acquiring visas and work permits and hiring and firing local workers. Chapter 3 is devoted to Reporting related procedures, including company registration, obtaining licenses, and acquiring incentives. Locating procedures, including acquiring land, developing a site, obtaining utility hook-ups, and complying with environmental laws, comprise Chapter 4. Chapter 5 focuses on Operating procedures, including registering for and paying taxes, importing and exporting, and complying with currency controls.

Annex A is a list of individuals interviewed for this report.

Annex B is comprised of the forms collected during the research phase and used to complete the various regulatory procedures referenced in this report.⁸

Chapter 2: Employing

⁸ Annex B will be included in the final report only.

I. Introduction

This chapter covers the procedures in Swaziland related to labour. Specifically, this chapter discusses the procedures required of investors and expatriate employees to obtain work permits, the general labour regime and dispute resolution related to labour, and the registration and reporting requirements of mandatory social welfare agencies.

II. Acquiring Visas and Work Permits

A. Acquiring a Visit Visa

In Swaziland visas and Entry (Work) Permits are issued by the Immigration Department, which is under the Ministry of Home Affairs. SIPA offers investors assistance in obtaining Entry Permits and visa extensions, but an investor can interact with Immigration directly if he or she so chooses.

Visitors to Swaziland from certain countries can obtain a visa for free at the airport or other ports of entry and do not need to apply in advance. Swaziland offers two types of visas – single or multiple entry. The normal period of time granted to an expatriate coming to Swaziland is 30 days, although Immigration Department officials say that the officer in charge at the border may grant a stay of two weeks in some cases. The duration of the stay may be written into the visitor's passport. Table 2.1 indicates nationalities that do not need a visa prior to arrival.

Table 2.1: Nationalities not Requiring a Visa Prior to Arrival in Swaziland

Antigua & Barbuda	Germany	Malta	Spain
Australia ⁹	Ghana	Mauritius	Sweden
Austria	Greece	Namibia	Switzerland
Bahamas	Grenada	Nauru	Taiwan
Barbados	Guyana	Netherlands	Tanzania
Belgium	China	New Zealand ¹⁰	Tonga
Belize	Hungary	Norway ¹¹	Trinidad & Tobago
Bosnia & Herzegovina	Ireland	Palestine	Turkey
Botswana	Israel	Papua New Guinea	Tuvalu
Brunei	Italy	Poland	Uganda
Canada	Jamaica	Portugal	Ukraine
Croatia	Japan	Saint Lucia	United Kingdom ¹²
Cyprus	Kenya	San Marino	United States of America ¹³
Czech Republic	Republic of Korea	Serbia & Montenegro	Uruguay
Denmark ¹⁴	Latvia	Seychelles	Vanuatu
Dominica	Lesotho	Sierra Leone	Vatican City
East Timor	Lithuania	Singapore	Western Samoa
Estonia	Luxembourg	Slovakia	Zambia
Finland	Malawi	Slovenia	Zimbabwe
France ¹⁵	Malaysia	Solomon Islands	
Gambia	Maldives	South Africa	

⁹ Including citizens from Norfolk Island.

¹⁰ Including citizens from the Cook Islands, Niue, and Tokelau.

¹¹ Including citizens from the Jan Mayen Islands and Svalbard.

¹² Including citizens from Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Channel Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, Turks & Caicos Islands, and Saint Helena.

¹³ Including citizens from the Northern Mariana Islands.

¹⁴ Including citizens from the Faeroe Islands.

¹⁵ Including citizens from Reunion, Saint Pierre & Miquelon, and Wallis & Futuna Islands.

An investor may work with SIPA to scout out Swaziland for business opportunities and obtain a visa and Entry Permit. The first time an investor goes through the process of acquiring Entry Permits and a visa extension SIPA will offer to assist. SIPA advises investors to apply for an extension of the visa for the maximum time allowed – three months – by which time an investor can typically register a company, identify his or her work location, and receive a work permit.

To obtain an extension of a visa, the investor would complete a “Visa Application Form,” which asks for standard information about the visitor’s nationality, home address, reason for coming to Swaziland, and means to support the stay, and submit it to Immigration (or SIPA) with the following submission requirements:

- Passport
- E 40 (US \$7.02) visa fee

If approved, when Immigration is done stamping the extension into the passport, the investor would return to SIPA or Immigration to collect the visa extension stamped into the passport. The visa can be extended for 30 days twice, totaling a maximum of 90 days.

B. Acquiring an Entry (Work) Permit

1. Investor Entry Permit

The policy governing expatriate work permits, referred to as Entry Permits in Swaziland, is expressed in the form used to obtain them: “It is the Government’s policy that the economy of Swaziland should be manned by trained and competent citizens. Entry permits are issued to non-citizens with skills not available at present on the Swaziland Labour Market, only on the understanding that effective training programs are undertaken to produce trained citizens within a specified period.” No legislation outlines what skills are unavailable in Swaziland or specifically determines how many expatriates can work for a given company. Similarly, the Labour Department has not done a formal and comprehensive workforce skills assessment. However, it is the policy of the Labour Department to approve work permits on a ratio of one expatriate for every ten Swazi employees. The size of the company and the nature of the technology it uses may affect this ratio, which was developed with the garment industry in mind.

While there is only one type of work permit, there are ten classifications of Entry Permits as seen in table 2.2 below. Each class comes with its own restrictions and all are valid for two years.

Table 2.2: Swaziland Entry Permit Classifications

Class	Description
A	Person offered employment by a specific employer
B	Person who holds a dependent’s pass who is offered employment by a specific employer
C	Member of an approved missionary society
D	Person approved, or assured thereof, and financially able to engage in agriculture or animal husbandry
E	Person approved, or assured thereof, and financially able to engage in mining, including prospecting
F	Person approved, or assured thereof, and financially able to engage in trade, business, or a non-prescribed profession
G	Person approved, or assured thereof, and financially able to engage in manufacturing
H	Person with the qualifications for and financial ability to engage in a prescribed profession
I	Person at least 21 years of age with sufficient financial resources sufficient to support

	an annual salary but not derived from employment in classes A-H and who will not seek employment in Swaziland
J	Person not employed in Swaziland who has lived in the country for 10 years and was entitled to or granted a Residence Permit under repealed laws

Investors who wish to acquire an Entry Permit may seek the assistance of SIPA, although it is not required. SIPA offers to facilitate the process and suggests that its assistance can speed up the process. SIPA's assistance includes providing the application form free of charge and a checklist of submission requirements, checking the application for completeness, brokering communication with the immigration department, and writing a letter of support to Chief Immigration Officer. There is no fee for SIPA's assistance in obtaining Entry Permits, but the permit itself costs E 600 (US \$105.26) payable in cash.

Since its inception in 1998, SIPA reports that 2001 and 2002 were its busiest years in terms of facilitating Entry Permit applications. In these years SIPA processed an annual average of 500 Entry Permit applications, up from 150 in 2000. Since then the number of applications SIPA has processed has declined to 200 in 2003 and approximately 155 in 2004.

The Entry Permit for investors is the same as for expatriate employees. The investor can apply for an Entry Permit after completing the company registration process, as certain company registration documents must be furnished to Immigration as part of the approval process. The steps to obtain an Entry Permit are indicated below; the first four steps can be completed in any order:

Step 1) Establish a local bank account. While SIPA indicates that an investor no longer needs to transfer the amount to declared capital into the bank account in Swaziland, an investor will need to show proof of having a local bank account to obtain a work permit. Immigration and Labour officials suggest that there is no specific minimum amount of capital required to be deposited in a bank in Swaziland, but if the amount is judged to be too low it may affect the decision to grant an Entry Permit. According to the Labour Department, in some cases an investor may wish to submit a list of equipment to already in or to be brought in to Swaziland to demonstrate commitment.

Step 2) Get a medical examination. A medical examination performed by a doctor operating in Swaziland is required to obtain an Entry permit. Therefore, the investor will need to complete this check prior to applying and produce proof of the examination.

Step 3) Obtain a police clearance. Investors are required to obtain a police report from their home country within six months of the time it is submitted as part of the Entry Permit application for review by Swazi authorities.

Step 4) Certify a copy of applicant's passport. A copy of the applicant's passport is acceptable, but it must first be certified (a process akin to notarization). Certification can be done by the Swazi police, a lawyer, or a magistrate. The magistrate and police should certify the passport at no cost.

Step 5) Complete and submit application form. The Entry Permit application form, form "Application for or Renewal of an Entry Permit," can be obtained from SIPA or Immigration. All applicants complete a section titled "Personal Particulars of the Person Requiring an Entry Permit," and investors should fill in Part 2 while employees should complete Part 1. Part 2 of the form asks for information about the investor and the position including:

- Proposed type and place of business;
- Qualifications and previous experience;

- Availability of sources of income and location of capital; and
- Details of any license and/or registration that the investor has acquired or will need to acquire to get the Entry Permit.

In addition to the form, several other submission requirements must be included as part of the application. These include:

- A letter of application – Although there is not prescribed format for this letter, it will be addressed to the Chief Immigration Officer and generally include an introduction to the investor's company, the amount of capital to be invested, projected employment, and an expression of what type of permit is requested and for whom. Labour and Immigration officials suggest that the letter should be used to summarize the form and “sell” the Entry Permit request.
- Original medical certificate from a doctor in Swaziland.
- Police clearance that is no more than six months old.
- Two passport size photographs.
- Certified copy of the passport – Certification can be done by the Swazi police, a lawyer, or a magistrate. The magistrate and police should certify the passport at no cost.
- Form J – This form is generated as part of the company registration process and lists the names of company directors. According to SIPA, immigration may suggest that Swazis be on board of directors, but there is no law compelling this.
- Form C – This form is also generated as part of the company registration process and lists a firm's shareholders.
- Company bank statement from a bank based in Swaziland.
- Certificate of Incorporation issued by the Registrar of Companies.
- Memorandum of Association approved by the Registrar of Companies.
- Lease agreement for the business property, title deed to business property, or MoU from SIPA indicating ¹⁶the likely business premises.
- Trading License from the Ministry of Enterprise and Employment

After collecting the documents immigration will issue the investor a receipt for the application, called an “acknowledgment,” with a reference number. This reference number is used for tracking the application through processing.

The investor's application is sent by the Immigration Department to several other agencies for review. These include the “Localization Committee” at the Department of Labour, the Swazi police, and, ultimately, the Immigration Board, which is comprised of the Chief Immigration Officer, three other immigration officers, a representative of the Department of Labour, and a representative of the Registrar of Companies. The “Localization Committee,” comprised of officials from the Labour Department's Training and Localization Section, reviews the application and makes a recommendation to the Board about the degree to which the applicant is uniquely qualified compared to the locally available Swazi labour pool. The Section meets every Friday to review Entry Permit Applications and Labour officials suggest that their review typically takes one week.

Parallel to the localization review is a police check. This clearance involves Immigration contacting Interpol about the background of the applicant. This check is usually completed within one day, according to SIPA, but Immigration officials suggest that one to two weeks is average.

¹⁶ The checklist used by SIPA to guide investors does not include the Trading License, but Immigration's checklist requires it.

After both the Localization Committee review and the police check are complete the Immigration Board will rule on the issuance of Entry Permits. When the Board rules, it will inform SIPA and/or the investor and the Permit is approved.

Step 6) Collect the Entry Permit and pay the fee. If the investor went through SIPA he or she will be called when the Entry Permit is approved. The investor can either pay for the Entry Permit through SIPA or go directly to Immigration to pay and retrieve the passport and Entry Permit. The investor's passport will be stamped with an Entry Permit indicating that he or she has permission to work and reside in Swaziland for a designated period of time. He or she will also be given an actual hard copy of the work permit. If the applicant is known to Immigration and from an established company he or she might be able to pay with a company check. Otherwise the renewal fee of E 600 (US \$105.26) is payable in cash.

Entry Permits are valid for two years and can be renewed.

The entire process takes an average of two to four weeks, according to SIPA. The timeframe for receiving an Entry Permit is more likely to be two weeks, SIPA suggests, if an investor seeks its assistance in completing the process.

a. Renewal of Investor Entry Permit

The Entry Permit must be renewed every two years. Company directors can request that they be issued an Entry Permit with a three year period of validity after the initial two years. According to Immigration, the decision about whether or not to grant a three year Entry Permit is not guided by any particular set of guidelines, but the amount of capital invested and the Immigration Board's assessment of the business' likelihood of long-term viability are considerations. A three year work permit would cost E 900 (US \$157.89).

To renew, the investor repeats the process as outlined above, save for opening the bank account and obtaining a police clearance. If the applicant is known to Immigration and from an established company he or she might be able to pay with a company check. Otherwise the renewal fee of E 600 (US \$105.26) is payable in cash.

2. Employee Entry Permit

If an investor wishes to hire an expatriate, he or she will follow a similar process as outlined above. In many cases, the investor will complete the Application for or Renewal of an Entry Permit on behalf of the employee, as there are questions on Part 1 of the form pertaining to the employer's attempts to staff the position with a Swazi national. It will be necessary for the investor to have registered the company and established a bank account prior to seeking Entry Permits for employees. The process for obtaining an employee Entry Permit is outlined below; the first three steps can be completed in any order:

Step 1) Get a medical examination. A medical examination performed by a doctor operating in Swaziland is required to obtain an Entry Permit. Therefore, the employee will need to complete this check prior to applying and produce proof of the examination.

Step 2) Obtain a police clearance. Employees are required to obtain a police report from their home country within six months of the time it is submitted as part of the Entry Permit application for review by Swazi authorities.

Step 3) Certify a copy of applicant's passport. A copy of the applicant's passport is acceptable, but it must first be certified (a process akin to notarization). Certification can be done by the Swazi police, a lawyer, or a magistrate. The magistrate and police should certify the passport at no cost.

Step 4) Place an advertisement in the local media. To hire an expatriate, an employer must first run a job advertisement in the local newspapers. Immigration and Labour officials suggest that the ad can appear in either the *Swazi Times* or *Observer*. The advertisement should run at least twice (two days total).

Step 5) Complete and submit application form. The Application for or Renewal of an Entry Permit must be completed for each individual worker who needs an Entry Permit. Employees and/or their employer are only required to complete Part 1 of the form, which asks for such information as:

- Place, period, and value of employment, including salary, accommodation, and other benefits;
- Applicant's qualifications, including as demonstrated by the inclusion of relevant certificates and diplomas; and
- Steps taken to employ or train Swazi nationals for the position.

The investor or employee would submit these forms and the submissions required (see below) to SIPA or immigration:

- A letter of application – Although there is not prescribed format for this letter, it will be addressed to the Chief Immigration Officer and generally include an introduction to the investor's company and an explanation of who he or she is hiring and why.
- Original medical certificate from a doctor in Swaziland.
- Police clearance that is no more than six months old.
- Two passport size photographs.
- Certified copy of the passport
- Copy of the advertisement printed in a local newspaper
- Copies of university degrees or other certificates, as appropriate

After collecting the documents Immigration will issue the investor a receipt for the application, called an "acknowledgment," with a reference number. This reference number is used for tracking the application through processing.

The application is reviewed by the Immigration Department, the Labour Department's Training and Localization Section, Swazi police, and the Board in the same manner as described above for investor applications. However, according to Labour officials employee applications receive greater scrutiny than investor applications. The Section meets every Friday to review Entry Permit Applications and Labour officials suggest that their review typically takes one week. Police checks are routinely completed within one day, according to SIPA, but Immigration officials suggest that one to two weeks is average.

Step 6) Collect the Entry Permit and pay the fee. If the investor went through SIPA he will be called when the Entry Permit is approved. If the investor goes through Immigration, he or she will receive a letter when the permit is ready. The investor can either pay for the Entry Permit through SIPA or go directly to Immigration to pay and retrieve the passport and Entry Permit. The employee's passport will be stamped with an Entry Permit indicating that he or she has permission to work and reside in Swaziland for a designated period of time. He or she will also be given an actual hard copy of the work permit.

Generally, employee Entry Permits are valid for two years and can be renewed. However, for employees Entry Permit renewal is dependent on the degree to which an indigenous worker has been trained for the position. In some cases Immigration may only grant a one-year Entry Permit if the applicant has drawn suspicion for one reason or another. If the

applicant's company is trusted and known to Immigration he or she might be able to pay with a company check. Otherwise the renewal fee of E 600 (US \$105.26) is payable in cash.

The entire process takes an average of two to four weeks, according to SIPA. SIPA suggests that if an investor seeks its assistance, the timeframe for receiving an Entry Permit is more likely to be two weeks.

a. Renewal of an Employee's Entry Permit

The Entry Permit must be renewed every two years. Employees may only receive an additional two year Entry Permit.

To renew, the worker repeats the process as outlined above.

An employee can transfer to another company on an existing Entry Permit provided that he or she obtains a letter of permission from his existing employer. The process for getting a new work permit would be the same as outlined above save for the additional requirement that the applicant produce a letter from his or her previous employer stating that the employee is released from his employment.

C. Investor/Employee Appeals Process

If an applicant is not granted an Entry Permit, he or she may appeal to the Minister of Home Affairs. In the interim, an employee or investor may apply for a Special Pass to temporarily extend his stay in Swaziland for three months while the appeal is pending. To obtain a Special Pass, an applicant must submit the following:

- Completed application form 10
- Copy of the receipt of appeal from the Immigration Department
- Letter of application
- Two passport photos
- A certified copy of the passport

There is no specific timeframe for the conclusion of the appeals process, but it is assumed to be completed in fewer than three months. The Special Pass is often issued within one week, according to the Immigration Department.

D. Dependent Residence Permit

The dependents of individuals working in Swaziland can apply for a residence permit. SIPA handles dependents' permits by request. To apply for a dependent permit, the investor or employee must first obtain his work permit. Passport details and work permit data are required for the dependent form, which is different than the Entry Permit form. The dependent permit is also valid for up to two years but the actual length of stay is synced to match the duration of the Entry Permit holder at the time of issuance.

E. Citizenship

Presently, Swaziland does not offer permanent residence but does offer citizenship. SIPA cannot help with obtaining citizenship, so investors must deal with the Immigration Department or the King. There are two paths to citizenship in Swaziland: a) applying through the civil process administered by the Immigration Department; or b) negotiating with the King of Swaziland.

F. Analysis

Several investors note that obtaining an Entry Permit can be among the most problematic procedures in Swaziland. Some specific issues are highlighted below.

Issues

Visit visa timeframe may be variable and not well explained. According to immigration officials, when a foreigner arrives in Swaziland he or she can request permission to stay in Swaziland for up to 30 days. However, when asked foreign investors indicated that this 30 day timeframe was not always granted (two weeks was common) and many indicated that they were unaware of the need to specifically ask for a particular period of time. Similarly, immigration officials are inconsistent in writing or stamping the timeframe into the passport, thereby creating doubt among visitors as to how long they are legally authorized to stay. The 30 day period is reasonable and freely granted, so it should be automatically stamped into the passport without a visitor having to specifically request it. Two weeks may be insufficient for the purposes of exploring the possibility of investing in Swaziland.

Occasional misunderstanding of what nationalities require prior approval to enter Swaziland hamper tourism promotion. Reportedly, on occasion immigration officers disagree about what nationalities can be admitted into the country without having obtained a visa in advance. For tourists visiting the country, such a misunderstanding can create a very negative first impression. Such issues can usually be sorted out within a few hours during the normal workday but if a visitor arrives after hours it is not clear what options are presented. Given that the list of nationalities that can enter Swaziland by obtaining a visa at the border is clear and comprehensive such misunderstandings should not occur at all.

Two year duration of Entry Permits restrictive. Several investors note that the duration of work permits restricts their flexibility in hiring and represents an added administrative hassle. Most permits are issued for a two year duration and can be extended by repeating the application process, but in some cases the permit is valid for only one year based on the discretion of the Immigration Board. Some investors have been issued a five year Entry Permit but the rationale for this extended permit is unclear. Many countries issue work permits that last between three and five years, thereby reducing the red tape associated with hiring desired expatriates. Investors are often issued indefinite permits that ensure the right to work and travel between the investment location and home country.

Excessive and unnecessary submission requirements. One of the reasons why obtaining an Entry Permit can be time-consuming, say investors, is because numerous supporting documents are required. Several of these are of dubious value. For example, the letter of application is duplicative of the application form. Given that an investor is providing company information and justifying his or her request for an Entry Permit in the application form, it is unclear why the Immigration Department needs to review company registration documents (Form J, Form C, Certificate of Incorporation, and Memorandum of Association), especially since to obtain a Certificate of Incorporation from the Registrar of Companies an investor will have already furnished these documents to government. It is also unclear how knowing a company's shareholder list, for example, vitally contributes to making a decision on an investor's right to work in Swaziland. Similarly, requiring proof of a bank account in Swaziland does not seem to be an effective mechanism to gauge an investor's seriousness. No specific amount is required and an illegitimate investor could easily establish a bank account and close it down later.

Badly sequenced approval process. The immigration regime, and its procedural dependencies related to the process of registering a company and obtaining a mandatory Trading License, is one of the most problematic aspects of investor startup in Swaziland. Technically, it is impossible to complete the requirements for obtaining an Entry Permit and

Trading License because to obtain the former an investor needs the latter and vice versa. Relatedly, to obtain a Trading License a health inspection is required. There is a widespread consensus that based on the regulations and conduct of the health inspection, it is very hard for a company to pass, especially if it is not yet operational. Reportedly, health inspectors will fail investors whose facilities are incomplete, yet the health inspection is required prior to operating and even obtaining basic legal permission to work and conduct business in Swaziland. In practice, an investor must negotiate with both the Department of Immigration and the Ministry of Enterprise and Employment to reach a formal agreement as to which permission will be granted first, thereby creating opportunities for rent seeking.

Progress of applications cannot be easily tracked. There is a consensus among investors and lawyers familiar with the process of acquiring an Entry Permit that the government does a very poor job of tracking applications and explaining to applicants their status. Physically visiting the Immigration Department a number of times may be required to keep the process going. Indeed, the slow pace of approving of Entry Permits and lack of transparency regarding where applications are in processing create opportunities for rent seeking in return for expediting an approval.

Lack of consistency in approving Entry Permits for employees. Some investors complain that the review of applications for employee Entry Permits are variable and employers cannot often predict if and when an employee can legally work in the country. The process involves a review of company registration information, the employer's work permit status, advertisements for the job in Swaziland, and similar matters and involves a review by the Ministry of Enterprise and Employment. There is a consensus that for investors, renewals are much easier and quicker to obtain than the initial Entry Permit, but for employees renewals may be harder to secure. This inconsistency makes internal firm planning extremely difficult, investors say, and frustrates company attempts to comply with the law. Investors complain that the Entry Permit approval process for employees is equally cumbersome regardless of the type of employee being hired. Investors say that approval to hire a nuclear physicist, for example, will take just as long as hiring a junior accountant.

Inconsistent and long approval timeframe for Entry Permits. Investors complain that the timeframe for approval of an Entry Permit is highly variable, unpredictable, and time-consuming. Indeed, the agencies involved do not commit to approving of an Entry Permit in any particular timeframe. Some investors suggest that after a company has been established in Swaziland for a number of years obtaining the permit can be accomplished in a few weeks, especially if one relies on an experienced facilitator. But others suggest that the process can take several months – estimates of five to six months to receive the permit were commonly cited by interviewees. Most investors say that when delays are experienced, the Immigration Department does not explain why but in several instances investors said that they were required to resubmit an Entry Permit application because the paper work had gone missing. In some cases, companies bring an expatriate to work and do not receive the Entry Permit within. Indeed, when SIPA advises investors on the Entry Permit process it ensures that extra copies of the application are retained.

Legally, expatriate managers who come to Swaziland to conduct short-term management activities are also subject to the requirement to obtain an Entry Permit. This requirement limits the ability of overseas staff from a parent company to come to Swaziland in a timely fashion. Therefore, if a foreign executive has urgent business in Swaziland he or she will have to go through the cumbersome and time-consuming process of obtaining an Entry Permit.

Localization policy is unclear and poorly implemented. While all countries have a legitimate interest in promoting indigenous employment, Swaziland's localization policy is poorly articulated and not well implemented. Several investors note that when they have

prepared training plans to upgrade the skills of local Swazis the government does not make any comments or suggestions, raising questions about government's ability to understand the training plans or sincerity in wanting to see them. No legislation outlines what skills are unavailable in Swaziland or specifically determines how many expatriates can work for a given company. Similarly, the Labour Department has not done a formal and comprehensive workforce skills assessment, so there is no hard data on what types of skills are locally available. Many investors feel that the policy is vague and inconsistently applied. This creates considerable instability, as investors are not certain if they can count on being able to hire and retain the expatriate employees they need. Indeed, in most cases rational investors would much prefer to hire a qualified local rather than an expatriate for the simple reason of cost. Including benefits given for relocation, expatriates tend to cost more than indigenous workers. Therefore, the private sector is incentivized on its own to seek out, train, and hire Swazi citizens when they can. Small to medium size family run enterprises where family members comprise the bulk of the employees are the most likely exception to this rule. Additionally, investors are generally very concerned that their company will be well managed and policies and administrative systems that threaten an investor's ability to control the enterprise and make important human resource decisions are a deterrent to FDI.

Poor policy coordination among SIPA, Immigration, and Labour. It is apparent that there is disagreement related to the issuance of Entry Permits among the agencies involved with acquiring Entry Permits. These disagreements range from the submission requirements – immigration asks for the Trading License whereas SIPA does not instruct investors to obtain this prior to applying for an Entry Permit – to the enthusiasm for the policy of allowing foreigners the right to work in Swaziland. As the national IPA, clearly SIPA is more supportive of quickly issuing work permission to investors and expatriate managers. At the policy level, this results in different agencies sending different messages to potential investors.

Poor administrative coordination among SIPA, Immigration, and Labour. At the administrative level, there is poor coordination on issuing Entry Permits as well. Investors receive different guidance on what they need to do to complete the process, SIPA's input is formally excluded from the Immigration Board that makes final decisions, and SIPA is not well aware of the criteria used by the Localization Department during its review. Files are physically transferred between Immigration and the Labour Department, increasing the likelihood that materials will get lost and slowing down processing. This lack of coordination means that the national IPA cannot effectively advise investors about the Entry Permit process. Given that not all investors go through SIPA to obtain a visa the government needs to reaffirm that it is committed to promoting Swaziland as a destination for FDI and implement its immigration procedures accordingly. Additionally, while some investors praised SIPA's ability to facilitate the acquisition of Entry Permits, others suggest that SIPA lacks the authority to ensure that legitimate investors receive them in a timely fashion.

Immigration Board meeting schedule slows down Entry Permit approval. Investors and other observers suggest that the Immigration Board does not meet as frequently as it should, thereby delaying the approval process for Entry Permits. One facilitator familiar with the process says it can take as long as four weeks for the Board to meet.

Spousal work permits are hard to acquire and restrictive. Some investors note that getting a work permit for spouses is difficult and if granted, the spouse cannot work in Swaziland. This creates a disincentive for married managers and skilled workers to work in Swaziland, as many senior executives would prefer to have their spouses and families living with them. Making it difficult for spouses to live and work in Swaziland not only deters investor interest but also reduces contributions to the economy arising from family spending on goods and services.

Recommendations

Standardize visit vise timeframe. Since the government allows for visitors from certain countries to stay in Swaziland for 30 days, there is no reason why this should not be the default duration. Rather than sometimes issue a two week duration and expect visitors to ask for 30 days, Immigration should consistently and automatically grant a 30 day visit period.

Ensure that all immigration officers know which nationalities require pre-approval to enter Swaziland. The Immigration Department has prepared a comprehensive list of which nationalities can and cannot be admitted to Swaziland by obtaining a visa at the border. Therefore, all immigration posts should have a copy of this list and all officers should be trained to recognize which nationalities can be granted entrance at the border.

Consider standardizing the issuance of longer duration Entry Permits. In regard to work permits, most investors would rather pay a reasonably increased fee for a permit with a longer duration. Swaziland issues Entry Permits for durations of one, two, and five years (and one investor said that his work permit was valid for three years) yet the criteria determining which duration an investor receives are unclear and certainly not well explained to investors. The government should introduce a less discretionary system with longer durations of at least between three and five years. This would increase investor comprehension and comfort with the immigration system, reduce the time required of government and the private sector associated with processing more frequent renewals, and increase transparency and a very unclear process.

Reduce submission requirements. Some of the submission requirements for the Entry Permit are of dubious value and should be eliminated. As a principle of paperwork reduction, government agencies should only be requesting for documents that vitally inform the decision making process and should not request documents that their staff cannot or no not evaluate. For example, the letter of application is duplicative of the application form and should be eliminated. Given that a Certificate of Incorporation is required, the documents used to obtain the Certificate from the Registrar are not needed. In any case, it is unclear how these documents (Form J, Form C, and Memorandum of Association) contribute to making a decision on the issuance of an Entry Permit. Requiring proof of a bank account in Swaziland does not seem to be an effective mechanism to gauge an investor's seriousness, so Immigration should consider eliminating this requirement. Finally, as noted below, the Trading License should not be included as part of the Entry Permit review process.

Eliminate health inspection and Trading License from Entry Permit process. The most glaring bottleneck in the process of investor startup in Swaziland is the requirement to obtain a Trading License to get an Entry Permit and to simultaneously acquire an Entry Permit to obtain the Trading License. Clearly, this is technically impossible and causes considerable frustration among investors who would like to comply with the law and makes government look incompetent. Therefore, the Immigration Department should cease requiring the Trading License, and the related health inspection, as a prerequisite for obtaining the Entry Permit. Logically, an investor would first want to obtain legal permission to explore and conduct business, register a company, and then obtain licenses required to actually operate. As discussed in Chapter 3, the health inspection should be conducted after a facility has been developed.

Improve tracking system. The Department of Immigration issues a reference number for Entry Permit applications that but this positive step does not seem to be enable applicants to obtain accurate information about the status of their permit requests. This would be much easier of the agencies involved would commit to completing a review in a specified timeframe, but at the very least process reengineering would enable Immigration to better

track applications. An internal paperwork analysis is beyond the scope of this project but the Immigration and Labour Departments should consider undertaking such an exercise to improve the review of information and processing timeframes in place. This would contribute to introducing a reasonable tracking system that can inform investors of the status of their applications.

Improve consistency of approving of Entry Permits for employees. The criteria used to judge whether an expatriate possesses a skill unavailable in Swaziland lack clarity, and therefore administering the Entry Permit renewal process for employees lacks consistency. If the localization policy is to be retained, better criteria for judging what employees deserve an Entry Permit should be developed in consultation with the private sector. These criteria should be sensitive to the investor's preferences in personnel and ensure that previous management experience and company loyalty can be weighed appropriately. As noted earlier, investors that can maximize control over their enterprise, including in staffing decisions, are more likely to invest and expand.

Establish a fixed and short approval timeframe for Entry Permits. To improve the process of issuing Entry Permits, Immigration, the national police, SIPA, and the Labour Department should convene a Process Improvement Workshop. The goal of the Workshop would be to pinpoint current internal problems in processing, identify what information is essential to the process, and develop an action plan for restructuring the procedure that would result in a quicker timeframe for permit approval. Inconsistent and long approval timeframes might be caused by improper information collection, unclear decision-making criteria, inadequate staffing, or unresponsiveness among civil servants. Programming the appropriate solution will require identifying the root cause of delays and inconsistency. Additionally, the Immigration Department should commit to enshrining a reasonable timeframe in the regulations governing the procedures.

Consider amending or ending localization policy. Given the financial incentives that investors have to hire less expensive local employees when available, the lack of data to support making decisions about what skills are available in Swaziland, and the lack of scrutiny of training plans, implementing the localization policy is a difficult challenge. It is also not clear if foreign investors are starting companies in Swaziland and providing jobs to expatriates in unreasonable numbers. Therefore, the GoKS should consider the value of implementing such a policy. If, however, the government deems the policy necessary it should consider alternatives, such as offering positive incentives for increasing hiring, to restricting an investor's ability to manage his or her company through the issuance of Entry Permits for expatriate employees. Investors note that aside from providing some sort of training plan for local workers, the criteria used to judge whether or not an expatriate employee is justified are murky. The Labour Department, in consultation with SIPA, investors, and Immigration, should clarify and better articulate these criteria so that the process of obtaining an Entry Permit renewal is less inconsistent.

Improve policy coordination among SIPA, Immigration, and Labour. Given the domestic investment resources available and significant unemployment rate in Swaziland, the GoKS should be committed to a policy of attracting FDI and domestic investment on equal terms. This policy should be reflected in immigration policy as well. In Swaziland, it seems that the case for pursuing FDI has not been accepted by some in government and policy making circles, and SIPA may need to better articulate the value of FDI to secure greater cooperation from other regulatory agencies that impact on investment. If supported by the top decision makers in government, the finalization of a national investment policy and supporting investment code might help clarify that facilitating inward investment, including through ensuring that Entry Permits are not a source of insecurity among foreign investors, is a national priority.

Improve administrative coordination among SIPA, Immigration, and Labour. Immigration, Labour, and SIPA should improve coordination at the administrative level as well. For example, Immigration and SIPA should agree on what items need to be submitted as part of the application process and SIPA should be included as part of the Immigration Board. Files should be transmitted electronically and tracked. Single version of the process should be developed to guide investors through the process and disseminated by all three agencies and put on a government website. It is anticipated that these outcomes could be achieved by undertaking a multi-agency Process Improvement Workshop with decision-makers from each agency.

Increase frequency of Immigration Board meetings. As part of restructuring the process of issuing Entry Permits the Board should revise its meeting schedule. If approval criteria are clear and the information collected is adequate, it is not clear why a Board meeting would be necessary at all, as granting Entry Permits should become a routine function. If the Board must meet, it should commit to weekly meetings unless no applications are pending.

Improve access to spousal work permits. It is unclear if the GoKS has a particular policy objective in focus by creating restrictions on the spousal ability to work in Swaziland. Given that many married managers and skilled workers would prefer to have their families with them while in Swaziland the GoKS should review these restrictions and consider making spousal Entry Permits easier to obtain, of the same duration as the expatriate worker or investor, and not prohibiting spouses to work.

III. Labour Regime

A. Overview

Labour is governed by the a few principal acts in Swaziland:

- Employment Act No. 5, 1980
- Industrial Relations Act No. 4, 2000
- Wages Act, 1964
- Occupational Safety and Health Act, 2001
- Factories Machinery and Construction Works Act, 1972

The Employment Act guides labour relations in Swaziland between an employer and any individual, including detailing the content and rules regarding formal employment contracts, probationary periods of employment, and termination procedures.

The Industrial Relations Act governs collective bargaining rules and procedures and establishes the Industrial Court and Conciliation, Mediation, and Arbitration Commission (CMAC). There are numerous recognized labour unions in Swaziland represented by the Swaziland Federation of Trade Unions or Swaziland Federation of Labour. The Federation of Swaziland Employers/Swaziland Chamber of Commerce represents employers in Swaziland.

In addition, there are several Wage Regulation Orders that establish minimum wages in certain sectors, including:

- Sugar
- Manufacturing
- Building and construction
- Hotels and catering
- Retail and wholesale

- Motor engineering
- Security services
- Mining and quarrying
- Agriculture
- Forestry
- Road transport
- Domestic work

B. Handling Labour Disputes

Labour disputes in Swaziland are principally handled by two organizations: the Conciliation, Mediation, and Arbitration Commission, which was established in 2001 and established to provide alternative dispute resolution (ADR) services as per prevailing international norms and within the Southern African Development Community (SADC) framework, and the Industrial Court. CMAC staff suggest that compared to the court system ADR is inexpensive, more accessible, more effective and relatively informal. CMAC management suggests that even if a case does not reach settlement, the process involves deeply exploring the dispute and thereby reduces the severity of job actions like strikes. As an example, CMAC attended to approximately 1,500 cases last year, while the Industrial Court attended to 400 and has a large backlog. According to its management, CMAC's backlog at year-end is normally less than 2 %.

CMAC's internal goal is to resolve each labour dispute brought before it within the 21-day conciliation period stipulated by the Industrial Relations Act of 2000. On average, it presently takes 36 days to conciliate a case.

The Industrial Relations Act is harmonized with other major pieces of labour legislation and the Commission functions as a board of redress below the Industrial Court and High Court. There may be conflicts with the industrial relations Act and the workmen's compensation legislation in so far as attending disputes over compensation for work disabilities. Presently there are some technical loopholes in the 2000 law that established CMAC and an amendment to the Industrial Relations Act to strengthen the law was passed by parliament and is expected to become operational this year. The two most important features of the amendment would be to make appearance before the Commission mandatory if an ADR case on union recognition is filed and not resolved at conciliation and to change the place where cases are first reported from the Department of Labour to CMAC.

The Commission is staffed by 18 full-time employees, including nine commissioners who conciliate and arbitrate over cases. The full-time staff is supported by 16 part-time commissioners.

The number one issue brought before the Commission is unfair dismissal (65% of cases). The second most common issue is unpaid wages (15% of cases). By sector, the most cases were filed in the retail sector (35% of cases) and manufacturing was second (15% of cases).

C. Alternative Dispute Resolution Process

As articulated in collective agreements and the laws governing employment, a labour disagreement must exhaust internal company dispute resolution procedures before a case can be filed at the Department of Labour for onward transmission to CMAC. If an investor or employee wishes to use the CMAC process to resolve disputes he or she must complete the

following process (for the sake of this study, the procedure below represents the steps an investor would take to file a case with CMAC).

Step 1) Report dispute to Department of Labour.¹⁷ The nature of the dispute must be filed with the Department of Labour using a standard form. The Department will have ten days to investigate the dispute and make a judgment as to whether it is genuine in terms of its being filed in time and is not frivolous and vexatious. If valid, the Labour Department will forward the case to CMAC for resolution. If not, the Labour Department refers the matter back to the applicant stipulating the reasons for rejecting the report and advising the applicant of the right to appeal the decision with CMAC. The party may try again to exhaust the internal procedures or sue in the Industrial Court to compel the Department of Labour to accept dispute or other redress.

Step 2) File complaint with CMAC. The Department of Labour will then transmit the dispute to CMAC who will invite parties to conciliation. By law, CMAC should conclude the case within the 21 days or the extension period agreed to by both parties thereafter. CMAC staff will conciliate the case in a manner that assist each party to evaluate the claim to verify if it is legally supported, estimate the ramifications of a legal case, and thereafter assist parties reach a voluntary settlement.

Step 3) Participate in ADR meetings. While reaching a settlement is voluntary, parties are mandated to attend conciliation since it is statutory. The nature and complexity of the case influences the frequency and duration of the meetings to be held at CMAC in trying considering all arguments and reaching a resolution. If a resolution is reached, both parties sign a binding Memorandum of Agreement. If one side fails to adhere to this agreement, the other may register it in Court to become a court order and may thereafter sue in the courts to compel compliance.

If the parties do not resolve the dispute, a Certificate of Unresolved Dispute is created and given to each party within seven days of the end of the 21-day conciliation period. The parties may then pursue the matter through binding arbitration under the auspices of CMAC or litigation at the Industrial Court.

If the parties choose binding arbitration, at the start of the process both parties agree to accept and implement the final judgment. The arbitrator is chosen by mutual consent but in practice the arbitrator is often a CMAC commissioner (not the same one that worked on the conciliation process). The result of binding arbitration is the issuance of an arbitration award. The award can be appealed based on a matter of irregularity or matters of law. On average, binding arbitration in Swaziland takes six weeks to conclude.

CMAC does not charge the investor or employee for its services.

D. Settlement of a Labour Dispute at the Industrial Court

As noted above, if a labour dispute is not settled through ADR, an applicant can pursue a legal remedy at the Industrial Court. According to the Court, between 60-70% of the cases brought before the industrial court relate to unfair dismissal. Matters pertaining to recognition of a union are the second most common type of case contract disputes rank

¹⁷ When the amendments become operational this step will change and CMAC will receive the disputes directly from the parties. According to CMAC, the investigation period will be reduced to four days.

third. According to the Industrial Court, applicants must go through the CMAC ADR process prior to filing a case at the Industrial Court. To do so the following procedure is followed to file a case:

Step 1) Obtain a Certificate of Unresolved Dispute from CMAC. As discussed above, the applicant must complete the ADR process under the auspices of CMAC and fail to reach a resolution prior to coming to the Industrial Court.

Step 2) Register application. The applicant will need to register his or her case with the court to get on the docket of cases. The application is comprised of six copies of each of the following:

- Application Form IC/C, which summarizes the claim being filed;
- Form B, "Application for Determination of an Unresolved Dispute;"
- Original application by the applicant or his or her lawyer outlining the damages sought and basis for the lawsuit;
- CMAC Certificate of Unresolved Dispute.

Four copies of the file are kept by the Court, one by the applicant, and one is reserved for the respondent. When the file is complete and submitted to the Industrial Court registrar, each document is stamped and a date to return for an allocation hearing is issued.

Registering a claim takes less than one day, according to the Court.

Step 3) Send one copy of the application to respondent. The applicant is responsible for sending a copy of his or her application to the respondent, who will have seven or 14 days to respond in writing to specific charges outlined in the applicant's file.

Step 4) Attend allocation hearing. Both parties must attend the hearing at which a case number is assigned.

Step 5) Pre-trial conference. Both parties are required to attend a pre-trial conference at which the number of days each side needs before the Court to present the case is agreed to. Both parties will sign a pre-trial notice attesting to the length of time requested.

Step 6) File pre-trial notice with registrar. The applicant then files the pre-trial notice with the registrar and an actual trial date is set, usually six or seven months hence.

Step 7) File notice of sit down. Within four weeks of the case being assigned a specific date, the applicant must file a notice of sit down to the respondent noting the date and time the court case is scheduled to take place.

The Industrial Court charges no fees associated with registering or trying a case.

After this, the case will proceed to trial, a judgment will be issued, and the parties will be legally bound to execute the Court's findings. Appeals must be filed with the Industrial Court's Appeals Court within seven or 14 days of the Industrial Court's ruling.

E. Analysis

There is a general consensus among investors that hiring and firing local employees is not problematic so long as an employer follows the law and structures contracts appropriately. In general, investors regard Swazi workers as efficient, responsible, and easily trained but rated middle and upper management skills as generally wanting. Swaziland also suffers from image problems related labour disputes; opinions differ as to whether the level of

unionization is a hindrance to business operations. The frequent use of collective bargaining agreements with unions is generally seen as a source of labour stability and some unions are credited with providing needed education for workers on the broader issues regarding employment. Investors also generally agree that the Labour Department, which oversees the implementation of collective bargaining agreements, is fair in its dealings with employers and workers groups.

A few specific issues related to labour disputes are noted below.

Issues

Lawsuits against employers add to operating cost. Although beyond the scope of this analysis, several investors note that lawsuits against employers related to unfair dismissal are common and often result in the employer having to pay some amount of compensation regardless of whether the employee was dismissed properly and for cause. Employers note that even if they feel justified in defending themselves in the courts the cost in time and fees can be high. Although CMAC is credited with being a relatively efficient and fair organization, several investors suggest that the general labour regime and Industrial Court are unduly biased against employers. One attorney stated that about 65% of the cases he has tried in the Industrial Court were ruled in favor of employees, suggesting that the legal framework and attitude of the Court are biased against employers and in favor of excessive protection of workers.

Industrial Court is excessively slow but CMAC improves process of handling labour disputes. According to some investors, labour disputes can be problematic in Swaziland because the Industrial Court is very slow. The courts are slow in part because employees generally need to prepare a detailed response to a workers claim. Also, the Court requires that two assessors – one representing labour and the other representing the unions – confer with the judge to make a decision. Additionally, lawsuits are seemingly common in Swaziland, in part because of the frequency or plaintiffs winning compensation, so there remains a backlog of cases before the Industrial Court.

On the positive side, there is a broad consensus that CMAC has been an improvement in the area of handling labour disputes in Swaziland. Investors regard CMAC's procedures as clear, relatively efficient, and fair.

Change in labour regime regarding severance increases wage burden. Although not an administrative issue, several investors note that the recent change in the law to extend severance payments to workers who had resigned voluntarily or have been fired for cause, especially if applied *ex post facto*, will represent a significant cost. Reportedly, this change was passed by the legislature and Cabinet and is awaiting the final step of gazetting to be become law and is already reflected in some collective bargaining agreements. While the labour regime should provide for appropriate protection for workers, this legal change removes disincentives for employee misconduct and resignation. One investor cited a case where several workers who were specifically trained and in short supply in Swaziland recently resigned en masse, collected severance pay, and then reapplied for their old jobs back. Given the investment already made in training the employer felt compelled to hire most of these workers back.

Recommendations

Improve the integrity of the implementation of rules regarding termination. CMAC has already improved the labour regime by offering investors and workers access to alternative dispute resolution mechanisms. Judicial training and increased sensitivity to the constraints

facing investors could improve the adjudication of labour disputes so that employees do not win unjustified judgments.

Improve Industrial Court speed. Improving the speed with which the Industrial Court rules is in part a matter of increasing its resources and changing the procedures under which it operates. The GoKS should consider increasing the number of judges and staff and eliminating the role of the assessors. Continued reliance on the quicker and less expensive CMAC process should also relieve pressure on the Industrial Court.

Study implications of changes in severance pay. To compete for investment, countries must be sensitive to costs and inflexibility imposed by the labour laws. It is beyond the scope of this analysis to measure the economic impact of the new law extending severance pay to workers that resign voluntarily or are fired, but the issue is worthy of government attention, particularly if there are no protections for existing companies. This issue should be further examined to assess the potential impact on existing and future companies in Swaziland to assess the extent to which the new legislation will deter investment by raising the cost of labour. One possible solution is to ensure that social payments like severance can be deducted from company taxes.

IV. Mandatory Registrations with Social Agencies

A. Background

According to Swaziland National Provident Fund Order, 1974 (as amended), all employers must register with the Swaziland National Provident Fund (SNPF), although certain types of employees may be exempt. Exempt employees include non-citizens, casual employees, temporary employees attending or waiting to attend a university or similar institution, and certain employees of religious institutions. The Fund was established to provide retiring Swazi nationals with some form of post-employment financial benefit in the absence of private or public pension schemes for the vast majority of workers. The fund offers five types of benefit categories and makes a one-time payment upon leaving the workforce:

1. Age benefit – The age benefit is paid out when a worker reaches 50 or older, whether he elects to retire or not.
2. Retirement benefit – This benefit can be claimed when a worker reaches age 45 and retires from regular employment.
3. Emigration benefit – The emigration benefit is for Swazi citizens that demonstrate proof that they have left the country permanently.
4. Physical or mental disability benefit – If under 45 years old the disability benefit is paid out to a worker who submits proof from a doctor that he or she has a disability preventing gainful employment. If older than 45, partial but permanent impairment that prevents a Swazi from earning a “reasonable livelihood” represents an allowable claim.
5. Survivor benefit – When a contributing member dies, family members previously nominated by the deceased can file a claim for his or her benefits. In the absence of a specific nomination by the Fund contributor, the spouse is the default survivor.

The amount of a claim equals the individual’s actual contributions plus 7% fixed interest per year. The SNPF invests its contributions in various financial instruments but historically it has invested in local real estate. Today, real estate is only 20% of its portfolio, down from 80% in earlier years.

B. Employer Registration

1. Registering Full-time Employees

Within 28 days of hiring its first employee, a company should register with the SNPF by completing and returning form NPF 1, "Swaziland National Provident Fund Employer Registration Form." The Employer Registration Form asks for company details such as its contact information, Certificate of Incorporation Number, Trading License Number, and name of directors. According to SNPF staff, the registration process can be completed at several branch offices and within a couple hours.

After registering, the employer is issued an account number and mailed a Certificate of Registration, handbook explaining employer responsibilities, and some ledger forms (Form NPF 200) intended to be turned in monthly with the Fund payment. The ledger, which can be recreated in Excel or a similar software package and submitted electronically, asks for employees' graded tax number, name, gender, wages, and contribution. A NPF 200 form should be submitted monthly with the contributions to the Fund.

The first payment is due within 21 days after its first payroll, and each subsequent payment must be paid by the 21st of each month for the payroll period of the preceding month. The penalty for late payment equals 7.5% of the amount due and is assessed each month, thereby escalating. Payments can be made at any one of the SNPF branch offices (although in some areas the offices are open only intermittently during the week) in cash, by company check, or money order. A facility to pay directly through the bank is being considered.

Presently, the contribution amount equals 10% of an employee's monthly salary up to a maximum of E 80 (US \$14.04). The employer pays 5% of the employee's salary, and the remaining 5% is deducted from the employee's monthly wage. Employers can supersede this minimum required Fund payment with voluntary contributions.

If a worker leaves or joins a company, form NPF 201 should be completed notifying the SNPF of a change in employment roll status.

The employer's annual Fund contributions qualify for tax deduction so long as they do not exceed 10% of the total payroll amount of the company.

2. Registering Casual Workers

Casual employees are also required to be registered by an employer for the Provident Fund. As defined by the Order, a casual employee is someone who is:

- a. Not a domestic servant;
- b. Engaged on a daily contract of service; and
- c. Is employed for less than one month, with provisions.¹⁸

Employers are required to pay 7% of such worker's monthly wages for payment to the Fund as a "Special Contribution" beginning on the 31st day of employment.

C. Workmen's Compensation

In addition to the provident fund, companies in Swaziland are required to obtain private insurance to cover work place accidents. The government has developed an accident report

¹⁸ "Provided that the continuity of the employee's period of service shall not be deemed to have been broken by reason only that the employee was the employed on Sundays, public holidays, or not more than five other days during the period of one month." From "The Employer's Guide to the Fund," pg. 6.

book for employers and a form for employers to use if a worker is injured on the job. The form includes an accident report number and asks for a company's tax payer identification number. The Commissioner of Labour will send this form to the Department of Mines (regardless of whether or not the employer is in mining), the attending physician, and the employer's insurance company.

Next, a doctor would complete a medical examination report and, potentially, a disablement report. Based on the health of the injured worker, the Commissioner of Labour would draft an agreement proposal for compensation and send it to both the employer and employee. If both ratify the proposal, worker's compensation is paid. The formula for the amount of compensation is: monthly salary (including wages and benefits) * 50% * 54 months.

D. Analysis

Issues related to the mandatory registrations for labour related benefits in Swaziland are not high among investor concerns. However, a few observations are offered below.

Issues

Inadequate awareness of the need to register with SNPF. According to the SNPF, compliance remains a problem in Swaziland, particularly among SMEs, construction companies, transport, and textiles. Many companies do not register in time, SNPF officials say, and some claim that SIPA did not tell them it was required. Further, since the fines can quickly escalate (7.5% of the amount owed charged each month) and the Fund can attach a company's assets companies that fall behind in payment can experience difficulties. SNPF has prepared very good materials that can guide investors through the registration and payment process.

Recommendations

Improve information dissemination to investors. As noted above, SNPF has prepared a clear, concise, and comprehensive guide for investors. This information should be made available online and incorporated into SIPA's broader investment facilitation materials. Additionally, SIPA should ensure that the mandatory SNPF registration and payment procedures are included as part of its description to investors of what the business startup requirements are.

Chapter 3: Reporting

I. Introduction

This chapter discusses reporting procedures in Swaziland. These procedures are required of an investor at the startup phase of business and convey legal permission to begin

operations. Specifically, this chapter will cover company registration, the process to obtain mandatory licenses, an illustrative sectoral licensing process, and the acquisition of incentives.

II. Company Registration

A. Company Registration Regime

Company registration in Swaziland is completed by the Registrar of Companies under the Ministry of Justice. By law, in Swaziland only lawyers are permitted to register a company. Company registration is governed by the Companies Act, 1912, as amended.

In addition to non-profit companies, the Companies Act allows for three basic forms of company formation: a) companies limited by shares; b) unlimited companies; and c) partnerships. Public companies have the word “Limited” after the company name. Private companies have the words “Proprietary Limited” in their name. Foreign companies can operate a type of branch, an “External Company,” but are subject to all requirements in the Companies Act and must register as a company in Swaziland. Sole proprietors are also legal business entities in Swaziland but not covered by the Companies Act and registered by the Ministry of Enterprise and Employment.

1. Private Companies

Private companies are the most common vehicle for investment in Swaziland. The minimum number of shareholders and directors for private companies is two and one, respectively. The contents of the Articles of Association are determined by the Act and for private companies must include the following clauses:

- A restriction of the right to transfer shares;
- Membership is limited to a maximum of 50 shareholders not including company employees; and
- No offers of subscriptions of shares or debentures to the public is prohibited.

2. Public Companies

Public companies are not subject to the restrictions noted above. The minimum number of shareholders and directors for public companies is seven and two, respectively.

There are no requirements to include Swazi nationals as directors or shareholders.

3. Partnerships

Partnerships are restricted to 20 members, including natural persons.

B. Company Registration Process

To register a company in Swaziland, an applicant must complete the following process:

Step 1) Reserve a company name. Applicants must first write a letter to the Registrar General’s Department to reserve a company name. The process for Registry staff to approve of a name takes an average of two days, Registry officials say. At the time of requesting a name, the lawyer processing the application will be told to return in two days to inquire as to the approval or rejection of the name request. The cost, paid later in the process is E 10 (US \$1.75).

With concurrence by the Registrar the name reservation is valid for three months, by which time an applicant must file his or her papers to register a company. If the applicant does not file within three months, the name is released back for use by another applicant and the process and fee for name reservation will need to be repeated.

The Companies Act imposes some restrictions on the selection of company names. For example, the name must be unique, cannot suggest blasphemy or indecency, and cannot have the words “Imperial,” “Royal,” “Crown,” “Empire,” or “Government” in the name. Name changes must be approved of in writing by the Minister of Enterprise and Employment.

Step 2) Purchase and complete forms. The forms required to register a company, with the exception of for TR 42, “Application for Annual Company License,” must be purchased. Form TR 42 asks for the company name, address of registered office, country of incorporation, and nominal capital of the company. Some – not all – of the forms are available in the lobby of the Ministry of Justice for E 3 (US \$0.53) apiece.

Step 3) Obtain tax clearance. Investors will need to obtain a certificate of tax clearance from the Department of Taxes. The investor will be issued a form indicating that he or she does not owe taxes in Swaziland.

Step 4) Have lawyer draft Articles and Memorandum of Association and other documents. The format and content of the Articles and Memorandum of Association are proscribed in the Companies Act. The minimum contents include the: a) company’s name; b) authorized share capital; and c) companies main purpose, including ancilliary objectives. Also required is a Declaration of Compliance, which is in essence an affidavit prepared by a lawyer. The applicant’s lawyer will need to draft these three submissions.

Step 5) Submit documents and fee. When the required documents are complete, the company registration application should be submitted to the Registrar of Companies. The complete application will include:

- Reservation of Name Confirmation Form
- Original Memorandum of Association, which will be presented as one original copy signed by the directors and two additional copies
- Articles of Association, which will be presented as one original copy signed by the directors and two additional copies
- Form TR 42
- Form E, which records the names and addresses of company directors and managers
- Declaration of Compliance, which certifies that the applicant is complying with “all or any of the said requirements” of the law¹⁹
- Tax Clearance Form from the Department of Taxes
- Registration fee, which will include E 10 for the names search

The registration fee is determined by the amount of capital of the registrant’s company, as indicated in the table below. The Registrar of Companies states that the fees are under revision.

Table 3.1: Swaziland’s Company Registration Licensing Fees

Nominal Capital	License Fee
E 10,000 (US \$1,754) or less	E 200 (US \$35)
Exceeds E 10,000 but not E 30,000 (US \$5,263)	E 350 (US \$61)

¹⁹ Companies Act, 1912, Art. 19, (2).

Exceeds E 30,000 but not E 50,000 (US \$8,772)	E 500 (US \$88)
Exceeds E 50,000	E 800 (US \$140)

Other fees are likely to apply when an investor registers his company. These are included in Table 2 below.

Table 3.2: Additional Fees Related to Company Registration

Purpose	Fee
Registration of original Memorandum of Association	E 100 (US \$18)
Registration of altered Memorandum of Association or a substituted Memorandum and Articles of Association and the Order of Court confirming same	E 100 (US \$18)
Registration of the reduction of the capital of the company and Order of Court confirming same	E 100 (US \$18)
Registration of change of company name	E 200 (US \$35)
Registration of any required document other than those listed above	E 20 (US \$4)
Recording any fact by the Registrar	E 20 (US \$4)
Lodging annual list and summary	E 50 (US \$9)
Issuance of any certificates by the Registrar	E 50 (US \$9)
Inspection of any document filed with the Registrar	E 10 (US \$2)
Inspection of the registers kept by the Registrar	E 10 (US \$2)
Altering an address in the register	E 10 (US \$2)
Reserving a new company name	E 10 (US \$2)
Change of the end of a company's financial year	E 10 (US \$2)
Registration of a special resolution for the conversion of the company type into another form of company	E 30 (US \$5)
Registration of a Memorandum of an external company	E 100 (US \$18)
Requesting the submission of provisional financial statement of a private company	E 10 (US \$2)
Requesting submission of documents lodged for registration	E 10 (US \$2)
Granting exemption from lodging annual financial statements of a subsidiary	E 30 (US \$5)

Step 6) Collect Certificate of Registration. Once the Registrar has finished processing, the applicant can claim the Certificate of Registration. Typically, the applicant's lawyer will be instructed as to when to return to the Registrar of Companies to claim the Certificate. According to the Registrar, the process takes two weeks on average depending on the Registrar's workload.

All companies must maintain a physical office in Swaziland at which the Certificate of Registration is displayed.

C. Annual Submissions and Renewal of Registration/Company License

Companies are required to submit an annual return to the Registrar noting the capital structure, shareholders, and directors as of June 30 of each year. In Swaziland, registration must be renewed annually within 30 days of the June 30 submission date. The renewal is done through application for a "Company License" from the Registrar of Companies. To renew, an applicant will complete Form TR 42 and pay the appropriate licensing fees. If required, other forms will be submitted to document changes in a company's structure, shareholding, address, or other characteristics.

D. Analysis

The company registration process does not figure prominently among investor complaints. However, a few observations are warranted.

Issues

Registrar of Companies offers poor service. While company registration is not high among investor complaints in Swaziland, the process is characterized by poor service, unresponsive civil servants, and a lack of centralized information. Investors cite examples of delays caused by a lack of Certificate paper or computer problems, and the Registrar's records are not completely computerized. By law, only lawyers can register a company so investors are rarely involved directly in the process. While this requirement shields investors from bad service, it imposes a necessary cost of approximately E 3,000 (US \$526) in the startup phase of business including the modest fees paid to government. According to investors, the process usually takes between two and six weeks assuming the forms are completed properly and the names search does not reveal conflicts.

Forms are not easily accessible and must be purchased. Only one form is provided by the Registrar directly and none are available for downloading from the internet. Some, but not all, of the required forms are available for purchase in the lobby of the building that houses the Registrar for a nominal amount.

Company registration legislation is outdated. The Companies Act is quite old, dating back to 1912, and proposed revisions are being held up by Royal signature. Some observers suggest that revisions in the law could allow for more flexibility in the options available for company registration. The legislation allows for essentially four types of companies – proprietary limited companies, public companies, non-profit organizations, and sole proprietors – and such options as branch offices and individual limited liability companies are not allowed. In addition, the regulations regarding names – such as the requirement that companies have at least two words in the company name – can cause a minor inconvenience to some investors when their first choice is rejected.

Confusion among some investors about the process and requirements. Neither the Registrar nor SIPA adequately explain the company registration process the Registrar offers no comprehensive process information. Therefore, information on how to register a company is largely in the hands of lawyers, who charge for their services and information. While this is not a major deterrent to large companies, micro, small, and medium enterprises (MSMEs) may find the inaccessibility of the process and required cost a barrier to formalization. Some specific requirements are particularly confusing. For example, foreign investors are not required to have a local shareholder but there is some confusion about this. According to some facilitators, the Registrar is not good at clarifying the rules and requirements to investors.

Recommendations

Improve customer service at the Registrar. The Registrar of Companies should undertake a reform program designed to improve the quality of its services. This reform should address three critical elements: improving transparency and customer service, standardizing approval timeframes, and expanding the use of information technology. The desired outcomes of these reforms would be to create an agency that accurately and helpfully guides investors through the company registration process, registers companies in a quick and consistent manner, and computerizes all records and posts forms, regulations and guidelines on the internet.

Enable forms to be downloaded for free. As noted above, posting all forms on the internet would shift the cost of acquiring forms from the government to the private sector. For investors that lack internet access, the forms could continue to be sold but the Registrar should ensure that they are all available at its premises.

Update company registration legislation. Evaluating the efficacy of the proposed company registration legal reform is beyond the scope of this analysis. However, the as several observers suggest revisions would be useful. It is recommended that the Ministry of Justice confer with private sector stakeholders as part of its legal reform process to ensure that changes improve the investment environment. Similarly, it is recommended that government consider revising the law that requires company registration be completed only by lawyers. While drafting legal documents is clearly the province of trained and accredited legal professionals, in many countries individual entrepreneurs can register their own companies. This makes the process more accessible to MSMEs.

Clarify the requirements and rules for company registration. As implied above, the Registrar and SIPA should improve transparency regarding company registration. A simple guide and accompanying webpage should be created that outlines the legal requirements, restrictions, steps, costs, and timeframes for registering a firm in Swaziland.

III. Obtaining Licenses

A. Obtaining a Trading License

All investors need a Trading License prior to commencing operations in Swaziland. Investors must file an application in the district where they are operating. A Trading License may be transferred to a new owner provided he or she files a Trading License transfer application. In addition, business owners may amend Trading Licenses to cover additional business activities providing they apply for a license amendment. Investors must obtain a license for each relevant business activity. Previously Swaziland had a master business license system: business owners obtained a single operating license. Currently, however, the Ministry of Enterprise and Employment requires a separate license for each activity. All licenses, including transfers and amendments, are valid for the calendar year: all licenses expire on December 31 of the year in which they were granted. Businesses must display their license in a prominent position on their business premises.

The Ministry of Enterprise and Employment's Commercial Department is responsible for granting or rejecting Trading Licenses. There are no written process guidelines. Investors learn about the process steps and fees from a licensing officer at the Commercial Department or one of the regional offices.

The Trading License process is governed by the following legislation:

- The Trading Licenses Order, 1975²⁰
- The Trading Licenses Regulations, 1975

Investors must pass a health inspection prior to obtaining a Trading License. This process is outlined below.

1. Regulatory and Policy Regime Related to Health Inspections

As part of the process of becoming operational, all companies must undergo a health and hygiene inspection conducted by either the Ministry of Health (MoH) or the City Council in which the enterprise is located. The major pieces of legislation governing health inspections at the national level are:

- Public Health Act No. 5, 1969

²⁰ The Kings Order-in-Council repealed the Trading Licenses Act No. 27 of 1939 and promulgated the new Trading Licenses legislation.

- Public Health Food Hygiene Regulations, 1973
- Bakery Regulations, 1974
- Sale of Adulterated and Tainted Foodstuffs Act No. 25, 1968
- Control of Slaughterhouse Act No. 10, 1964
- Salt Iodinization Regulations, 1997

Two other acts are related to the health inspections. These are the Health and Safety Act, 2001, administered by the Department of Labor and relating to occupational health and safety, and the Building Act, 1968, administered by the Ministry of Housing and Urban Development, which specifies the minimum contents of building plans.

Some of the principal Acts and regulations governing health inspections are being amended presently. There are no written guidelines for inspections, so inspectors are expected to be able to interpret the regulations appropriately and inspect based on what they say. The nature of the inspections varies based on the type of firm to be inspected, but according to the MoH inspections within the same sector tend to be very much alike.

Since the vast majority of foreign investors are located in premises not governed by a City Council, for the purposes of this study only the Ministry's process for health and safety inspections is covered. The City Councils adhere to the same regulations but have their own by-laws to set certain standard and guide health inspections.

Like other national agencies in Swaziland, the Ministry of Health maintains regional offices that serve their district communities, including by inspecting companies so that they can become operational. Overall, there are 36 health inspectors at the MoH.

2. Hosting a Ministerial Health Inspection

The process to host an initial health and hygiene inspection is as follows:

All companies that apply for a Trading License are required to advertise in the *Times of Swaziland* for three weeks (technically, for 21 days but there is no Sunday edition of the *Times*). When a company is gazetted in this manner, the Ministry of Health should receive a copy of the MoEE license application so that it knows to schedule an inspection. Alternatively, health inspectors can read the *Times* to learn about which companies are entering the Trading License approval process.

The investor is contacted by a health inspector and arrangements are made for the firm to be inspected. According to the Ministry of Health, the inspections are usually scheduled within one to two days and completed within one day. Completing the resulting inspection report takes an average of one to two days, the MoH asserts. If the report is favorable, it is sent to the investor, the local government authority, MoEE, and the Principal Secretary of Health. The report will indicate that the facility is approved for operation. The investor can either pick up the report from the MoH or it will be sent by regular mail, which takes approximately one week. After receiving the health inspection approval, the investor will return to the MoEE and present it so that Trading License processing can continue.

If the business does not meet the minimum health and hygiene standards, the inspectors report will reflect the changes required. The investor will then contact the Ministry after changes are made and when he or she would like to undergo a second inspection.

If the investor wishes to challenge the results of the inspection, he or she can appeal to the Ministry. According to the MoH, this is extremely rare and has happened only once in the past ten years.

There is no fee for the Ministry inspection. City Councils do charge for the health inspection.

The health inspection will be repeated annually on a random basis.

3. Trading License Application Process

After having completed the health inspection process, the investor will complete the following steps to obtain the Trading License.

Step 1) Applicant retrieves and completes application/advertising form. The investor retrieves the relevant application form from the Commercial Department at the Ministry of Enterprise and Employment, or from any of the other three regional offices in Swaziland. There are several different forms depending on business type. If the applicant is a sole proprietor he or she completes Form A-1. If the applicant is a partnership he or she completes Form A-2. If the applicant is a company he or she completes Form A-3.

The Commercial Department is open Monday through Friday, 8:00am-1:00 pm and 2:00-4:45 pm.

The forms require slightly different information as elaborated below.

Form A-1 asks for the following information:

- Applicant's postal address
- Applicant's business name or style of business for which application is required
- Nature of type of license required
- Applicant's nationality
 - If Swazi, chief's name
 - If Swazi, Indvuna
- Applicant's citizenship
 - If Swazi citizen state whether by
 - a) birth
 - b) naturalization
 - c) registration
 - d) khonta
 - Give certificate of registration number where applicable
- Location of business premises
 - Has the locality of the premises been declared to be a general business area under section 8 of the order?
- Has any previous application by applicant for a license been refused under these applications and or any other laws? If so, give details. Country? If so, give date of court order for sequestration
- If application has been rehabilitated give the date thereof
- Has the applicant been convicted under the insolvency\Act No. 8\1995 of Swaziland or the insolvency law of any other country?
- Has applicant during the last five years been convicted under the replaced Trading License Act. No. 21\1939 of the Trading Licenses Order No. 20\1975? If so, give details.
- How much money do you intend to invest in the business?
- Full particulars of any financial interest any other person has in the business
- If the application is for the transfer of a license, nationality or citizenship of transferor
- If application is for an amendment of a license, write full particulars of proposed amendment
- Any additional information which the applicant wishes to give in support of this application

Form A-2 asks for the following information

- Applicant's postal address
- Name of partnership or business
- Nature or type of license required
- Details of all partners, including nationality and citizenship
 - If Swaziland citizen, state whether by
 - a) birth
 - b) naturalization
 - c) registration
 - d) khonta
 - Give certificate number or registration number where applicable
- Location of business premises
 - Plot No, Street, Town, District
 - Has the locality of the premises been declared to be a general business area under section 3 of the Order?
- Is more than one half of the capital of the partnership held by Swaziland citizens?
If not, state the number of shares of each partner
- Number and date of issue of any previous license held under the Order
- Has the partnership made or does it intend to make any other application under the Order?
- Has any previous application for a license been refused under these regulations and/or any other law?
- Has the estate of any of the partners been sequestrated under the laws of Swaziland or of any other country? If so, give details. If any of the applicants have been rehabilitated, the date thereof.
- Have any of the partners during the last five years been convicted under the Insolvency Act No. 81/1955 of Swaziland or the Insolvency laws of any other country? If so, give details.
- Have any of the partners during the last five years been convicted under the Trading Licenses Act, No. 27/1939: 21/1959 or the Trading Licenses Order, No. 20/? If so, give details.
- Has the partnership complied with the requirements of all other laws applicable to the business and the premises?
- If application is for the transfer of a license
 - Nationality of transferor
 - Citizenship of transferor
 - If citizen of Swaziland state whether by birth, naturalization, registration, or khonta; and give certificate number or registration number where applicable.
- If application is for an amendment of a Trading License, give details of the proposed amendment.
- Any additional information which the applicant wishes to give in support of this application

Form A-3 requests the following information:

- Name of company and registration date
- Postal address
- Nature or type of license required
- Whether private or public company
- Give details of the directors as follows: name, country of residence, nationality, citizenship. If Swaziland citizen, state whether by birth, registration, naturalization, khonta; and give certificate number of registration number where applicable
- Location of business premises: Plot No. and district.

Has the locality of the premises been declared a General Business Area under Section 3 of the Order?

- State the nominal and issued share capital of the company.
- Is more than one-half of the issued share capital held by Swazi citizen?
Give details of the share holding of the ten largest shareholders: name and no. of share held.
- State the nature of business carried on or to be carried on.
- Number and date of issue of any previous license held under the Order. If so, give details.
- Has the company made or does it intend to make any application under the Order?
- Has any previous application for a license been refused under these regulations and/or any other law? If so give details.
- Has the company complied with requirements of all other Law applicable to the business and premises?
- If application is for a transfer of a license: nationality of transferor, citizenship of transferor; if citizen of Swaziland state whether by birth, naturalization, registration, khonta and give certificate number or registration number where applicable. Other particulars of transferor
- If application for an amendment of a license, full particulars of proposed amendment.
- Has any of the directors during the last five years been convicted under the insolvency Act 81/1956 of Swaziland or the insolvency Law of any other country? If so give details. If he has been rehabilitated the date thereof.
- Have any of the directors during the past five years been convicted of an offense Under the Trading License Act 21/1939 or the Trading License Order No. 20 of 1975? If so give details.
- Any additional information which the company wishes to give in support of this application.

Step 2) Investor pays application fee. Prior to submitting the completed application form the investor must pay an application fee at the District Revenue Office at the Ministry of Finance. The District Revenue Office stamps the investor's application as proof of payment. The application fee for all types of Trading Licenses is US \$7.02, which covers the cost of advertising the Trading License application in the *Times of Swaziland*.

Step 3) Investor submits application to Commercial Department. The investor submits his stamped application form and advertising form to one of the licensing officers at the Commercial Department.

The licensing officer places an advertisement in the newspaper. The advertisement indicates that the applicant is applying for a Trading License at particular premises and announces the hearing date in case there are objections.

Step 4) Investor attends licensing hearing. Twenty-one days after placing the advertisement the licensing officer holds a licensing hearing at the Commercial Department or one of the district offices. The investor must attend the hearing or instruct his or her attorney to attend. At the hearing the investor must supply all required supporting documentation. The supporting documentation required varies by the applicant's business type - sole proprietor, partnership, or company.

Applicants must provide supporting documentation. Some of the submission requirements imply that the investor must complete other steps prior to licensing his or her business. For instance, the licensing application process requires the investor to produce a Health Certificate. The investor must also have completed the application process for and obtained an Entry Permit.

Applicants who are sole proprietors provide the following supporting documentation:

- Premises Health Certificate
- Passbook from bank account indicating that the applicant has sufficient funds to operate the business
- If the applicant is leasing a premise, he must submit his lease agreement. If he owns the premises he must indicate ownership to the licensing officer. The investor is not required to submit the property title deed.
- If the applicant is not a Swazi citizen he must submit a copy of the Entry Permit. There is no local partner requirement.

Applicants who are partnerships provide the following supporting documentation:

- Copy of partnership agreement
- Partnership bank statement
- Premises Health Certificate
- If either partner is not a Swazi citizen he must submit a copy of the Entry Permit
- Lease agreement or verbal statement that one of the partners owns the premises

Applicants who are companies provide the following supporting documentation:

- Certificate of Incorporation
- Company's Memorandum of Association
- Company bank statement
- Premises Health Certificate
- If the applicant is not a Swazi citizen, he must submit a copy of the Entry Permit
- Lease agreement or verbal statement of premises ownership

The licensing officer approves the Trading License during the licensing hearing and gives the applicant a Grant Form, which indicates that the officer approves for the investor's licensing application. The licensing officer has the final decision to approve a Trading License during the hearing. The licensing officer does not require approval by another individual.

Step 4) Investor pays licensing fee at the District Revenue Office. Once the licensing officer issues the investor a Grant Form the investor must return to the District Revenue Office at the Ministry of Finance to pay the relevant licensing fee. The District Revenue Office stamps the investor's Grant Form as proof of payment.

Step 5) Investor returns stamped Grant Form to licensing officer. The applicant returns his stamped Grant Form to the licensing officer and the licensing officer issues him or her with a Trading License.

The investor must renew his Trading License annually.

If an objection during the hearing results in the licensing officer refusing a Trading License to the investor, the investor may appeal to the Minister within 14 days of the hearing. The individual who objects can likewise appeal to Minister within 14 days of the hearing if the licensing officer grants a license despite his objection.

4. Schedule of Fees

The application fee for all types of Trading Licenses is US \$7.02. The license fee differs by the type of trade one carries out. The original Trading License Regulations laid out fees for a number of categories; the fee for some categories is lower if the activity takes place in a

rural area. In 2003, an amendment to the regulations raised license fees and established a significantly greater diversity of categories. In some categories lower license fees still apply in rural areas. Trading license fees are list on the government's website at <http://www.gov.sz/home.asp?pid=2533>.

Table 3.3: Trading License Application Fees and License Fees by Category

Description	Application Fee (E)	License Fee (E)
1. Auctioneer	20	250
2. Accommodation Establishment	20	250
3. Baker Urban	20	100
Rural Area	20	50
4. Hairdresser	20	75
Rural Area	20	20
Barber	20	20
5. Butcher	20	150
Rural Area	20	50
6. Cobbler	20	100
7. Take Away	20	200
Rural Area	20	100
8. Caterer	20	100
9. Dealer in Farm Produce	20	50
10. Debt Collector	20	250
11. Disinfectant/Fumigator	20	50
12. Dealer in Wholesale	20	300
13. Dealer in	20	250
a) clothes, shoes, linen curtaining, fabric		
b) Shoes, clothes, and others	20	200
c) Photographic material and accessories	20	150
d) Books, stationery, cards, magazines, newspapers, etc.	20	150
e) Agricultural equipments: accessories and irrigation machinery	20	150
f) Electrical appliances and accessories	20	350
Rural Areas	20	150
g) Jewelry, ornaments, silverware, etc.	20	150
Rural Areas	20	50
h) Groceries	20	300
Rural Areas	20	50
Description	Application Fee (E)	License Fee (E)
i) Furniture	20	350
Rural Areas	20	100
j) Business machines and accessories	20	300
Rural Areas	20	150
k) Crockery, cutlery, ceramics, glassware	20	100
Rural Areas	20	50
l) Fancy goods and cosmetics	20	100
Rural Areas	20	50
m) Optical goods and accessories	20	150
Rural Areas	20	75
n) Toys and infant items	20	100
Rural Areas	20	50
o) Sports goods and equipment	20	150

Rural Areas	20	50
p) Spare parts for cars, motorcycles, and other	20	250
Rural Areas	20	75
14. Hiring services	20	75
15. Dairy/Dairy farm	20	150
16. Dealer in aerated or mineral water	20	150
17. Dealer in bones or used goods	20	100
Rural Areas	20	50
18. Dealer, household, patents, and proprietary medicine	20	100
19. Pharmacist/chemist and apothecary	20	300
20. Dealer in motor vehicle	20	500
21. Petrol & Oil dealer/filling station	20	100
Rural Areas	20	50
22. Motor vehicle attendant	20	50
23. Breakdown services	20	200
24. Motor vehicle driving school	20	350
25. Fishmonger/fish fryer	20	100
26. Fruit, vegetables & plant dealer	20	50
27. Funeral undertaker	20	120
28. Miller (purchasing & sales)	20	350
29. Private investigator/freelancer	20	50
30. Kennel or pets boarding establishment or salon	20	50
31. Livery stable or riding school keeper	20	50
32. Hawker (food, drinks & other)	20	60
Goods other than food & drinks other than food & drinks	20	60
Food and drinks only	20	60
Frozen goods only	20	60
Cut flowers etc	20	60
Ice cream, frozen sucker	20	20
33. Peddler/street vendor	20	25
34. Launderer or dry cleaner	20	350
Description	Application Fee (E)	License Fee (E)
Self service laundry	20	100
35. Offensive traders:	20	50
a) scraping, cleaning, or boiling offal		
b) Burning charcoal or lime	20	50
c) Curing, dressing, tanning or scuffing or hides and skins	20	200
d) Manufacturing malt	20	70
36. Pawnbroker/shylock	20	500
Shylock	20	1,500
37. Physical culture, health, or beauty salon	20	100
a) facilities or institutions or guidance in beauty therapy physical culture or fitness or posture improvement		
b) Turkish bath or massage	20	100
c) sauna	20	200
38. Place of entertainment	20	150
a) dance studio		
b) drive in theatres	20	100

c) skittle alley	20	100
d) miniature golf course	20	150
e) machine	20	30
39. Restaurant keeper	20	150
Rural Area	20	30
40. Salesman agent	20	250
41. Special license	25/day	
42. Warehouse	20	200
43. Vestare	20	50
44. Workshop	20	150
45. Management consultants	20	350
46. Import and export	20	200
47. Business broker and estate agent & or employment agent	20	350
48. Travel agent	20	350
49. Photographic studio	20	150
Rural Areas	20	50
50. Agent of a firm	20	250
Resident agent of a firm	20	75
51. Supermarkets	20	400
a) butcher	20	250
b) baker	20	150
c) grocery	20	100
d) fresh produce	20	
e) furniture	20	250
f) electrical appliances	20	150
g) crockery, cutlery, glass	20	100
52. Ice cream parlor	20	150
53. Car hire	20	350
54. Cinema/theatre	20	350
55. Driller license	20	350
56. Dressmaker/tailor	20	100
57. Manufacture	20	
Description	Application Fee (E)	License Fee (E)
Capital over 250,000	20	250
Capital (100,000 – 250,000)	20	175
Capital of 1 – 100,000	20	100
58. Green grocery	20	75
Rural Area	20	30
59. Scrap yard dealer	20	250
60. Curios shop	20	100
61. Grocery	20	100
Rural Area	20	30
62. Builder and contractor Mbabane-Manzini corridor	20	1000
Outside corridor	20	350
63. Medical & dental clinic	20	350
64. Veterinary clinic	20	350
65. Produce and handiwork	20	10
66. Billiard/snooker table: per table	20	60
67. Vender's cart	20	100
a) sale of prepared food and non-alcoholics		
b) sale of prepared foods only	20	60
c) sale of tobacconist & candies/sweets	20	60
d) sale of tobacconist & non-alcoholic beverages	20	75

68. Night club/discotheque	20	300
69. Shoe repairing	20	20
70. Blacksmith/farrier	20	50
71. Dealer in hardware	20	250
Rural Area	20	100
72. Evening housekeeper	20	15
73. Street photographer	20	60

The Commercial Department indicates that the Trading License application process can be completed in three to four weeks. The most significant delay is the 21 day newspaper advertising requirement, says the Ministry.

B. Analysis

Issues

The fundamental purpose of the Trading License is unclear. All companies in Swaziland, regardless of size or function, are required to obtain a Trading License annually. The license is not linked to any monitoring or oversight mechanism and is not linked to protecting any public purpose. The Trading License changed several years ago to move from a master license that would allow a business entity to receive a single license specifying several permissible activities to a myriad of licenses for each activity the investor does. This imposes a series of nuisance procedures and costs on investors. International best practice suggests that business licenses should only be issued to regulate a vital public interest and should be linked to an effective monitoring system. For example, licensing regimes for restaurants and hospitals are designed to ensure that basic standards related to food hygiene and public health are followed. The Trading License in Swaziland regulates no such vital public interest. Indeed, since the license is required by all enterprises in Swaziland it seems to be designed as a mechanism to generate revenue and register companies rather than to ensure that they meet minimum standards. Further, the Ministry of Enterprise and Employment notes that applicants are very rarely turned down, and in these cases usually only temporarily, so the licensing process does not impose and meaningful standards that companies must meet to operate.

Health inspections cited as unprofessional and arbitrary. There is a broad consensus among the investors interviewed that the process for obtaining a health inspection – a required permission to receive a Trading License – is arbitrary and unprofessionally conducted. Some foreign investors note that their own company standards related to health are far more sophisticated than those enforced by local authorities in any case. This perception adds to the frustration investors feel when they fail an inspection because they have been inspected before their facilities are complete. Both the Ministry of Enterprise and Employment and Ministry of Health concede that there is a shortage of health inspectors and transport capacity.

Health regulations in need of modernization. Given that the Public Health Act is 36 years, the MoH concedes that there is insufficient regulatory guidance about the standards for certain types of modern factories. In such cases, inspector must use their own judgment based on their academic background and training to determine if a factory meets minimum standards. Indeed, it is not clear that the regulations applied are designed to cover inspections of incomplete structures. Several investors note that the health inspectors seem to confuse building readiness issues with occupational health and safety issues.

Health inspection badly sequenced in Trading License approval process. Several investors note that their operations were delayed by problems in acquiring the Trading License. While the Trading License process has its own delays and inefficiencies, a major

cause of delay is obtaining the health inspection certificate. Several investors note that because a health inspection is required before a company is operational, investors cannot pass, as firms are unwilling to complete construction and operate machines without the legal permission conveyed by the Trading License. Therefore, when inspectors come to assess a building site they cite the investor for such lapses as having an incomplete and inoperable facility. Several investors cited small reasons why they did not pass a health inspection related to the fact that the factory was logically not yet operational (and could not be legally functioning without the Trading License) – incomplete tiling, machinery not yet installed, and plumbing not yet connected.

Some facilitators suggest that investors must have a Trading License to apply for a health certificate. At the same time, the MoEE process steps note that investors must produce a Health Certificate at the Trading License hearing. Facilitators explained that they often submit a copy of the Trading License newspaper advertisement to the health inspector to indicate that the applicant has commenced the Trading License application process. This process is sometimes, but not always, successful. The Ministry of Health says that this is not required, but clearly there is some confusion about the issue.

For its part, the MoH suggests that investors involve the Ministry earlier in the development process so that it can better advise on such things as having enough toilets and proper ventilation. The Ministry would prefer that they receive a sketch plan and other information that indicated the type of operations, number of workers, and how ventilation, waste disposal, toilets, and lighting were to be installed.

Coordination between Ministry of Health and Ministry of Enterprise and Employment seems to be inadequate. Investors perceive that the MoH and MoEE do not communicate adequately about the approval procedures related to the Trading License and health inspection. Indeed, there is some disagreement between officials about how the Ministry of Enterprise and Employment communicates with the Ministry of Health. MoEE suggests that a copy of a company's licensing application is forwarded to the Ministry of Health, but the MoH says that its inspectors read the *Times* to find out which firms have declared an intention to seek a license and operate.

No written process guidelines. The investor must complete a number of steps and produce significant documentation during the Trading License application process. These steps are not written out and published anywhere. Nor does the Commercial Department publish written information explaining the documentation the investor must bring to the licensing hearing. The lack of information could cause considerable confusion on the part of investors, create additional process steps, and delay approval.

Application not available electronically. The three different application forms are not available electronically. Investors must visit the Commercial Department to retrieve the relevant application form. This adds an additional step to the process, which could be eliminated if forms were available online.

Unclear criteria for demanding sole proprietor bank statements. The Commercial Department indicates that there are no criteria for evaluating the level of funding in a sole proprietor's bank account. Moreover, a Trading License is apparently never refused based on *insufficient* bank funds. Since the department has no established minimum level of bank funds for sole proprietor applicants, this seems an unnecessary document for investors to produce.

Confusion over timing of Entry Permit and Trading License. As discussed in Chapter 2, if the investor or his partner is not a Swazi citizen he must produce an Entry Permit at the Trading License hearing. However, Immigration also requires investors to provide a Trading

License for the Entry Permit application process. One local facilitator noted that this is a significant bottleneck in the investment process and that investors must be creative in finding a solution to the confusion. The facilitator indicated that nine out of ten times the investor arranges for a friend or associate with Swazi citizenship or a Entry Permit to assume temporary company leadership. This individual will then apply for the Trading License on behalf of the company.

Newspaper advertising period unnecessarily lengthy. An investor's Trading License application must be advertised in the *Times of Swaziland* for 21 business days. Since the paper is not published on Sundays the advertisement runs for more than three weeks. During this period individuals have an opportunity to object to the application. This is a long period, especially for a small country and particularly because private sector sources noted that the government has tended to ignore objections unless they are very serious – a firm polluting a neighbor's property, for instance.

Licensing hearing process lengthy. Private sector sources noted that the licensing hearing process is overly time consuming. On the investor's hearing date he must wait in line with 20-30 other applicants, waiting his turn to file into a room with the licensing officer. The officer apparently handwrites receipt of each of the investor's supporting documents onto a piece of paper. There is no standard checklist on which the licensing officer notes receipt.

Recommendations

Consider abolishing the Trading License or reverting to previous Master Business License system. Since the Trading License does not regulate a vital public interest in a meaningful manner the government should consider abolishing the requirement. If the government does choose to maintain a Trading License system it should revert to the previous system whereby an investor applies for a Master Business License rather than multiple licenses for each business activity. A Master Business License is better for the investor – more efficient in terms of application time and often less costly. Moreover, a single license would not necessarily represent a revenue loss if the government adjusts the price. International practice suggests that investors prefer to pay for a single though more expensive license than for numerous less expensive ones.

Improve conduct of health inspections. The Ministry of Health should review its training and procedures related to health inspections. The process is widely criticized by investors and considered a serious barrier to business startup and operations. In particular, inspectors need to know what they should be evaluating and when they should be inspecting. Further, public-private dialogue is needed to help health inspectors improve their technical capacity to inspect a wide range of modern machinery, procedures, and remediation systems.

Health regulations in need of modernization. Working with input from the private sector, the regulations that guide inspections should be revised. The revised regulations should clarify what occupational health and safety issues should be evaluated, address concerns related to HIV/AIDS in the work place, and limit the inspectors' mandate to legitimate issues.

De-link health inspection from acquiring a Trading License. While it is certainly appropriate for companies to undergo a readiness inspection for occupational health and safety issues, it should not be done as part of the initial process of acquiring a Trading License. Rather, it should be linked to the start of a company's production and also be scheduled and concluded so as not to needlessly leave a completed factory idle. While providing more information to the Ministry of Health earlier in the process for comments may be helpful, the Ministry must be sensitive to not becoming an obstacle to business startup.

Improve coordinate among the Ministry of Health, Ministry of Enterprise and Employment, and SIPA. There is no indication in the Trading Licenses Order or the Trading Licenses Regulations that a health certificate be required for the license. Also, since there are no written guidelines indicating process steps nor documentation requirements it is unclear what the source of this administrative requirement is. To avoid confusion and delays the MoEE should publish guidelines that include a clear explanation on how to move forward with the Trading License and the health certificate applications concurrently. The MoEE should cease requiring a health inspection as part of the Trading License application process. The MoH inspection should be linked to permission to operate a factory and come after initial reporting requirements related to investment startup. Once the health inspection process is improved and separated from the Trading License process, all agencies involved will need to develop a common explanation of procedures. For SIPA it will be important to be able to advise investors accurately about steps are required and when they should be undertaken.

Establish and publish written guidelines. The MoEE's Commercial Department should immediately draft and publish written process guidelines detailing the steps an investor must take in completing a Trading License application. Guidelines should include explanation of the different types of application forms, which should be attached to the hard copy guidelines. The department should also include a list of all documents required at the licensing hearing. The department should immediately publish the guidelines on its website.

Make application available electronically. The Commercial Department should immediately upload the three relevant application forms, and the renewal form, onto the MoEE website. It should subsequently post notification of its website address and the materials available electronically at its offices, at SIPA, and at other relevant government offices.

Establish criteria for sole proprietorship bank statement or abolish requirement. The department should determine relevant criteria for evaluating a sole proprietor applicant's bank account statements, or abolish the requirement. If the department continues to require the bank statement it must establish a minimum funds threshold for various business activities.

Rectify timing issues with regard to work permit. The MoEE should move to immediately rectify confusion over the timing of the Trading License and the work permit application processes. The ministry must coordinate with the Registrar's Office to determine proper sequencing of these processes. The Trading Licenses Order and the Trading Licenses Regulations do not indicate that an investor must have an Entry Permit to apply for a Trading License. It is possible that these application processes could occur concurrently - the investor could provide a copy of the Trading License application newspaper advertisement to the Registrar's Officer, for instance.

Decrease newspaper advertisement period. Since the department admits that Trading Licenses application are very rarely denied due to objections it should decrease the advertising period. The department should reduce the current 21 day advertising period to 7 days maximum to speed the overall approval process. The department is currently considering reducing the advertising timeframe; it should implement this consideration immediately. In the medium term the department should consider eliminating the advertising requirement since it rarely results in a license denial.

Shorten and improve licensing hearing process. In the short term the Commercial Department could considerably speed the approval process by improving the actual licensing hearings. The department should immediately create and use a documentation

checklist to record the records the investor brings to the hearing. Moreover, the department could easily schedule hearing times for each investor so applicants are not required to wait in line for hours for their turn with the licensing officer. If the department determines that the average amount of time a licensing officer needs to spend with an applicant is 30 minutes, the department should schedule hearing times every 30 minutes on licensing hearing days. In the medium term the department should eliminate the licensing hearing process altogether. Rather than scheduling a hearing and requiring an investor's presence, the department should collect all relevant documents, internally review them, and issue a license electronically or through the postal system.

C. Obtaining a Mining License

The Constitution of Swaziland vests mineral and mining rights in the king, who holds them in trust for the Swazi nation. A national trust, Tisuka Taka Ngwane, receives all mining royalties. The Ministry of Natural Resources and Energy's Department of Geological Surveys and Mines processes prospecting and mining license applications. Two committees are involved in the application approval process: the Minerals Committee and the Negotiating Committee.

Investors first visit the Geological Surveys and Minerals Department to learn about the application process. Investors exploring mining investments complete two stages: prospecting and mining. There are consequently two different application processes – one for an Exclusive Prospecting License and another for a Mining Lease License.

An investor first seeks an exclusive prospecting license. If the investor is satisfied with the information yielded by prospecting and he wishes to mine the area he has prospected, he applies for a mining license. The application steps for each process are the same, though application information differs, as noted below.

This process is governed by the following legislation:

- The Mining Act, 1958
- The Mining Regulations, 1958

An investor seeking a mining or prospecting license must complete the following process steps.

Step 1) Investor submits letter of interest. The investor sends a formal one-page letter to the Commissioner of Mines indicating his desire to apply for a prospecting or mining license. The investor must include a brief description of his proposed project.

Technical staff members in the department review the letter, and if they find the application meritorious they recommend that the Commissioner of Mines table the letter before the Minerals Committee. Concurrently the Commissioner issues an electronic version of the application for a prospecting or mining license to the investor.

Step 2) Investor completes and submits the prospecting or mining application form. The investor completes the form and returns it to the Department of Geological Surveys and Mines. He may return it in person, via the postal system, or via email. The application includes personal and financial details as well as a description of the mineral in which the investor is interested. Along with the application form the investor attaches several additional documents. For a mining license the investor attaches an area plan indicating the mine coordinates. For a prospecting license the investor attaches a physical description of the area to be prospected, including all geological information.

The application form for an Exclusive Prospecting License requests the following information:

- Name and address in Swaziland
- Applicant's nationality
- Number of applicant's prospecting license
- Position of applicant in company
- Name, nationality, and description of members or directors (if any)
- Amount of a) nominal capital subscribed and b) cash working capital
- Copy of company Memorandum and Articles of Association²¹
- Date of erection of a) location and direction beacon, b) upper beacons, c) corner beacons, d) boundary beacons
- Approximate area in km²
- Mineral for which applicant desires to prospect
- Additional mineral(s) which applicant has discovered on the area and for which he desires to prospect
- Statement of geographical position in regard to some town, village, or river crossing or junction which is shown on the latest version of the map of the District in which the area applied for is situated
- Indication of compliance with regulation 12 of the Mining Regulation No. 5 of 1958 (1)²²
- Indication of being in a position to comply with Regulation 21²³ as regards a deposition; and statement of whether by cash payment of banker's guarantee.
- Signature of witness (if any) to erection of location beacon and other beacons
- Indication if there were any beacons belonging to other prospectors existing at the date on which applicant erected his location beacons and which purported to mark out any of the area for which applicant now applies
- Indication that applicant has shown on attached map other mining beacons bordering on the area for which applicant is applying
- Name of person who will be resident on the area if application is granted and who is qualified to comply with the requirements of Regulation 56 (1)²⁴ of the Mining Regulations, No. 5 of 1958 (1).

²¹ Company does not have to register in Swaziland prior to applying for a prospecting license.

²² Regulation 12 states the following: "(1) Every holder of a prospecting license when proposing to prospect under the authority of his license in any district shall notify the District Commissioner of his entry into the district for such purpose; (2) Every holder of a prospecting license when proposing to leave a district in which he has been prospecting shall notify the District Commissioner of his intended departure; (3) The holder of a prospecting license, unless prospecting on the area of an exclusive prospecting license, location or lease shall keep a record in triplicate in Form 22 in the First Schedule showing the district, the Crown land, farms or Swazi Area in which he prospected each day and the kinds and quantities of minerals won, if any, in the course of such prospecting operations, and shall send a copy of such record to the District Commissioner and to the Commissioner so that it will be received by them not later than fourteen days after the end of the month to which the record refers; (4) Every holder of a prospecting license who has not prospected under his license during the month shall send a "nil" record to the District Commissioner and to the Commissioner so that it will be received not later than fourteen days after the end of the month to which the record refers; (5) Any person who commits a breach of this regulation shall be guilty of an offense and liable on conviction to a fine not exceeding ten emalangeni, or, in default of payment, imprisonment for not exceeding fourteen days."

²³ Regulation 21 states the following: "(1) The following moneys shall accompany an application for a license under regulation 19 – (a) rent for the first year at the rate of ten emalangeni per 260 hectares or part thereof; (b) preparation fee of two emalangeni; (c) registration fee of fifty cents. (2) A deposit of not more than two hundred emalangeni may be subsequently called for by the Commissioner in respect of such license prior to its grant."

²⁴ Regulation 56 (1) states the following: "Every holder of an exclusive prospecting license or mining right who is not himself in person continuously in charge of operations shall at all times during working

The application form for a Mining Lease requests the following information:

- Name and address in Swaziland
- Applicant's nationality
- Number of applicant's prospecting license
- Position of applicant in company
- Name, nationality, and description of members or directors (if any)
- Amount of a) nominal capital subscribed and b) cash working capital
- Copy of company memorandum and articles of association
- Date of erection of a) location and direction beacon, b) upper beacons, and c) other beacons
- Approximate area in hectares
- Minerals to be mined
- Length of term desired
- Statement of geographical position in regard to some town, village, or river crossing or junction which is shown on the latest version of the map of the District in which the area applied for is situated
- Rent calculated at E1.25 (US \$.22)/hectare or part thereof

The applicant must attach the following in triplicate to the application form:

- A government plan or tracing thereof, signed by applicant and giving the information as required under regulations 20 and 45 (b)
- A signed plan on a scale of 1:10,000 as required under regulation 45 (b) of the Mining Regulations, No. 5 of 1958 (1)
- A statement as to the number of occupiers of private lands on the area of the proposed lease as required under regulation 45 (c) of the Mining Regulations, No. 5 of 1958 (1)
- A statement as to the natural water supplies in the area of the proposed lease, any existing usage of such natural water supplies and any proposed use of such by applicant

The department reviews the application for accuracy and to ensure that all items are included. The department sends the application and attached documents to the Commissioner of Mines, who reevaluates the materials. The Commissioner of Mines registers the investor's interest with the Minerals Committee. The king appoints members to the Minerals Committee. Members do not serve fixed terms.

Step 3) Investor presents his or her prospecting or mining project to the Minerals Committee. The investor's presentation includes information on the financial, technical, and marketing aspects of his project. The committee makes an immediate decision to approve or reject the investor's application. The department notes that the Minerals Committee rejects approximately 60% of applications because the projects are too small to be viable or the company has no previous prospecting or mining experience.

If the Minerals Committee approves the application it sends an approval letter to the Minister of Natural Resources and to the Negotiating Committee. The Negotiating Committee investigates the investor's financial and legal background and establishes prior to meeting with him. There are no established criteria by which the Negotiating Committee sets terms. The committee does not have fixed membership.

Step 4) Investor appears before the Negotiating Committee. The investor appears before the Negotiating Committee to negotiate the terms of his prospecting license or mining lease.

hours have an appointed agent on the area in charge of operations and shall notify the Commissioner of every such appointment and every change of agent."

During this hearing the Negotiating Committee negotiates state royalties and the financial role of the government in the company's project. Mining policy gives Tibiyo the right to a 51% share in all mining projects. Following the hearing the Negotiating Committee and the investor – typically through his legal representation – will continue to negotiate the deal for the next six to seven months.

Once the Negotiating Committee reaches agreement with the investor it communicates approval to the Minerals Committee. The Geological Surveys and Minerals Department subsequently draws up the prospecting or mining license. The investor pays no fee for the application process. The investor will pay land rental fees and royalties to the Swaziland Government.

D. Analysis

The Ministry of Natural Resources and Energy commissioned a draft national mining policy document. The document, written by the Mining Policy Review Task Force and published in October 2003, suggests a number of policy changes that it recommends be codified in new law. The document clearly recognizes many of the failings that appear common in the mining license process and notes changes required for the country to achieve its full mineral wealth potential:

“There is an urgent need to reverse the decline of the mining industry that has taken place in the past two decades by attracting new investment in the exploration for and exploitation of mineral resources. The Government recognizes that to do this it must establish an enabling environment for investors that is based upon modern regulatory arrangements and competitive terms. Tanzania and Mozambique, both historically insignificant as mineral producers, have reformed their regulatory arrangements for mining and are beginning to attract substantial flows of investment from companies that would previously have overlooked them...”²⁵

The task force recommends that one of the mining policy's guiding principles should be “a stable regulatory environment in which investors are treated in an even-handed and transparent manner.”²⁶ This is in recognition that investment decisions required transparent decision-making factors.

The document's first chapter, “Regulation of the Mining Sector,” notes that the country must establish an enabling environment for investment in the minerals sector. It recommends application guidelines that describe the procedure and establish and maintain deadline: “The mining law will set out timely, efficacious and transparent arrangements for applications being made and processed and set out the conditions that must be met in order for mineral rights to be granted to the applicant...”²⁷

Issues

Application process is unclear. The prospecting and mining license application process is unclear. The department does not publish any guideless explaining procedures and application requirements. The department's website does indicate that two committees fall under its mandate: the Minerals Committee and the Negotiating Committee. However, the website does not give any details that would assist the investor in understanding the administrative, financial, and time requirements. Sources note that bureaucratic bottlenecks substantially delay application approval. Investors shuttle between departments and offices

²⁵ Mining Policy Review Task Force, Draft National Mining Policy of Swaziland.” October 2003. p. 2-3.

²⁶ *Ibid*, p. 4

²⁷ *Ibid*, p. 11

completing and following up on the application processes. Reportedly, several international companies have expressed recent interest in mining but none have been approved and they have had difficulty getting an audience with the pertinent regulators.

Department viewed as unresponsive. The Geological Surveys and Minerals Department is viewed as unresponsive. One knowledgeable source noted that in recent years eight companies have expressed an interest in mining investment but they met with an unresponsive department. Reportedly, several investors left when they were unable to meet with relevant government officials. Sources note that the department is understaffed and the commissioner himself is not readily available to investors.

Poor customer service orientation. The Geological Surveys and Minerals Department lacks sufficient customer service orientation. Staff members appear to undervalue the role of investment in the minerals sector and do not provide a welcoming environment either in terms of materials available or process ease.

Committee composition is unstructured. The King appoints members to both the Minerals Committee and the Negotiating Committee for indefinite terms. There are no set members and according to the Geological Surveys and Minerals Department the committee composition is erratic. While this might not affect the speed at which the department issues prospecting or mining licenses it limits overall process transparency.

Committee members do not evaluate based on clear criteria. Committee members do not approve or reject prospecting and mining license applications based on clear, established criteria. Investors do not understand how the department and the committees approve or reject decisions and have been unable to follow up adequately. This lack of transparency is a major deterrent to investment and also creates the impression that the government does not really want investment in the sector, despite the potential for job creation and increased state revenue.

Committee approval process lengthy. The committee approval process is lengthy: Currently the department approves or rejects an investor's application in six to seven months according to the department. Other sources have noted that the application process can take years. Requiring potential investors to wait such a long period before investment approval represents a significant deterrent to FDI.

Recommendations

Draft and publish application guidelines. The Geological Surveys and Minerals Department should draft and publish application guidelines, which explain the steps an investor must complete, the costs involved, and the time delays anticipated. The department should also provide written materials that explain the approval process, detailing the internal steps the department and committees complete. Currently the department has application forms electronically. It should make these application forms and process guidelines, available on its website.

Professionalize Geological Surveys and Minerals Department. The government should draft a new minerals act that includes provisions recommended in the Draft National Mining Policy, including a more accessible and investor-friendly mining license approval process. The Geological Surveys and Minerals Department should provide a welcoming environment for investors. Relevant staff should be available to meet with investors when they visit the country, and should readily explain the application and approval processes.

Improve customer service. The ministry should provide training to department senior and junior staff on customer service orientation and techniques. Moreover, the ministry should improve the department's understanding of the benefits of investment, and FDI in particular, to the country's minerals sector.

Revisit committee structure and appointment process. The existing committee appointment system and membership structure are unclear. According to the department the draft constitution establishes a Minerals Management Board to replace the existing Minerals Committee. The Draft National Mining Policy likewise recommends this new committee structure. Under the recommended system the King will appoint board members by portfolio, including the following members: a legal advisor, an economist, a mining engineer, and three additional members appointed by the King on the advice of the Minister of Natural Resources. Board duties will be enumerated in the constitution as well as members' duties, and terms of office. The government should act quickly to draft, accept, and implement a new mining act in line with Draft National Mining Policy recommendations. The essential objectives of the decision-making bodies should be clarified so that they serve as effective and quick regulators of the mining sector.

Establish clear application evaluation criteria. The department should also establish and publish application evaluation criteria. The existing committee approval process and the new recommended committee structure should operate under specific evaluation criteria that are clearly understood by committee members and by applicants.

Improve committee approval process to decrease time delay. In revisiting the committee structure, as suggested above, the government should decrease the application approval or rejection time. In fact, a new mining act and regulations should set a minimum time period in which the department must either approve or reject an application.

IV. Acquiring Incentives

Swaziland has a number of incentives designed to reduce the cost of production and attract capital whether from within or outside the country. The incentives can be grouped into two categories, namely, those associated with the general investment climate, like the general tax regime, and are available to any business, and special incentives that are available only under certain conditions and only on application by investors who consider that their businesses may qualify for the incentives. Local and foreign investors can apply for Swaziland's incentives on an equal basis.

This section describes procedures for obtaining the special incentives, which are:

- Provision of factory shells, with subsidized rental and a grace period before the first rental is paid;
- Reduced corporate tax of 10%, instead of 30 and exemption from withholding tax;
- Income tax deduction of the cost of training Swazi nationals (Training allowance).
- Customs Tariff and Sales tax incentives; and
- Export Credit Guarantee scheme.

A. Factory Shells

1. Subsidized Rental

The incentives relating to factory premises are granted by the Ministry of Employment and Enterprise at the recommendation of SIPA. The law establishing SIPA²⁸ grants SIPA the power "to hold, manage, develop, let, hire or otherwise deal in immovable property." However, the factory shells belong to the government and the rent is paid to the government. According to two companies that were interviewed, new foreign companies are given priority in the allocation of factory shells.

The period of grace before the first rental is paid depends on the nature of the business and on the negotiations with SIPA. Generally rental is not paid until the business starts operations. One company was granted a period of 20 months while another started paying rent only six months after getting the premises.

The subsidy²⁹ on rental can be substantial. In rural or small towns like Big Bend and Pigg's Peak it is between E6 (US \$1) and E7 (US \$1.22) per square meter per month instead of the economic rent of about E10 (US \$1.75). The subsidized rental is between E12 (US \$2.10) and E15 (US \$2.63) per square meter per month in Mbabane, Manzini and Matsapha, where the economic rental is between E 15 (US \$2.63) and E20 (US \$3.50). Provision is made for escalation of the rental by 10% after the first year. The rental payable therefore depends on the location of the factory, and the extent of subsidy can range from 25-40% of the market rate. Again this will depend on the negotiations with SIPA and possibly on SIPA's perception of the importance of the investment. For example, an investor who would employ 1,000 people would be able to negotiate a better package than one who would employ 500 people.

2. Application Procedure for Factory Shells

Step 1) Submit business or project proposal. To obtain a factory shell or DAO, the investor must submit a business proposal to SIPA, which, in addition to serving as a center

²⁸ Act No. 1 of 1998.

²⁹ It was not possible during the research for this study to establish whether there is legislation allowing the Minister for Employment and Enterprise to delay the payment of rental and to charge a subsidized rental.

for information, is also responsible for appraising business proposals and recommending the granting of incentives.

The investor can also submit the application and a business proposal directly to the Ministry of Finance. This would be the case where SIPA assistance is not required or where the application is in respect of expansions of existing business.

The business proposal or plan must include the following details:³⁰

1. Parent Company
 - Profile of the company
 - Audited financial statements for the last three years
2. Proposed Swaziland Project
 - Summary of proposed Swaziland Project including markets served (both geographical and sector) and how the project fits into the corporate strategy of the parent company
 - Employment projections for three to five years
 - Financial projections for three to five years
3. Commercial Viability
 - Existing markets to be serviced by proposed project
 - Ability to achieve revenue projections
 - Competitive position
4. Investment
 - Buildings
 - Plant and Machinery
 - Working capital
5. Funding
 - Equity
 - Loans
 - Other

While appraising the project SIPA may seek clarifications or additional information from the investor. It takes one to two weeks to appraise a proposal.

Step 2) Negotiate and sign memorandum of understanding. Once satisfied about the soundness of the project, SIPA will prepare a draft Memorandum of Understanding. The investor and SIPA will discuss the provisions and once there is agreement on its contents and text it will be signed by the investor and the Minister for Enterprise and Employment for the Government of the Kingdom of Swaziland (GoKS).

The terms and conditions of a typical MOU will include the following:

- Undertaking by the investor to set up a company for a named business activity (e.g. making teddy bears) with an initial investment of a given amount of Emalangeni (e.g. E7 million), and employing a given number of people, and the investment to be effected by a specified date (e.g. October 2005).
- Provision that the investor will endeavor to employ Swazi workers in key positions.

³⁰ This information is summarized from a *Guide for Submission of Business Proposals* prepared by SIPA for investors.

- Provision that the government will provide a factory shell of a given area (e.g. 300 square meters) within a period of time, (typically six to nine months), and that the factory will be enough to accommodate the number of people to be employed.
- Name of the area where the enterprise will be located (e.g. Matsapha).
- The rental to be paid by the investor. The rental will be a subsidized amount per square meter.
- A grace period before the first rental is paid. (This has to be negotiated).
- Provision that, subject to Cabinet approval the investor will pay a corporate tax of 10% for ten years.

B. Reduced Corporate Tax

The standard corporate tax rate in Swaziland is 30%. However, in terms of Section 69(2) of the Income Tax Order 1975, where the Minister is satisfied that a new business is beneficial to the development of the economy, he may, with approval of Cabinet, nominate such business as a Development Enterprise, and grant it additional tax concessions. The minister does this by issuing an ad hoc order known as “Development Approval Order” (DAO).

There were no formal procedures for implementing Section 69(2) until in 2000 when the Minister for Finance published “The Development Approval Order Notice, 2000” which stipulates the conditions and process for obtaining concessions under the sub-Section. The concessions are:

- Corporate tax at the maximum rate of 10% for ten years
- Exemption from withholding tax on dividends for ten years

1. Criteria for approval

The DAO Government Notice stipulates the criteria on the basis of which application for DAO will be considered. These are:

- The DAO is available only to new investments, business or development enterprises in the manufacturing, mining, international services and tourism sectors, and to local or foreign direct investment;
- It is also available to “expansions of existing enterprises” but only if such expansions are implemented as stand-alone, independently incorporated businesses or companies;
- The investment must be in the form of a company registered and incorporated in Swaziland;
- The company must have been promoted by reputable promoters with a demonstrably successful track record;
- The granting of the concession may not unfairly discriminate against existing competing enterprises;³¹
- The investment must be capable of yielding a 10% minimum economic rate of return (ERR) evaluated on the basis of the economic analysis of the project approval; and
- The applicant must submit a detailed project proposal.

2. Conditions Stipulated in the DAO

The DAO stipulates the following conditions:

³¹ Existing competing enterprises is defined as those business that are currently supplying the domestic market with goods or services which are similar to those proposed by the applicant.

- The enterprise must within a specified period undertake the business stipulated in DAO;
- The enterprise must comply with all its income tax obligations;
- The enterprise must not breach any condition in the DAO; and
- The concession will be allowed only if the Commissioner of Income Tax is satisfied that the development to which the order relates has been carried out.

3. Application Procedure for the DAO

To obtain this incentive, the investor simply submits a letter of application to the Minister of Finance. There is no special form prescribed for the application. The investor should therefore write a letter that would fully show, in terms of the DAO Notice, that the enterprise deserves the concessions.

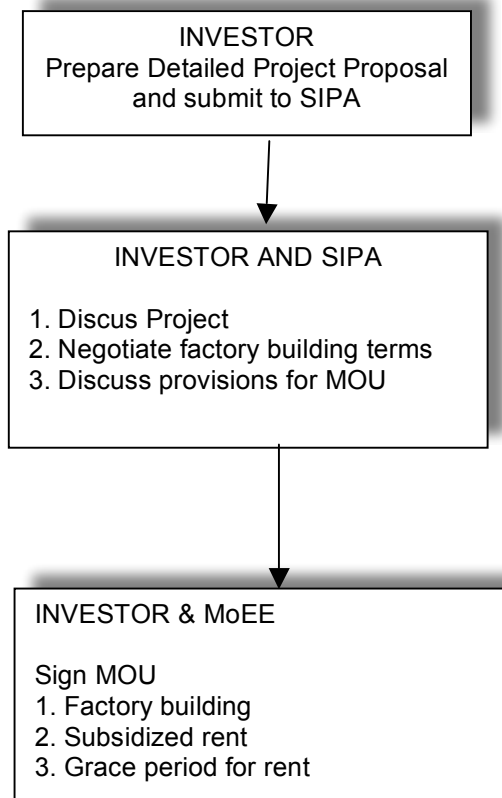
The application must include detailed project proposals in the prescribed format. The details will enable determination of the economic return rate of the project, the minimum of which is 10%. The application will undergo the following process:

- The Minister refers the application to a “Professional Committee,” which “assists the Minister” in evaluating the application in accordance with the set criteria. The committee comprises officials from the Ministry of Finance, including Income Tax Department, the Ministry of Enterprise and Employment, and SIPA.
- The committee evaluates the application in accordance with the set criteria. The evaluation may take one or several days depending on the complexity of the proposal.
- The committee then recommends to the Minister on whether a Development Approval Order should or should not be granted and with what conditions if granted.
- If the Minister accepts the recommendations, he submits to Cabinet a proposal to issue a DAO in respect of the applicant.
- If the proposal is accepted by Cabinet, the Minister then issues the DAO which is published in the official gazette.

The processing of the application for a DAO may take between four and six weeks. Within 21 days of cabinet approval the Minister must issue a notice in the official gazette to the effect that the applicant business is nominated as a development enterprise.

When submitting income tax returns, the investor must quote the number of the Notice for the DAO to support payment of corporate tax at the rate of 10% and the exemption of the enterprise from withholding tax. Figure 3.1 illustrates the process for obtaining factory premises and the DAO.

Figure 3.1: Steps for Acquiring Factory Shell Incentives



C. Training Allowance

The training allowance is provided for by sections 14 and 18 of the Income Tax Order. They provide for deduction from taxable income 100% of the cost of training Swazi employees under approved schemes.

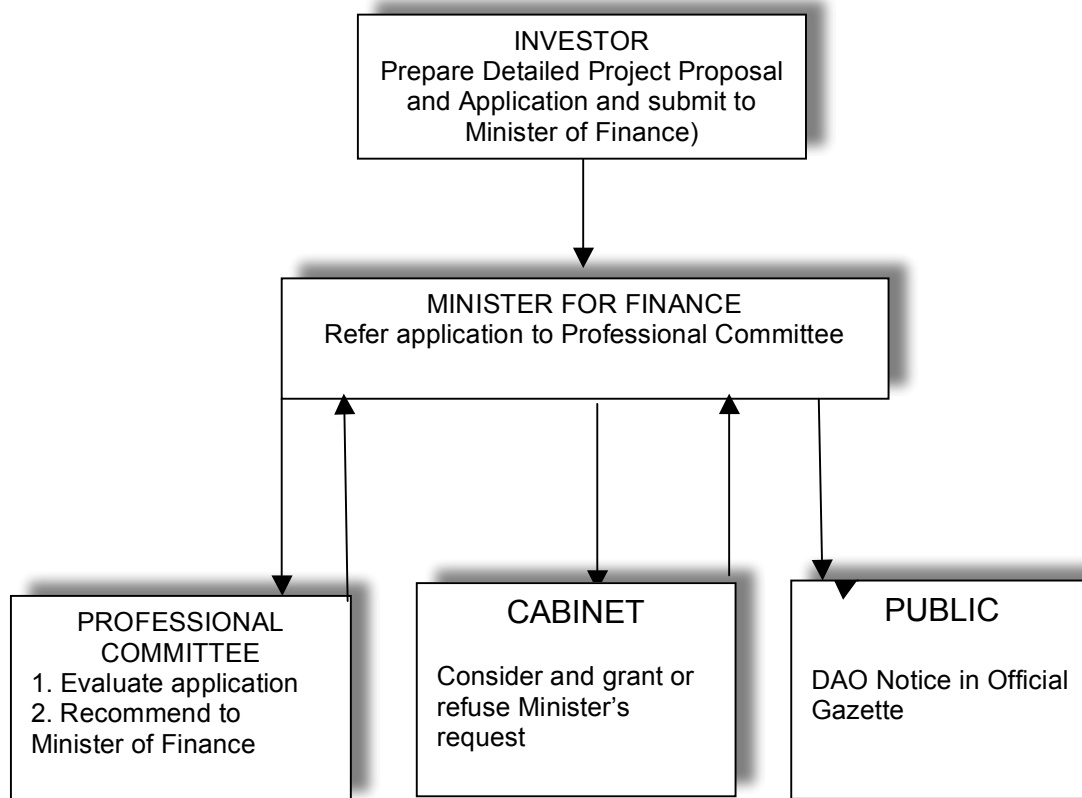
Practice Note No. 168³² defines “approved training scheme” as a scheme for the training of citizens of Swaziland for employment in industries approved by the Commissioner. The approved industries are: agriculture and agricultural service, forestry, mining, manufacturing, wood products, paper products, chemical products, construction, wholesale trade, retail trade, hotel and restaurant, transport and storage, financial institutions, real estate, and business services. Primarily the training scheme must lead to the acquisition of knowledge and skills which are necessary for the duties of employment, and must be related to increasing effectiveness in the performance of the employees prospective duties in that employment.

For a scheme to qualify as “an approved scheme”, the employer must apply to the Commissioner of Taxes for approval of the training or training programme that employees will benefit from. There is no special form required for this purpose. On approval of the training or training programme, the employer will be issued with a certificate of approval. The employer will be entitled to deduct 100% training expenditure from taxable income as shown the employer’s tax returns. However, the returns must be supported by a claim for training allowance which the employer must make on Form TRA, “Training allowance form.”

³² Issued by the Commissioner of Taxes for the guidance of taxpayers and officials

The allowance will be granted for as long as the provision in the law (sections 14 and 18) remains in force and a claim is made on Form TRA. If the Commissioner no longer considers a scheme to be eligible for the allowance, the Commissioner will notify the employer that the scheme is no longer approved.³³

Figure 3.2: Procedure for Acquiring DAO



D. Customs Tariff and Import Tax Incentives

The five countries of the South African Customs Union, SACU, have a common external tariff and Customs legislation that is identical in all material aspects. The schedules to the Customs Tariff indicate the goods that may benefit from rebates and duty drawback, and the Principal Customs legislation and Regulations stipulate the conditions and procedures for obtaining these incentives.

1. Industrial Rebates

The Third Schedule of the tariff provides for rebate of duty on specified goods that are used as inputs for production. The schedule contains a list of industries and corresponding selected inputs for the industry. The inputs are identified by tariff description and tariff

The list is jointly established by the five countries but it is likely that South Africa exercises a dominant influence since they have a higher stake in the industries seeking support and are also the largest suppliers of raw materials.

³³ Extract from Practice Note 168

The Third Schedule will benefit a new enterprise only if the enterprise will engage in the specified industry and if goods listed coincide with goods that the enterprise will import as inputs or raw materials.

2. Rebate on Goods Temporarily Imported

Another tariff incentive is suspension of duty on goods that are temporarily imported for processing under Part 3 of Schedule No. 4 of the Customs Tariff. Rebate item 470.3 of this part provides for rebate of full duty for goods imported for use in the manufacture, processing, finishing equipping or packing of goods for export. In the case of goods imported for processing and re-exportation, the importer is required to register with the Customs a rate of yield of the processed goods which will be obtained per unit of the imported goods. The rate of yield may depend on the manufacturing process used.

The goods must be used in the processing or manufacturing of goods for export and such goods must be exported within twelve months from the date the imported goods were declared to the Customs for importation. The period may be extended on request, but the request must be submitted before the expiry of the twelve months.

Since no duty is paid on the imported goods, neither these goods nor the goods produced from them may be diverted for home use in the SACU market unless prior approval from the Customs is obtained. Where approval is granted, the goods are liable to duty and taxes on the basis of the value that was declared during the importation of the inputs, but the rate of duty applicable is that obtaining at the time the goods are declared for home use.

The liability of the importer to pay duty on the imported inputs is discharged once the goods obtained from the inputs are exported. Proof of exportation is the export Customs declaration which must be accompanied with a copy of the Customs declaration on which the inputs were imported.

The advantage of this facility is that it is not confined to listed goods but applies to any goods that may be imported for processing and re-exportation. The imported goods are admitted duty free. The major condition is that the processed goods must be exported. This provision is very beneficial to companies importing fabric for making garments for the export market only. The rate of yield can easily be established since the industry knows the quantities of garments that can be made from a given unit of quantity of imported fabric.

3. Drawback of Duty

Swaziland, like the other SACU countries, avails to manufacturers the duty drawback provisions contained in the Customs Tariff and Customs legislation. Part 1 of Schedule No 5 of the Customs tariff has a number of columns showing the Drawback number of the item to be manufactures (e.g. 511.00 – Textile and textile products) and the imported raw materials for making them, the duty on which will be refunded if the drawback item is exported. There is also a column showing the extent of drawback, which in all cases is full duty.

Local materials may be used together with imported materials to produce the product for export. However, the importer and the Customs must agree on the formula for calculating the content of the imported input in the product to be exported, the amount of waste of the imported products that can be incurred to produce the product for export, and the formula for calculating the duty to be refunded. The duty drawback must not exceed the amount of duty paid on the inputs, and where several consignments have been imported for producing goods for export, any claim for drawback will be based on the consignment that has been in the possession of the claimant for the longest period.

A duty drawback scheme therefore requires duty on imported raw materials to be paid first and refunded when the product made from the raw materials is exported. The products produced from the inputs may be used in the domestic market, in which case drawback cannot be claimed.

4. Rebates and Drawback of Excise Duty and GST

The provisions for duty rebates and drawback apply *mutatis mutandis* to Excise Duty and Sales Tax.

E. Procedure for Obtaining Tariff and Tax Incentives

The following are the requirements for obtaining the Customs tariff and tax incentives:

Step 1) Register with Customs. The enterprise must register as a rebate or drawback beneficiary. Application as a manufacturer is made on Form DA 185 and DA 185.03. For purposes of AGOA, the Form CE 131 is submitted with form CE 45 bis 1.02 if the applicant is an exporter, and Form CE 45bis 1.03 if the applicant is a manufacturer, or both forms if the applicant is both manufacturer and exporter.

Step 2): Register premises with Customs. The premises that will be used for manufacturing or processing must be registered with the Customs. Application is made on Form DA 185 and DA 185.03. The premises must have a “rebate store” for storing dutiable goods. Both the premises and the store will be inspected by the Customs before they are approved for the purposes of the application.

Step 3) Obtain a security bond from financial institution. The enterprise must obtain a bond guarantee from a bank or insurance company to cover the duty and taxes that would be due on dutiable goods should they not be accounted for to the satisfaction of the Customs. The amount of the bond is arrived at by calculating the amount of duty and taxes that would be payable on the goods. The amount of the bond must be equal to the amount of duty and taxes.

Step 4) Obtain rebate certificate from the Trade Promotion Unit (TPU). Once the Customs is satisfied with the registration, premises, and bond, they will issue a letter to the applicant stating that all the requirements have been met and a Rebate Certificate can be issued. The applicant takes this to the Trade Promotion Unit of the Ministry of Foreign Affairs and Trade, which will issue the Rebate Certificate. The Rebate Certificate has a number that must be quoted on import and export Customs declarations.

F. Obtaining Certificates of Origin

Certain goods originating in Swaziland enjoy preferential treatment in the USA under the AGOA preferential arrangements. Exports to the EU also benefit from the preferential treatment provided by the Cotonou Agreement to imports from the African, Caribbean and Pacific (ACP) Group of States.

Since enterprises wishing to benefit from these preferential arrangements may also benefit from the rebate and drawback provisions discussed above, they must register for these benefits as described above. In addition, they must comply with the formalities for obtaining certificates of origin required under the respective preferential arrangements.

1. Obtaining AGOA Textile Certificate of Origin

To obtain the AGOA textile certificate of Origin, the exporter must complete Form 45 bis 1.01 together with form CE 45 bis 1.01(a) where he or she will indicate the preference group (Group A to I). The completion of the form by the exporter is conditional on the exporter having all the necessary evidence that the goods comply with the provisions of origin for the preference group declared on the certificate. The certificate must be completed in the English language.

A separate certificate is required for each preference group of textile and apparel article for which an importer in the U.S. intends claiming preferential tariff treatment under AGOA.

The exporter declares that the information entered on the document is complete and accurate, and the importer assumes the responsibility of proving that the information presented on the document is complete and accurate. The exporter also undertakes to maintain and present on request the necessary records to support the certificates.

It is therefore absolutely necessary for exporters to maintain importation, production and exportation records.

2. Obtaining the AGOA Visa

The application for visa is made on Form CE 45bis 1.01(a). The application must be submitted together with the Customs export declaration and the appropriate transport documents (airway bill or bill of lading), the commercial invoice and the certificate of origin. The signature on the visa application must be identical to the one on the certificate of origin and the same preference group and quantities must be shown on the visa.

If the officer processing AGOA exports is satisfied with the certificate of origin and the visa application, the officer stamps the front of the original of the commercial invoice with the visa stamp and inserts, within the impression of the stamp, the visa number, the correct grouping, and the total quantity in whole numbers (e.g. grouping 5 – 510 dozen). The officer then signs the visa.

The original stamped invoice and the certificate of origin are returned to the exporter for submission to the importer in the U.S. while a stamped copy of the invoice is retained by the Customs. The original invoice is required by the importer to enter the shipment in the U.S. when claiming preferential tariff treatment as contemplated in the AGOA.

G. The Export Credit Guarantee Scheme

The Export Guarantee Scheme is financed through annual budgetary allocations by the government to the Ministry of Enterprise and Employment. The funds are vested in Treasury Bills and Term Deposits that are monitored by the Central Bank of Swaziland (CBS). The role of CBS is to provide the guarantee to the commercial banks lending to exporters.

The objectives of the scheme are to enable:

- exporters to meet their working capital requirements;
- exporters who do not have enough collateral security obtain financial assistance;
- small exporters operating from Swaziland to obtain finance from commercial banks at concessionary interest rates;
- banks that have lent under the scheme to borrow by discounting their promissory notes within the Refinance Facility provided by the scheme;

- exporters to keep reasonable stock levels so they can respond promptly to incoming queries or export orders;
- Swazi exporters to extend easier credit terms of up to 180 days to importers without adversely affecting the exporter's cash flow position.

The ECS covers pre-shipment and post-shipment loans. The ECGS covers 75% of the loan in the case of pre-shipment applications, and 85% in the case of post-shipment applications. There is no minimum guarantee, and the maximum guarantee to anyone exporter is E2.5million (US \$438,596). Commercial banks are free to issue credit to applying exporters of up to E50,000 (US \$8,772) without applying for a credit guarantee from the ECG Scheme first.

Exporters without collateral can benefit from the scheme through their integrity and ability and record of fulfilling contractual obligations, but the commercial banks are instructed to secure security in the form of bonds on fixed assets and by deeds of hypothecation.

The interest charged on any outstanding amount is the prime interest rate per annum. The CBS also charges a premium, which presently ranges from 0.53-2.33% depending on the nature of the credit as well as length of period for which credit is required. There is also a filing fee of E25 (US \$4.39) whenever a new guarantee is issued or an old one extended.

1. Procedure for Obtaining Credit Guarantee

The exporter completes application FORM PO-1 for post-shipment guarantee, and FORM PS-1 for pre-shipment guarantee. The information required on the application, which is addressed to the CBS, is the name of the commercial bank, the name of the borrower, details of the facility required, purpose of the facility, the nature of security furnished, and the interest payable. The applicant must submit to the commercial bank a project proposal complete with cash flow projections and financial statements. The applicant must also attach export orders or shipping documents to the value of the amount of credit required. The applicant submits the application and all supporting documents to his/her commercial bank.

The commercial bank examines the details entered on the form and confirms the viability of the application in terms of the ECGS requirements and whether the application should be granted. The commercial bank signs the form and sends the application to the CBS Development Finance Division where the ECGS is located.

ECGS examines the application and if satisfied issues credit guarantees and advises the commercial bank.

The commercial bank releases the requested credit to the applicant.

H. Analysis

Countries need Foreign Direct Investment (FDI) because it is a source of private employment, management skills, and modern technology. It can also bring in industries that complement horizontal integration of export clusters in the region. Swaziland is competing with other countries, not only in the region, to attract FDI and all the benefits it brings. It sees the opportunities offered by preferential arrangements, particularly AGOA, as improving access on the market side and investment incentives as a means of attracting capital on the supply side and removing supply side constraints.

Several general issues were raised in Swaziland regarding the country's efforts to attract FDI. The first issue concerns the image of Swaziland as perceived internationally. It was pointed out by private sector executives that Swaziland is perceived as a country in violation

of human rights where future instability resulting from the struggle for democracy and trade union rights cannot be ruled out. It was argued that the international perception, whether it is false or not, counteracts the effectiveness of the special incentives.

Table 3.4: SADC Member States' Company Tax Regime

Country	Standard Tax Rate	Sectoral Tax Rates	VAT/Sales Tax Rate	Export Taxes
Botswana	25%	Manufacturing – 15% Offshore financial services – 15%	10%	No
Lesotho	35%	Manufacturing – 15% Non-resident service contracts – 10%	5%, 14%, 15%	No
Malawi	30%	No	20%	No
Mauritius	25%	Manufacturing, services, IT, tourism, construction, agriculture – 15%	12%	No
Mozambique	32%	No	17%	18% on raw cashews
Namibia	35%	Manufacturing – 17% Mining companies – 25% Diamond mining companies: 50% plus a surcharge of 10%. Petroleum production – 42% plus additional profit tax.	15%	No
South Africa	30%	Mining	14%	No
Swaziland	30%	Manufacturing, etc. 10% for companies granted Development Approval Order ³⁴	14%, 25%	Sugar levy
Tanzania	30%	No	20%	3% on raw cashews Up to 5% on agricultural produce
Zambia	35%	Chemical fertilizer manufacture – 15% Non-traditional exports – 15% on taxable income derived from exports Agriculture – 15% Mining – 25% Stock Exchange Listed companies – 33% Banking institutions – 45% (if profits exceed US \$53,191)	17.5%	17.5% VAT on copper
Zimbabwe	30%	Mining – 25% Tourism – 15%	15%	No

Source: The Services Group, *SADC Investment Incentives Study, 2004*.

Another issue is whether Swaziland has any special opportunities that would attract a potential investor when South Africa with a huge market and seemingly unlimited opportunities is only next door. Any production cost advantages, like cheap labor, which Swaziland may have over South Africa would not be enough to attract an investor eyeing the South African market because of the internal taxes and border formalities that are still in place. As one private sector executive pointed out, all the reasons for deciding to invest in Swaziland before 1994 have disappeared with the apartheid regime in South Africa.

Finally, it is also an issue whether there is more in Swaziland's incentives package than what other countries like Botswana are offering. Table 3.4 above and table 3.5 below compare

³⁴ Table updated by adding DAO.

company tax regimes of SADC states and SADC states' investment incentives. Swaziland does not have the best of either.

SIPA and certain government officials point out that the incentives are effective. At one time there were twenty seven foreign companies producing mainly for the AGOA market, and these employed thousands of people who would otherwise be unemployed. They point out that the provision of a factory shells is quite beneficial to the investor since it can reduce very significantly the initial capital outlay. Furthermore, when a factory shell is readily available, the time span between the decision to invest and the commencement of production are reduced significantly. The provision of factory shells is therefore very attractive especially to garment manufacturers since they use light machines that can be supplied at very short notice. The subsidized rental also helps to reduce overheads costs of companies.

Some of the private sector executives that were interviewed doubted that these incentives were all that beneficial. They pointed out that a cost benefit analysis would reveal that the benefits were minimal given the heavy investment by the government in the construction of factory shells and in infrastructure to access them. Furthermore, the subsidized rental can be discounted since rental on premises is usually an insignificant factor in the costs of any operating a company. They also pointed out that the textile companies pay relatively low wages. Furthermore, the companies are in Swaziland only to take advantage of AGOA. Without the market access offered by AGOA the companies will pack their machines and leave the country.

Although SIPA has a list of companies that have been allocated factory shells, they did not have data to show the cost effectiveness of the factory shells and other incentives. However, it should be noted that policy and political considerations may warrant the provision of investment incentives even where their economic benefits alone are minimal. It is certainly more prudent to provide employment even with very low wages than to have a large percentage of the labor force out of employment. In this connection, the construction of factory shells is part of the government's Millennium Action Plan that has broader policy objectives including the distribution of industry in all regions. Box 3.1 below contains a short brief on the Millennium Program.

Issues

There is no comprehensive investment legislation. Swaziland does not have legislation on investment that would provide the legal basis for all policy aspects of investment, allocate responsibility for granting incentives, and prescribe criteria for making investment decisions and the process for obtaining incentives. As a result, incentives are scattered in several enactments, responsibilities are shared among several Government ministries and institutions, and sometimes there are disagreements over who should be entrusted with what powers. To give two examples, the Minister of Employment and Enterprise is not responsible for granting DAOs although he is the one in charge of investment promotion. The responsibility is vested in the Minister for Finance. Secondly, the TPU is issuing rebate certificates although rebates come under the SACU legislation, which is implemented by the Customs. Rebate certificates should be issued by the Customs.

These contradictions may result in lack of a common vision, mission and drive, and in dissipation of resources for promoting investment and exports. It also adds bureaucracy in the process of obtaining approvals and certificates (e.g. rebate certificate). The potential investor might not know where to go for information and assistance and can be frustrated where he or she has to shuttle between competing authorities.

There is no comprehensive information on the available incentives. SIPA has a number of printed materials and information on the website about available incentives. However,

these are simple publicity materials that do not explain much about individual incentives and procedures for acquiring them. Since there is also no ad hoc legislation on investment incentives, it is very difficult for an investor to carry out research and evaluate the incentives that are available. One would need to find all the relevant legislation, some of which, like the Customs tariff, is very difficult to study.

Box 3.1: The Millennium Program

“The Millennium Program is an effort to accelerate economic growth with strategic projects involving the development of infrastructure and tourism. This conforms to the aspirations laid out in the National Development Strategy, which is a twenty-five year vision of a vibrant economy and developed infrastructure for Swaziland.

The program provides an opportunity for the country to strengthen her position as destination for tourism, investment and commerce. Each component has a strategic framework and aims to promote economic development and delivery, an approach in line with the Comprehensive Development Framework promoted by the World Bank.

The Millennium Program is a catalyst for building national pride and identity by developing economic confidence and creating jobs in the SME sector. It also provides the opportunity to change the role that Swaziland can play in both the regional and continental landscapes.

The concept was implemented by the King and includes a new international airport at Sikhupe; a them park, exhibition centre, and sporting complex at Manzini; and factory shells at Matsapha and Nhlngano as well as other strategic parts of the country.”

Source: Swaziland Business Year Book 2005

Local investors perceive that the incentives are not for them. This perception stems from the fact that the factory shells have been given to foreign companies, mostly those engaged in the textiles and garments cluster. Several companies that were interviewed also pointed out that SIPA gives the impression that their responsibility is to assist only foreign investors. Furthermore, it is evident from the many publications on Swaziland, both private and official, that the government initiatives to promote foreign investment are given more publicity than those for promoting local investment.

Table 3.5: SADC Member States' Investment Incentives

Country	General Incentives	Sectoral Incentives	Regional Incentives	FDI Prohibitions
Botswana	Capital allowances Accelerated depreciation Training deduction Discretionary incentives	Financial services Stock Exchange Manufacturing Mining The Beef Industry does not receive any direct export incentives from the State. Only indirect support given under the WTO AOA (Green Box support).	No	Yes
Lesotho	Capital allowances Training deduction Tax holidays	Manufacturing	No	None
Malawi	Capital allowances Indefinite loss-carry forward Training deduction	No	No	Trade informally discouraged
Mauritius	10 year tax holiday Tax free dividends Permanent residence status	Manufacturing Spinning Agro industries Hotel development	Yes	None
Mozambique	Loss carry forward Accelerated depreciation Investment credit Technology investment deduction Training deduction Infrastructure rehabilitation deduction Property transfer tax reduction Cultural works purchase deduction	Large scale projects Mining Petroleum Agriculture Tourism	Yes	No
Namibia	Capital allowances on resident shareholders' tax	Manufacturing	No	No
South Africa	Capital allowances Training deduction Trade mission subsidies Export finance and insurance	Automotive Orchard farming Fishing Financial services Retailers	Yes	No
Swaziland	Capital allowances Accelerated depreciation ³⁵	Manufacturing	No	No
Tanzania	Capital allowances Acceleration depreciation Loss carry forward Profit reinvestment tax exemption (Zanzibar)	Manufacturing Mining, Petroleum and gas Economic infrastructure Tourism, Agriculture Nautical	Different incentives regime for Zanzibar	Yes
Zambia	Loss carry forward Research and development deduction	Stock exchange Manufacturing, Agriculture Tourism, Mining	Yes	Trade informally discouraged
Zimbabwe	Capital allowances	Manufacturing	Yes	No

Source: The Services Group, SADC Investment Incentives Study, 2004.

³⁵ Table updated by deleting training deduction.

There is perception by both officials and the private sector that there has been too much focus on textiles and AGOA. There do not seem to be concerted efforts to attract investment in sectors other than textiles and garments for the AGOA market. There is no deliberate effort to promote investment in spinning and weaving in order to reduce the transport costs of materials by making use of fibers available in the region. This would also bring in technology to enable Swaziland to engage in real manufacturing and to produce for the EU and SADC markets, the rules of origin for which require double transformation.

There is insufficient transparency in the processes for granting the DAO. Although the objective of the Development Approval Order Notice, General Notice No. 56 of 2000, is to make the process for granting DAO more transparent, both private sector and public sector officials report that in practice the process is not transparent. In fact, the problem starts with Section 69 (2) of the Income Tax Order, which is the legal basis for the DAO. It grants the Minister for Finance power to refuse to grant an application and his decision is final. It seems he does not have to give reasons for the refusal. Furthermore, the General Notice itself prescribes subjective criterion where it stipulates, as a condition for granting the DAO, that “the company (applying for a DAO) shall have been promoted by reputable promoters with demonstratable successful track record.”

There is very little utilization of the Export Credit Guarantee scheme. The scheme is vested in the Central Bank of Swaziland but implemented by the commercial banks. The commercial banks are not particularly interested in the scheme because they have more profitable products of their own to market, and often applicants do not meet the lending conditions of the commercial banks. There is therefore very low utility of the facility.

There are no guidelines explaining the duty and tax rebates in the Customs tariff. As discussed earlier the Customs tariff incentives are SACU provisions. The SACU tariff is very complex, and it is not published in a user-friendly format. Since it is a SACU instrument, Swaziland alone cannot change it. However, a simple non-technical user-friendly guide or manual can be prepared in order to make the details on the rebates and the procedures for acquiring them more accessible especially to potential investors.

Recommendations

With the participation of private sector review the current investment focus and incentive policy and publish a national investment policy document. The review should lead to agreement on other investment opportunities in the country that should be given priority in the investment promotion effort, and on a package of incentives for foreign and local investors and the conditions for qualifying for them. It should also include the role of the various institutions currently concerned with trade and investment promotion and the possibility of merging them.

Increase SIPA’s efforts to promote local investment. SIPA should give more publicity to its efforts to promote local investment especially in small and medium enterprises. This will correct the impression that government investment efforts are target only at foreign investment.

Shift toward more automatic and transparent incentives. International best practice suggests that incentives that are clear and automatic are easier to administer. If the criteria to access incentives are clear decisions about which firms qualify should be more or less automatic. Such a system helps companies plan more effectively and reduces perceptions of favoritism.

Enact comprehensive investment legislation.³⁶ Following the review, a new legislation should be enacted. This would provide for among other things:

- Criteria for qualifying for investment incentives as a foreign or local investor;
- More responsibilities for SIPA including export development as well as investment promotion
- Power for SIPA to decide on applications for incentives and to grant investment certificates;
- A one-stop investment center where the various administrative authorities will station officials to provide information and to facilitate administrative procedures for investors. The one stop centre will be akin to a border where Immigration, Customs, and freight forwarders, etc. are stationed. It can also include staff from the utility companies, like water and electricity so that it can handle applications for connections more expeditiously.
- Power to SIPA to operate, maintain, and collect rental on factory shells.

Box 3.2 below shows contents of a typical FDI law.

Prepare a handbook for investors and establish a website. SIPA should spearhead the preparation of a detailed “Investor’s Handbook for Swaziland” which would explain the special incentives in detail and the process for obtaining them. The text for the handbook, some of which can be drawn from the Investor Roadmap of Swaziland, should also be placed on a website administered by government. The handbook and website should also include the various forms required. The work should involve the various institutions that are responsible for administering relevant legislation, like Income Tax and Customs Departments. The handbook could be sold at a subsidized price or at cost and should also be accessible on the website for free.

Vest the decision to grant a DAO in SIPA. Currently the responsibility is vested in the Minister of Finance although the criteria on the basis of which the decision must be made are not revenue or finance related. Once the committee has given a positive assessment of an application, SIPA will issue an investment certificate which would entitle the investor to 10% corporate tax and 10 years withholding tax.

Review the implementation of the Export Credit Guarantee Scheme. The utility of the scheme is so low that it might be abolished. According to a private sector executive, the scheme should not have been vested in the Central Bank but in an institution set up ad hoc. Furthermore, the commercial banks are not particularly interested in the scheme because they have their own commercial products that are more profitable. Many exporting companies that could benefit from the scheme do not meet the lending criteria of the commercial banks, and some of them do not even keep the accounts required by banks.

³⁶ See Box 3.2 below for the contents of a typical Investment legislation.

Box 3.2: Typical Content of an FDI Law

An investment law should treat both foreign and domestic investors equally, be attractive to investors, and should provide only those fiscal facilities that are affordable.

Preamble (purpose and objectives of the law)

The preamble states the purpose of the law and the Government's objectives in passing it

Scope and Definitions

To maintain legal clarity and consistency, it is recommended that an investment law exclusively cover *direct investment* (i.e., an investment that creates a controlling interest in an enterprise), and that separate laws and regulations related to the stock market should address *portfolio investment* (i.e., investment in a non-controlling interest). Definitions include terms like: Forms of Investment; Direct Investment; Foreign Direct Investment; Foreign/Domestic Investor; etc.

General Guarantees (for all investors)

Guarantees to be found in an FDI Law are: National treatment; most favored nation treatment; freedom to invest; freedom to own land; access to foreign exchange; repatriation of profits; and compensation for government expropriation.

Guarantees for Foreign Investors

These include international arbitration and freedom to hire expatriate personnel.

Investment Incentives

Depending on the country incentives may include: duty-free imports of equipment and machinery; duty-free imports of raw materials, intermediate inputs, and components for the production of exports; accelerated depreciation; investment tax allowance; and lower corporate tax rates; etc.

Institutional Framework

The Investment Promotion Agency might be established by the law and its functions, authority viz a viz other agencies, and budgetary rules might be described.

Transitional Measures

This may include a grandfather clause, the revoke of previous laws or the application of the law to existing or already started investment projects.

Source: The Service Group, 2003

The ECGS of South Africa is working very well because it is vested in an independent institution. The Ministry of Foreign affairs in collaboration with CBS should carry out a study to establish the causes for the low utility of the scheme. The conclusions of the study would enable the Government to decide on further measures.

Chapter 4: Locating

I. Introduction

This chapter analyzes the procedures that a local or international investor in Swaziland encounters when acquiring a property, developing it, connecting to utility networks, and complying with environmental standards and regulations. In addition to providing a procedural outline, the chapter analyzes the main issues investors face in acquiring and developing land, and provides recommendations to decrease such entry barriers.

There are three main types of land in Swaziland: Swazi Nation Land (SNL); Government Title Deed Land (TDL), including industrial zoned land; and Private Title Deed Land. Investors can purchase or acquire any of these three, although the procedures for doing so differ. Government TDL is controlled by either the Ministry of Housing and Urban Development (MHUD) or the relevant local authority, which is either the city council or a town board.

The report covers the purchase or lease and development of government TDL and private TDL. Investors rarely acquire Swazi Nation Land and the procedure for doing so is considerably more complex than acquiring and developing government or private TDL. There are a number of overlapping authorities involved in determining how SNL may be acquired and used: the king, chiefs, district development committees, and the government. Swazis and non-Swazis alike report long delays and restricted access to SNL. Swazi Nation Land represents over 50% of all Swazi land and is mostly rural in character.

Swaziland has a land area of 17,363km². A landlocked country, Swaziland is bordered by Mozambique and South Africa. The majority of investment is located within in a couple urban centers and a number of designated industrial sites. The government is seeking to increase investment in general in rural areas, however, where unemployment is high. To this end the government offers lease rate concessions on property further away from established municipalities.

The main acts that govern and regulate locating issues are the following:

- The National Housing Board Act, 1988
- The Town Planning Act, 1961
- The Urban Government Act, 1969
- The Crown Lands Disposal Act, 1911
- Crown Lands Disposal Regulations, 2003
- The Environment Management Act, 2002
- The Environmental Audit, Assessment, and Review Regulations, 2000
- Posts and Telecommunications Act, 1983
- Public Telecommunications Regulations, 1993
- The Swaziland Posts and Telecommunications Corporation Act, 1980
- Posts and Telecommunications Corporation (Staff) Regulations, 1990
- The Electricity Act, 1963
- The Water Act, 2003
- The Water Services Corporation Act, 1992
- The Public Enterprises (Control and Monitoring) Act, 1989
- Building Regulations Act, 1969
- Building and Housing Act, 1968

II. Land Acquisition

An investor may acquire land in Swaziland from the government or from the private property market. Swazi citizens or non-citizens who purchase or lease government title deed land (TDL) require approval of a proposed project by the relevant line ministry and ultimately by the Ministry of Housing and Urban Development (MHUD). For example, investors proposing agricultural projects purchase agriculturally zoned land through the Ministry of Agriculture. Investor's proposing a hotel or tourism project purchase land through the Ministry of Tourism. The Ministry of Housing and Urban Development, however, must grant approval for the sale of all government TDL.

Swazi citizens may lease or purchase property on the private property market without prior government approval. Non-Swazi citizens, however, must obtain government approval through the Land Speculation Control Board prior to purchasing property in the private property market. Non-citizens may lease property in the private property market without prior government approval.

Investors proposing an industrial or commercial project on government title deed land (TDL) located outside the jurisdiction of the relevant local authority purchase directly through the Ministry of Enterprise and Employment. This includes plots in the major urban centers of Matsapha, Nhlanguano, and Ngwenya. Investors purchase industrially-zoned government TDL within designated municipal boundaries from the relevant local authority. For instance, the Mbabane City Council sells government TDL to investors if the plot is within its jurisdiction. Even in Mbabane, however, the Ministry of Housing and Urban Development must grant final approval and the Ministry of Natural Resources must establish the selling price for government TDL.

Investors with industrial projects often lease government TDL, or more typically factory shells, directly from SIPA. The Authority leases existing factory shells or constructs new ones for investors in the country's existing industrial estates and industrial sites. Both the government and the private sector own property within the following three estates: Matsapha, Nhlanguano, and Ngwenya. Currently only the private sector owns property in Mbabane Industrial Site and Sidwashini Industrial Site. Investors can purchase or lease privately owned land and factory shells in all estates and sites via real estate agents or the Swaziland Industrial Development Corporation (SIDC). SIDC is a development finance company, partly owned by the government that leases and sells land and factory shells to investors. SIPA also rents factory shells to investors.

A. Identifying Land

The government and the private property market are the two main options for purchasing land in Swaziland. The government manages and sells/leases land within three industrial estates in the country: Matsapha, Ngwenya, and Nhlanguano. Sites are also available for purchase in these industrial estates from private sellers, including SIDC. This report focuses primarily on the acquisition of industrial land.

Swaziland has an industrial master plan - the National Industrial Estate Strategy and Master Plan - through which Ministry of Enterprise and Employment administers industrial estate and industrial site development. While most of the country's existing industrial space is located close to urban areas the government is attempting to decentralize industrial activity from main towns to small town and rural areas to spread employment opportunities. Future anticipated industrial sites include Siphofaneni, Ebuhleni, Mpaka, and Matsanjani.

The Mbabane Industrial Site and the Sidwashini Industrial Site, both located within Mbabane municipal boundaries, no longer contain any government owned plots. All land within these

two sites is now privately owned. Therefore, while the Mbabane City Council still approves site development within these two sites, it no longer controls site acquisition. Mbabane City Council has, however, zoned additional industrial land in the municipality. This site is called the Mahwalala Industrial Site.

1. Government Land

a. Leasing Government TDL for Industrial Purposes

Investors may lease government owned property for industrial purposes. For the most part investors lease existing government owned factory shells, especially in established industrial estates and industrial sites. SIPA is responsible for leasing government property for industrial projects in Swaziland. Sometimes investors lease factories that are built to their specifications; in these cases SIPA works with the Ministry of Economic Planning's Project Management Unit (PMU) to construct specific factories.

Investors looking to lease land and/or facilities for manufacturing activities may visit SIPA to discover the range of options. SIPA shows the investor existing properties within the country's industrial areas. If none of the properties meets the investor's specifications SIPA will empower PMU to design and construct a custom factory for the project. PMU constructs facilities for investors in existing industrial estates and sites; PMU also constructs outside of these areas if the investor desires, in accordance with the government's policy to locate investment in areas where unemployment is high.

SIPA offers factory space to investors on a first come, first served basis. However, there are also criteria by which SIPA evaluates the merit of particular projects: 1) does the project fit in with SIPA's priority sectors, which include manufacturing, agro processing, and services; and 2) the size of the investment in terms of dollar value and number of jobs created. SIPA does not consider investments less than US\$175,440 unless the proposed project is particularly useful: a high tech investment, for instance. SIPA typically prefers investments that are over US\$877,200.

In the past SIPA has had a number of investors waiting for factory shells and the agency offered leases to the most significant investments first. In most instances SIPA is able to provide investors with factory space to lease. SIPA has 18 factories for lease, two of which were vacant as of March 2005. SIPA is not currently constructing any new factory shells. If SIPA does not have existing space the agency often negotiates with SIDC on the investor's behalf. SIDC lease rates are higher than those offered by SIPA. SIPA's rental rates are subsidized. SIPA rates vary between US\$1.14 – 1.75/m² (E6.5 – E10). Private industrial rental rates are US\$1.05 – 7.02/m² (E6 – E40).

SIPA negotiates lease rates with investors. The factory floor rental rate from SIPA ranges as follows:

Matsapha Industrial Estate, which is 700 hectares: \$1.23 - \$1.75 m² (E7 – E10)
Ngwenya Industrial Estate, which is 300 hectares: \$1.14 - \$1.58/m² (E6.5 – E9)
Nhlangano Industrial Estate, which is 400 hectares: \$1.14 - \$1.58/m² (E6.5 – E9)

Private property lease rates in these three estates are as follows:

Industrial: \$1.05 - \$7.02/m² (E[^] - E40)
Commercial: \$3.51 - \$26.32/m² (E20 – E150)

Generally SIPA grants Matsapha investors 12 months free rent. SIPA lease rates increase by 10% each year. SIPA does not yet have a cap on rates meaning the rate increase each

year indefinitely. Investors leasing more than 10,000/m² must sign a minimum ten year lease agreement. Investors leasing less than 10,000/m² must sign a minimum five year lease agreement.

SIPA charges lower lease rates in the outlying areas to encourage investors to locate outside the main commercial corridors and thereby diversify job location. SIPA also recognizes that outlying areas have less reliable access to utilities than areas near urban centers.

Investors make monthly lease payments directly to SIPA, typically via check.

If an investor requires adaptations to an existing government factory building or a new facility altogether SIPA works with the PMU to complete construction. Adapting or constructing a factory building for an investor through SIPA requires the following steps.

Step 1) Investor signs a Memorandum of Understanding with SIPA. SIPA works with the investor to develop an MOU outlining what the PMU will construct for the investor and the lease price. PMU's senior infrastructure engineer often participates in the initial meetings with the investor to lend technical expertise regarding the type of property a particular project requires. SIPA and the investor sign an MOU. SIPA gives the MOU to the PMU's senior infrastructure engineer.

Step 2) Investor finalizes property details with PMU. The investor meets with the PMU to finalize property requirements. Sometimes, at Swaziland government expense, the PMU visits the investor's home country facilities to understand the investor's requirements. The PMU assembles a design team including the following: architect, civil and structural engineers, quantity surveyor, electrical engineer, mechanical engineer. Working within the parameters of the MOU the design team develops the project.

Step 3) Investor meets with PMU design team and accepts plan. If the investor has an additional idea or request the PMU must work through SIPA to develop an addendum to the MOU. During the design stage the investor must communicate with the PMU his exact requirements. If the investor requests additional construction after the design has been accepted he is responsible for obtaining all required construction permits. The time delay between when the investor first meets with the PMU to when the PMU assembles the entire design team to meet with the investor is approximately three weeks.

Once the investor approves the PMU's design, the senior infrastructure engineer organizes required government approvals. The PMU assembles a Project Report, which includes the original SIPA MOU, the PMU's recommendation to approve, and a project description. The PMU forwards the Project Report to the Ministry of Economic Planning's Principal Secretary. If the PS approves the Project Report he forwards it to the Ministry of Finance where the Central Tender Board is housed. The Central Tender Board includes the following representatives:

Ministry of Finance;
Ministry of Agriculture;
Ministry of Public Works and Transport
Ministry of Enterprise and Employment;
and a tender board secretary who represents Government Stores.³⁷

The PS at the Ministry of Finance forwards a copy of the Project Report to each Central Tender Board representative a week prior to meeting.

³⁷ Government Stores is the agency responsible for procurement of goods and services for the government.

The Central Tender Board meets every Thursday, during which time the PMU's senior infrastructure engineer presents the Project Report. The Central Tender Board issues project approval to the PMU within three days of sitting. The approval is called the Tender Board Sanction. The Board sends copies of the Tender Board Sanction to the Ministry of Finance, the Accountant General, the Auditor General, the Commissioner of the Treasury, and the PMU design team. Upon receipt of the Tender Board Sanction the PMU design team completes the detailed project design. The PMU communicates the approval to the investor at this time. If the Board requires changes the PMU engineer makes them and resubmits the modified Project Report to the Ministry of Economic Planning for the process to recommence

Step 4) Investor reviews PMU detailed project design. The investor meets with the PMU design team once the detailed project design is completed. The team then develops tender drawings to use for construction bidding purposes.

Step 5) Investor signs tender drawings. The investor visits the PMU once again to sign the tender drawings. The investor signs the tender drawings and the PMU calls for open tender in two local newspapers. Bidders are invited to apply.

PMU holds a site meeting for interested bidders; during the site meeting the PMU explains the project requirements to potential bidders. The site meeting typically last several hours. The investor is welcome to attend the site meeting. Within three weeks bids are due and PMU holds a public bid opening meeting during which bidders prices are registered. The PMU forwards the prices to the design team for an assessment of the bidders' prices. The design team makes recommendations, which the PMU engineer summarizes in a project brief. The PMU engineer forwards his or her project brief to the PMU director who forwards to the Principal Secretary of the Ministry of Economic Planning for signature. The PS forwards the project brief to the Ministry of Finance who signs and forwards to Government Stores. Government Stores forwards the project brief to the Central Tender Board which reviews the document and approves the construction team. The Board submits a formal letter of approval to PMU. The PMU communicates approval to the chosen contractor. The PMU assembles the design team and the contractor to go over the project. The contractor is required to be on site within 28 days of approval notification. If the project is being fast tracked the contractor is required to be on site within 14 days.

After construction commences PMU holds monthly site meetings to assess construction progress. The investor is invited to attend these meetings.

The PMU typically grants construction approval within two months of first meeting with the investor. If the investor is under time pressure PMU can fast track the process, decreasing construction approval to three weeks.

b) Purchasing Industrial Zoned Government TDL outside Municipal Boundaries

Investors may purchase government TDL within or outside of established industrial estates. The Ministry of Enterprise and Employment controls land sales within three of Swaziland's industrial estates - Matsapha, Ngwenya, and Nhlangano - because this land falls outside the jurisdiction of local authorities. Matsapha, 700 hectares in area, is the country's largest industrial estate. The majority of Swaziland's investors – particularly in the textiles and apparel sectors – have located. Nhlangano Industrial Estate has an area of 400 hectares. Ngwenya, with 300 hectares, currently hosts only a couple investors.

Investors interested in a particular plot of land complete the following steps to gain title to government TDL.

Step 1) Collect and complete application form. The investor must visit the Ministry of Enterprise and Employment's Industrial Department to obtain an application for purchase. The application is called the Land Application Form and it is only available at the Ministry of Enterprise and Employment. The investor completes and submits the Land Application Form for the Industrial Department. In completing the form the investor must provide personal details and a description of the project he intends to develop on the property to which he seeks title deed. If the investor is starting a new business on the industrial land he must also submit a business plan. Companies with existing operations elsewhere are not required to submit a business plan. The investor may submit his application via post, email, or fax.

The department processes the application, making sure all details are completed, and sends the application to the Allocation Committee. The Allocation Committee includes the following members: a SIPA representative, a Ministry of Housing and Urban Development representative, and a Ministry of Enterprise and Employment representative. The committee has no fixed meeting schedule but it does meet every month to review Land Applications. If there is an urgent request the ministry indicated that the committee will meet right away. There is no formal process for requesting an expedited committee review. The ministry notes that the maximum time delay between when an investor submits an application to when the committee meets is one month.

The Allocation Committee will either approve or reject the purchase application. The committee evaluates the application based on the benefits the industrial project will bring to Swaziland: capital inflow and employment for instance. There are no set criteria in regards to the investment's dollar amount. The committee is especially careful to avoid speculative investment by determining that the applicant does not already own land that he has not developed: The investor must indicate on the application form whether or not he owns other property in the country. The Allocation Committee will only sell government TDL if the investor intends to develop the plot for industrial or commercial purposes. Therefore, the agreement will include a forfeiture clause that says if the investor has not developed the land within two years of purchase the government will assess fines and eventually may repossess the property.³⁸ If the investor has a plot preference and his project complies with the industrial estate's zoning plan the committee will allow him to purchase his or her preference.

Once the Allocation Committee approves the sale it forwards its recommendation to the Principle Secretary (PS) at the Ministry of Enterprise and Employment. The PS signs the approval and sends an allocation letter to the investor indicating what plot has been allocated and at what price. The allocation letter advises the investor that if he accepts the offer he must visit the Ministry of Enterprise and Employment within 21 days to sign the deed of sale. The set sale price for government TDL in Matsapha is US\$ 3.51/m² (E20) and at the other two industrial estates the set price is US\$ 1.75/ m² (E10). Private real estate prices in Matsapha range from US\$8.77 – 17.54/m² (E50 – E100) for industrial land. Government significantly subsidizes the sale of industrial TDL in Matsapha.

Step 2) Accept offer and sign deed of sale. If the investor accepts the allocation and purchase price he goes to the Ministry of Enterprise and Employment to sign the deed of sale and pay a 25% deposit on the property. The investor is expected to pay the remaining 75% in 25% intervals every three months; the purchase will be completed, therefore, within a year. The investor pays the deposit, via a bank guaranteed check, at the accounts

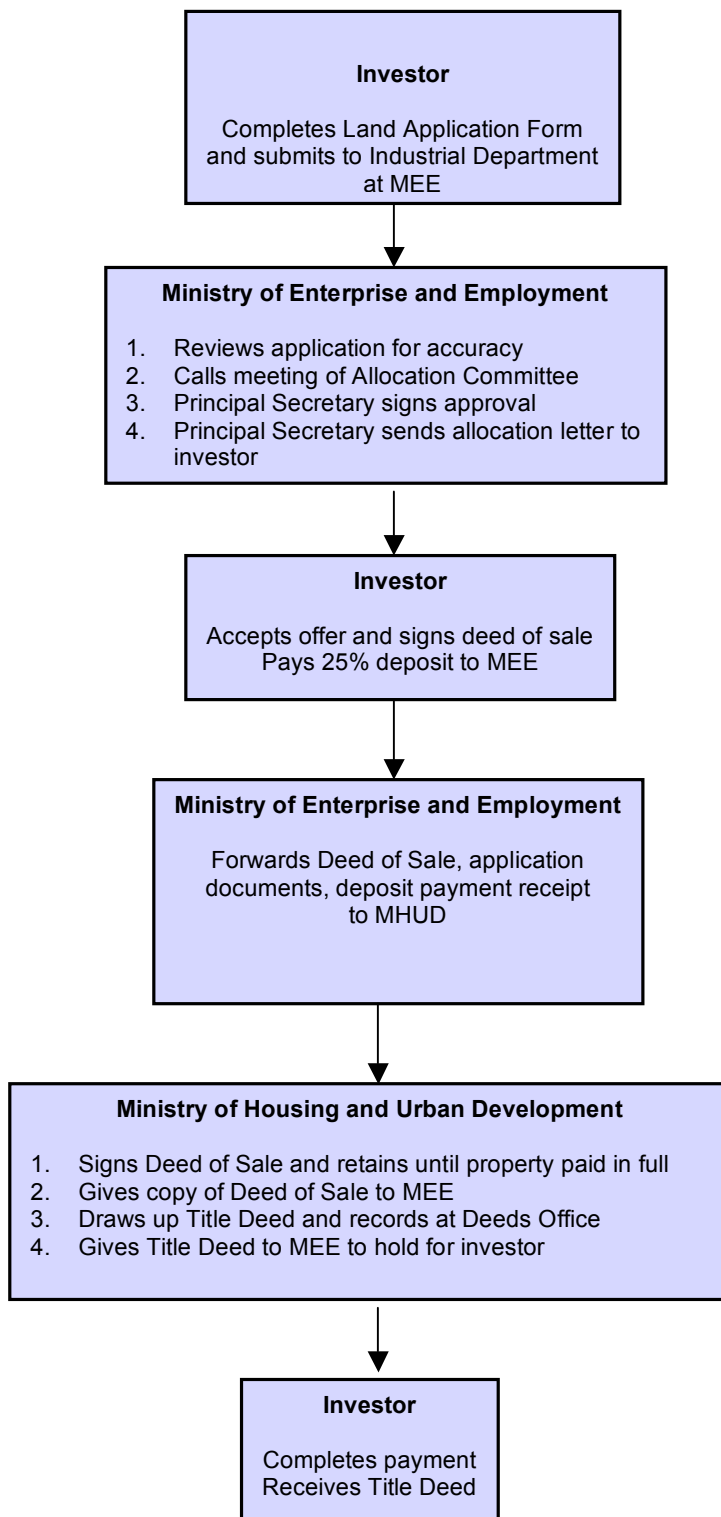
³⁸ In practice the ministry has been unable to assess fines because the legislation and the buyer's title deed do not define a site development threshold. The investor could develop as little as 5% of the property and not be eligible for a fine, for instance.

department in the Ministry of Enterprise and Employment. The accounts department issues a receipt. The investor then signs the deed of sale in front of two witnesses he or she has brought with him or her.

The Industrial Department at the Ministry of Enterprise and Employment submits the following documents to the Ministry of Housing and Urban Development: the deed of sale, the company's application documents, and the investor's deposit payment receipt. The Minister of Housing and Urban Development personally signs the deed of sale and sends a copy to the Industrial Department at the Ministry of Enterprise and Employment. The Ministry of Housing and Urban Development retains a copy of the deed of sale. MEE notes that an investor can complete the purchase in one week to one month.

Step 3) Complete payment and obtain title deed. When the investor completes payment the Industrial Department at the Ministry of Enterprise and Employment gives a copy of the investor's final payment receipt to the Ministry of Housing and Urban Development. The Ministry of Housing and Urban Development draws up a title deed and lodges it with the Swaziland Deeds Office. Once the title deed is issued the Industrial Department at the Ministry of Enterprise and Employment forwards it to the investor.

Figure 4.1: Site Acquisition from Ministry of Enterprise and Employment



c) Purchasing Industrial Zoned Government TDL inside Municipal Boundaries

Swaziland's capital city, Mbabane host significant commercial activity. While most heavy manufacturing activity is located in Matsapha Industrial Estate, the Mbabane Industrial Site hosts light manufacturing activities. Mbabane is home to both domestic and foreign investment. While Mbabane City Council controls the site development process within its municipal boundaries, it does not wholly control the sale or lease of government TDL within its boundaries. MHUD must grant final approval for the sale and/or lease of government land in Mbabane for residential, commercial, or industrial purposes.

All plots in Mbabane's existing industrial sites (Mbabane Industrial Site and Sidwashini Industrial Site) are now privately owned. The government no longer owns any plots in these industrial sites. These two sites are zoned for light industry, although they mainly host retail investments. Light industry in these sites includes Sidwashini Woodmasters and a Chinese coat making factory.

The Mbabane City Council recognized the demand for additional industrially zoned land in the municipality, and also realized that Mbabane is lagging behind in attracting SIPA-facilitated investment. The City Council has therefore recently zoned an area just outside the main city to be another industrial site, the Mahwalala Industrial Site. The City Council has subdivided the site into 4000 m² plots that it will make available to investors on long term (99 year) leases or for purchase.

Applicants who wish to purchase or lease government title deed land within the Mbabane municipal area must complete the following steps to obtain a deed of sale, a title deed, or a lease agreement.

Step 1) Investor discusses project with Mbabane city planner. According to the Mbabane City Council Department of Public Works and the Department of Planning an investor frequently visits the Department of Planning to discuss his project with the city planner prior to applying to lease or purchase. The city planner advises the investor as to the plausibility of being approved for a particular plot based on his proposed project. This is the first opportunity the investor has for learning what plots are available within the municipality.

Step 2) Investor submits Development Proposal application. The investor submits a Development Proposal to the City Council's Planning Department. There is no form for the Development Proposal; instead, the investor drafts a formal explanation of his project including the following information: the proposed project, how much land the applicant requires, and the project development plan. The project development plan includes building plans and a proposal on whether the investor would like a freehold or leasehold arrangement. The applicant makes no payment for this application process.

One of the Planning Department's city planners reviews the application to determine if it meets the city's zoning plan. The city planner compiles a report that includes all of the investor's submitted documents, including the following:

- Project description
- Amount of land required
- Project development plan
 - Building plans
 - Indication of preference for freehold or leasehold arrangement

The city planner's report recommends to the City Council's executive management that it approve or reject the application to purchase or lease a particular plot. The city planner distributes this report to the executive management three weeks before they meet.

Step 3) Investor presents application to City Council executive directors. The city planner joins the applicant when the latter presents his application to a meeting of City Council executive directors. The City Council's executive directors meet on the first Monday of every month to discuss purchase and lease proposals. The City Council's executive directors include the following:

- finance director
- health and environmental services director
- planning director
- director of public works
- director of human resources
- professional assistant to the chief executive
- chief executive officer
- public information officer; and
- information technology manager.

The executive directors either accept or reject the city planner's recommendation.

If the executive directors approve the investor's application the city planner presents the application to the City Council's twelve elected councilors. The councilors meet on the last Tuesday of every month. The investor may attend the meeting and might be called upon to answer questions. However, the city planner presents the application. The councilors either accept or reject the application to purchase or lease government TDL in Mbabane municipality. The councilors can overrule the city planner recommendation and the City Council's executive director's recommendation. If the councilors reject the application the applicant may appeal to the Ministry of Housing and Urban Development. Rejections, and subsequently appeals, are very rare.

If the city councilors approve the sale or lease the Planning Department forwards a report and the application to the Ministry of Housing and Urban Development. The report includes all of the application documents and the council's recommendation. According to the Mbabane City Council the Ministry rarely rejects recommendations to approve a purchase or lease. The process of gaining final approval from the Ministry of Housing and Urban Development takes one to three months.

The Ministry's internal process for approving a sale involves the following steps:

- a) The Principal Secretary at the Ministry of Housing and Urban Development reviews the City Council's report and the investor's application and forwards them to the Director of the Housing and Human Settlements Department within the Ministry.
- b) The Director of the Housing and Human Settlements Department assigns the proposal to a Land Officer in the Lands Section. The Land Officer reviews the application and recommends approval or rejection to the Minister of Housing and Urban Development.
- c) If the Minister approves the land purchase he indicates this decision to the Director of Housing and Human Settlements through the Principal Secretary.
- d) The Land Officer asks the Government Valuer in the Ministry of Natural Resources and Energy to determine the market value of the property in question.
- e) Once the Government Valuer has completed the property assessment he submits a Valuation Report to the Principal Secretary in the Ministry of Housing & Urban

Development. The Principal Secretary forwards the Valuation Report to the Director of Housing and Human Settlements who tasks the Land Officer with notifying the City Council.

- f) The Land Officer writes a letter to the Mbabane City Council notifying the council about the Minister's decision on the application. The letter includes the government's selling price, based on the Valuation Report.

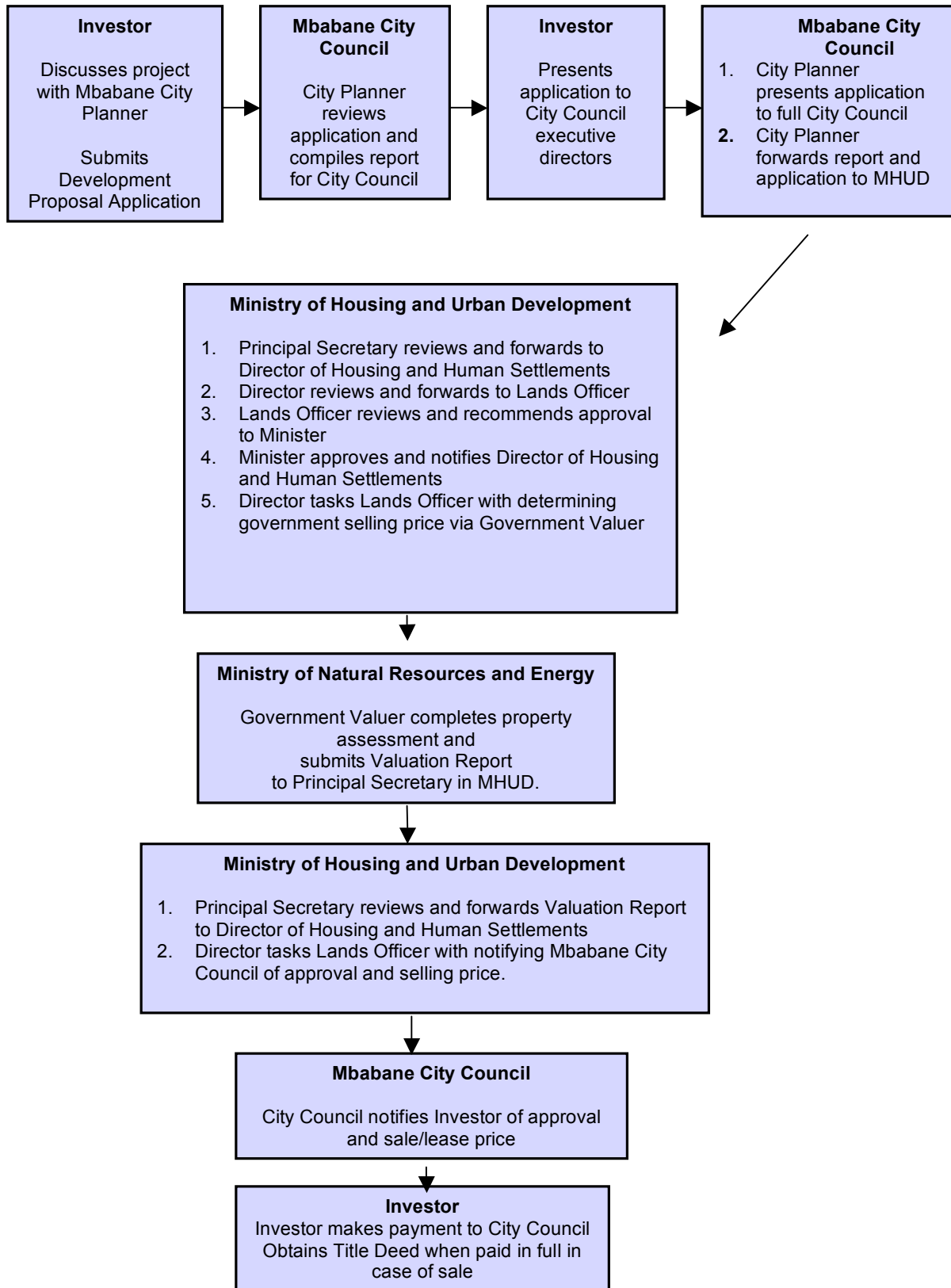
Step 4) Investor notified of approval and makes payment. Once the Ministry communicates its approval to the Mbabane City Council the Planning Department drafts a deed of sale or a lease agreement and informs the applicant of the decision and price. If the Ministry rejects the sale or lease the applicant has no further appeal process. The investor has three months to pay a deposit on the land. If the investor fails to make a deposit during this time the government regains control of the property.

In the case of a land purchase the investor pays either a portion of the sale price or the entire amount. The City Council allows the applicant five years to complete payment in full. The City Council charges no interest. The applicant makes payments to the City Council's Revenue Office. Once the investor signs the deed of sale the City Council returns the deed of sale to the Ministry of Housing and Urban Development for the minister's signature. Sometimes the Ministry grants the City Council's City Clerk power of attorney to sign deeds of sale and title deeds on its behalf.

In the case of a lease agreement the City Council drafts a lease agreement, which the applicant and the Ministry sign. The applicant subsequently pays rent to the City Council's Revenue Office. The City Council has established lease rates that vary by location. The City Council uses market lease rates to set lease rates on government title deed land.

According to the Mbabane City Council the entire site acquisition process takes between two and four months.

Figure 4.2: TDL Acquisition Process from Mbabane Municipality



2. Purchasing or Leasing Land on the Private Property Market

Investors may purchase or lease property on the private property market from the Swaziland Industrial Development Corporation or from real estate agents. Private property transactions are simpler although more expensive to investors than purchasing government land. Property rates in the private property market are determined by supply and demand and therefore tend to be higher than the subsidized rates of government land. The private property market in Swaziland includes a mix of residential, commercial, and industrial properties.

Swazi citizens may purchase residential, commercial, or industrial land without government approval. However, non-citizens must gain approval from the Land Speculation Control Board prior to purchasing any land from the private property market. This process is detailed below in the real estate section (2b).

a) Accessing Land from SIDC

Incorporated in 1986 SIDC is a development finance company established as a joint venture between the government and major international development finance institutions. SIDC's goal is to promote private sector development in Swaziland. While SIDC's main focus is project financing the corporation owns assets that it leases to investors -- mainly factory shells. SIDC sells approximately 5% of its assets to investors. The corporation noted that its leases are flexible enough to convert to purchase after a period of time. SIDC finds that most of its tenants will lease for four to five years and then purchase. SIDC indicates that it charges market lease rates for its property – a flat rate of US\$1.75 (E10)/m². According to estate agents, however, industrial lease rates vary between US\$1.05 – 7.02 (E6 – E40), depending on location.

Most of SIDC's properties are in designated industrial areas, although the corporation does own some properties that are outside of the industrial estates. SIDC currently owns 58,000 square meters of building space and 13,000 square meters of undeveloped land, and has just sold a 110,000 square meter plot to the government. SIDC estimates that it owns between 80-90% of all factory shells in Swaziland, largely in designated industrial estates and industrial sites.

The majority of SIDC's tenants are industrial companies, although the corporation does have several non-industrial commercial clients that are mainly shopping complexes.

SIDC has a website that explains its services, including the leasing and sale of factory shells. However, the website does not indicate the exact process steps or forms required for submission.

The process by which an investor purchases property from SIDC includes the following steps:

The investor approaches SIDC regarding property purchase and both SIDC and the investor commission an assessment of the property in question.

Prior to price negotiations the investor submits the following items to SIDC:

- Company Memorandum and Articles of Association
- Certificate of Incorporation, which lists shareholders
- Project Description

SIDC performs an internal assessment. SIDC evaluates the company based on the following criteria, which the investor must provide to the corporation:

- Company's financial backing;
- Company's commitment to the investment;
- Company's existing capacity and know-how;
- Company's previous commercial involvements;
- The investment's benefit to the country in terms of jobs and skill transfer;
- The proposed project's utilization of raw materials, as demonstrated by the company

SIDC management approves the sale and recommends the project to the SIDC Board. SIDC does not approve certain projects, such as those related to tobacco, firearms, or ammunition production. The Board approves the sale based on SIDC's recommendation. SIDC either approves or rejects the investor's purchase or lease request within a week of the application submission.

The process for lease is similar except there is no Board approval process required and the parties do not complete a property assessment since lease rates are set.

SIDC has an equity share in fewer than 10% of investing companies. SIDC indicates that it does this mainly to assist in the development of industrial projects that may not have adequate financing.

b) Accessing Land from Private Real Estate Agents

There are seven real estate agencies in Swaziland. There is no centralized market information in the country. Pam Golding Properties has an extensive website (www.pamgolding.co.za) that lists commercial and industrial properties for sale in Swaziland. The majority of these properties are located within existing industrial sites such as those in Matsapha and Mbabane. Another estate agency, Aïda Swaziland (Pty) Ltd, has a website (www.aida.co.za) with no Swaziland listings or Swaziland information.

Table 4.1: Private Property Purchase Prices³⁹

	Residential	Industrial	Commercial
Mbabane	\$14.04 - \$26.32/m ² (E80-150)	\$26.32 - \$87.72/m ² (E150-500)	\$31.58 - \$35.09/m ² (E180-200)
Manzini	\$14.04 - \$26.32/m ² (E80-150)	\$26.32 - \$87.72/m ² (E150-500)	\$4.39 - \$140.35/m ² (E25-800)
Matsapha⁴⁰	\$17.54/m ² (E100)	\$8.77 - \$17.54/m ² (E50-100)	\$3.51-\$35.09/m ² (E20-200)

To purchase private property in Swaziland a citizen locates the desired land and either contacts the seller to purchase directly or works with a real estate agent to complete purchase. Alternatively, the prospective buyer can initially approach an estate agent for assistance in locating appropriate properties. The prices noted above reflect market prices: The smaller the plot of land the higher the price per square meter.

Land Speculation Control Board

Non-citizens initially follow the same process as citizens in purchasing land; however, prior to completing purchase they must gain approval from Swaziland's Land Speculation Control

³⁹ Aïda Real Estate Agency and Pam Golding Real Estate Agency.

⁴⁰ Matsapha has very limited residentially zoned property.

Board (LCSB), which approves or rejects land sales by citizens or non-citizens to non-citizens.

The Ministry of Natural Resources and Energy appoints the six-member board for renewable two-year terms. The board always includes an attorney from private practice (typically a conveyance attorney); a representative from the Ministry of Natural Resources and Energy who acts as the board's chair; and four additional private citizens who might be retired school teachers, retired public servants, former members of parliament, and others. The LCB meets on the last Thursday of each month.

Most investors use a facilitator to complete the LCB process, typically an attorney versed in conveyance issues. In fact, real estate agents in Swaziland often work with attorneys on retainer to complete this process on behalf of prospective buyers.

The LCB process is governed by the following documents:

- The Land Speculation Control Act, 1972
- The Land Speculation Control Regulations, 1972

The process for gaining approval from the LCB is as follows:

Step 1) Investor completes and submits application form. The standard application form is available in the Land Speculation Control Act. Attorneys and estate agents retain these forms in their offices. The facilitator submits the completed form to the LCB ahead of its monthly meeting. In fact, typically if the facilitator submits the form by the 15th of the month the LCB will hear his case at its monthly meeting.

The form requires the following information:

1. Nature of the transaction
2. Present registered holder of interest
 - Nationality
 - Address
3. Proposed purchaser
 - If a limited liability company, names of directors and shareholders
 - If a cooperative society, names of chair, secretary, treasurer and number of members
 - Nationality
 - Address
4. Term
5. Description of land as recorded in Deeds Office
6. Purchase Price
 - Full Description and Approximate Value of Improvements on Land
 - Any Other Considerations Passing Between the Parties

Step 2) Investor attends LCB hearing. At the hearing the investor provides the following additional supporting documentation:

1. Deed of sale between the current owner and prospective buyer
2. Copy of newspaper advertisement for the property
3. Land valuation from an independent valuator
4. Copy of bank guarantee
5. Work permit if applicant is purchasing in a private capacity
6. Company records if applicant is purchasing in a business capacity
 - Company Memorandum and Articles of Incorporation

- Resolution by company to purchase property
- Work permits from any non-Swazi shareholders or directors

The investor or his attorney testifies before the LCB regarding his reasons for purchasing the property and the price of the property. The LCB may ask questions about the proposed business the investor will undertake on the land and his business background.

Following the hearing the LCB issues a decision within seven days. Rejected applicants may appeal the LCB's decision within 14 days of the decision. The appeals process is through the Land Control Appeals Board, which is a sitting committee also appointed by the Ministry of Natural Resources and Energy. The LCB's secretary also sits on the Land Control Appeals Board. The Land Control Appeals Board's decision is final.

B. Analysis

Issues

Lack of market and land purchase information. Swaziland has no centralized information source on available property to purchase or lease, either from the government or in the private sector. SIPA has a section on its website titled Land Acquisition, but it is currently under construction. The Ministry of Enterprise and Employment, which sells non-municipal industrial land does not have any information on property available on its website. The ministry's webpage does have contact details for the individual who deals with industrial plots, but additional information on price, approval procedures, and guidelines would facilitate the process. Similarly, Mbabane City Council has a good website (www.mbabane.org.sz), including a lengthy and useful FAQ section. However, it does not have information on the land acquisition process.

No set and published evaluation criteria for ministries, departments, and local authorities involved in approving purchase of government TDL. It is unclear what approval criteria are used, if any, across all authorities involved in the sale of government TDL. This is well illustrated by the discrepancy in information on whether or not the purchaser must be a Swazi citizen or a Swazi registered company. The government's website contains a section under the Department of Housing and Urban Development titled "Acquiring a Plot from Government." This section notes a number of factors the government takes into consideration when a plot is allocated by government, including the following: "For one to get a plot from Government, s/he must be a Swazi Citizen, if it's a company, must be a Swazi registered company." In addition, "Applicant must have not benefited from the sale of government land before. A person benefits once on both uses (commercial and residential) from government."

Neither the Industry Department at MEE nor any of the three local authorities interviewed noted that an applicant must be a Swazi citizen to purchase government TDL controlled by MEE or by the relevant municipality. While it was consistently clear that private property sold to a non-citizen must be approved by the Land Speculation Control Board, there was no indication from government sources that non-citizens are unable to purchase government TDL in a private capacity. Most investors purchase industrially zoned land in a company's name rather than in a private capacity. However, sources did not indicate that a company purchasing government TDL must be registered as a Swazi company. The MEE's "Application for the Purchase of an Industrial Plot" does ask if the company is already registered in Swaziland and if so, the form requests memorandum and articles of association. The form also requests the "name, nationality, and percentage of shareholders in the company." However, MEE's Industry Department did not note Swazi citizenship or Swazi registered company as approval criteria. In addition, no sources in Mbabane City Council indicated that approval to sell government TDL is contingent upon citizenship or

local company registration. Moreover, neither the MEE nor the local authorities noted that applicants must show proof of citizenship. Yet, the 2003 Crown Lands Disposal Regulations state:

“Regulations and Procedures

The following regulations shall apply in all the different forms of land disposal namely: sale, lease and grant and any type of land allocation, individual sale, bulk sale, commercial sale and community facility sale.

Swazi citizen irrespective of age...”⁴¹

Further in the document there is a section titled “Regulations for commercial and industrial sales allocation,” which does not mention the criteria of Swazi citizenship or Swazi registered company.⁴²

Differences in understanding of government TDL approval process. The Crown Lands Disposal Regulations 2003 outline the approval process, which includes review and approval of applications by the Crown Lands Disposal Committee in the Ministry of Housing and Urban Development. However, the Department of Housing and Human Settlement, which approves sales of municipally controlled government TDL, did not mention this committee in outlining MHUD’s approval process. In fact, the flow chart depicting the approval process for Mbabane government TDL does not note a committee at all. The MEE approval process for non-municipally controlled industrial land does involve an Allocation Committee, but this committee does not have the same members as those outlined in the regulations for the Crown Lands Disposal Committee. It is unclear, therefore, whether or not a Crown Lands Disposal Committee is actually involved in the process.

In addition, there is a discrepancy over the deposit price. The regulations state that the applicant must pay a 20% deposit,⁴³ while the MEE indicates that the applicant must pay a 25% deposit for industrially zoned land.

Subsidized government lease and purchase rates. MEE charges a flat rate of \$3.51/m² for the sale of industrially zoned land. Meanwhile, commercial rates in Matsapha, Mbabane, and Manzini are significantly higher. In Mbabane rates for industrial land range from \$26.32 - \$87.72/m²; in Manzini they range from \$26.32 - \$87.72/m²; and in Matsapha they range from \$8.77 - \$17.54/m². Government is offering a significant subsidy to those investors who gain approval. While subsidized land is an incentive to investors, the difference between some of the subsidized and market rates are significant. Government could gain substantial additional revenue by selling land at closer to market rates.

SIPA lease rates are sometimes commensurate with the private rate offered by SIDC. Typically, however, they are lower. While SIPA negotiates each lease rate the agency typically rents for between \$1.14 - \$1.75/m² (E6.5 – E10) in Matsapha Industrial Estate, Ngwenya Industrial Estate, and Nhlngano Industrial Estate. Rates depend on location and project. SIDC, on the other hand, charges a flat lease rate of \$1.75/m² (E10) for industrial property. Private lease rates in these three industrial sites ranges between \$1.05 - \$7.02/m² (E6 – E40). Private lease rates for commercial property range between \$3.51 - \$26.32/m² (E20 – E150).

⁴¹ Government of Swaziland, “Crown Lands Disposal Regulations, 2003,” p. S2.

⁴² Government of Swaziland, “Crown Lands Disposal Regulations, 2003,” p. S7.

⁴³ Government of Swaziland, “Crown Lands Disposal Regulations, 2003,” p. S7.

According to the Crown Lands Disposal Regulations, 2003 government TDL is to be sold at concessionary rates, although neither the criteria for approving at concessionary rates nor the type of property is well defined. Schedule 7 of the regulations note that “All current vacant government plots (serviced) shall be disposed off [sic] in line with the current disposal procedure, that is, the purchase price shall be the market value discounted by 50%.” Schedule 7 indicates that “a. Plots targeted for the medium and high income levels shall be sold a full cost recovery; and b. Plots targeted for the low-income level shall be discounted at 50% of the market value, (there must be a criteria to determine whether the people qualify or not). Criteria are not listed.

Government TDL sale falls under a number of jurisdictions. The Ministry of Housing and Urban Development signs the deed of sale and title deed for all government TDL, regardless of where the process begins: line ministry or local authority. For property not controlled by the municipality line ministries are responsible for initiating the application process on behalf of investors and liaising with them upon approval. For industrial property sales MHUD sits on the Allocation Committee that grants final approval

In the case of municipally controlled property MHUD must grant approval. Moreover, the Ministry of Natural Resources and Energy (MNRE) is a required stop in MHUD’s approval process: MHUD’s Lands Officer must seek a property assessment from MNRE’s Land Valuer prior to establishing the government’s selling price.

The approval process becomes more cumbersome the more different ministries and agencies are involved. The government has already begun to discuss establishment of a national land policy, which might include a single agency responsible for government land allocation. For instance, the Crown Lands Disposal Regulations 2003 indicate in Schedule 10 a number of land related issues to be addressed, including “All land should fall under the direct jurisdiction of a single Ministry; with line ministries given clearly defined user rights.”⁴⁴ It is unclear what this means; it could indicate further centralization of land allocation processes. The concept of a single agency is useful, coupled with decentralization of municipally controlled land to relevant – and capable – local authorities.

Time delays excessive on part of MHUD. The site acquisition process through the Mbabane City Council takes between three and five months, largely because the MHUD delay is between one and three months. Investors only find out at the end of the long process what the land price will be, making advance planning difficult. The process could be sped up a property assessment did not have to be completed each time an investor applied for a site. Instead, the Government Valuer could maintain an up to date database of market property values.

Land application processing and documentation is manual. The ministries, agencies, and local authorities involved in selling and leasing government TDL to investors process applications manually. Relevant documents, including application forms and payment receipts, are transferred manually rather than electronically among the relevant bodies. This slows the approval process and increases the difficulty for the applicant of tracking the process.

Goals and procedures of Land Speculation Control Board are unclear. The LSCB rejects applications infrequently. However, the board’s mandate, evaluation criteria, and effectiveness are unclear. Moreover, the existence of such a control board could taint Swaziland’s image as a welcoming investment destination. Most private sector representatives, including estate agents and facilitating attorneys, indicated that the LSCB poses no serious issues. However, all were unable to indicate how the board makes

⁴⁴ Government of Swaziland, Crown Lands Disposal Regulations, 2003, p. S13.

decisions and what criteria it uses for doing so. In fact, one source noted that “even the goals of the act are not clear to members – the board has never dealt with the question of whether or not a transaction is speculative, for instance. For the Board members the process is merely a question of checking documents.” The Land Speculation Control Board Act and Regulations, 1972 do nothing to clarify the board’s goal or procedures. The only clarity the act and regulations provide is that purchases within the Matsapha Industrial Estate are exempt from the board’s control. Also exempt from the board’s control is “Land on which any hotel duly licensed by any lawful authority is erected or is to be erected.”⁴⁵ The act and regulations, including the forms found therein, indicate that the LSCB falls under the Ministry of Agriculture. The government’s website, on the other hand, indicates that the board falls under the Ministry of Natural Resources and Energy.

The Board exists, from most accounts, to guard against speculative buying in Swaziland. To this end the board requires an “independent” property assessment that it compares against the actual purchase price. The applicant’s attorney, however, hires the independent assessor to complete the property assessment. Furthermore, it is unclear what type of price differential the board is looking for in order to claim that the sale is speculative in nature. There are no predetermined criteria or even a common definition of speculative buying.

The Board also requires that the seller openly advertise the property in local newspapers to prove that Swazi citizens had the chance to purchase the property in question. The proposed buyer must show the advertisement to the LSCB at his hearing. The board has an additional goal that works in tandem with the above of controlling how land will be used in the country. According to the Board’s Secretary, “The Board will approve a sale if the transaction is desirable for the development of the land or the continuation of an existing use of such land. The Board will reject the Sale if it is satisfied that the person to whom the land is to be disposed of does not intend in good faith to develop the land in the manner which in the opinion of the Board is in the best interest of Swaziland.”⁴⁶ One source indicated that the prospective buyer must produce a work permit if he or she is purchasing in an individual capacity, or work permits from non-Swazi shareholders or directors (in addition to company Memorandum and Articles of Incorporation or association and company resolution (company intent to purchase) to purchase property) if he is purchasing on behalf of a company. It is unclear from the act or regulations whether or not this is true. The application form contained within the regulations asks for buyer nationality.

Sectional Title unavailable. Swaziland currently does not allow sectional title on property. This is especially problematic for small investors who might choose to obtain part of a plot or building. Sectional title would facilitate building subdivision, which can stimulate the housing and commercial realty market. Swaziland currently has a Sectional Titles Bill⁴⁷ that would allow both residential and commercial buildings and the land upon which they are situated to be divided into single and common sections. However, the government has not yet enacted this bill.

Gender bias in property ownership. While single women are allowed to hold property title, married women may only do so with their husband’s consent. In the case of TDL women do not cede ownership to their husbands upon marriage. However, married a woman cannot own SNL without prior approval by her husband. Even if the husband grants approval the land is registered in his name. A single women may only own SNL if she applies on behalf of her minor male children. This issue was cited in the numerous publications, including the government’s 2001 Housing Policy. In the policy document the government noted the need to alter this property ownership bias: “Women are severely disadvantaged in terms of their

⁴⁵ Government of Swaziland, “Land Speculation Control Board Regulations, 1972,” p. 8.

⁴⁶ Mr. Albert Lukhele, written answer to questions involving LSCB, c/o SIPA, April 2005.

⁴⁷ Government of Swaziland website: www.gov.sz.

ability to acquire land and housing in their own right. On SNL this is not possible. Married women are unable to acquire title deed land if married in community of property and are legally similarly barred from accessing loans from financial institutions.” The policy document further notes that “It is National Policy that should [sic] women have the same legal and customary rights as men when it comes to land and housing and access to housing finance. Policies incorporated in the NLP that apply to equality of access to land should similarly form part of the housing policy. In addition, Sections 24 and 25 of the Marriages Act 47/1964 should be amended to allow women to own land and housing in their own rights. In the interim, the Registrar of Deeds should open a special register for 99-year leasehold in order to enable women to register title in their own name and MHUD should lobby the Gender Office Ministry of Home Affairs and the Ministry of Justice to change the legislation.”⁴⁸

The government’s Draft National Land Policy addresses this gender bias. It recommends that the government introduce legislation to prohibit gender-based land allocation and inheritance. It further advocates for an amendment to the country’s Marriage Act and the Deeds Registry Act to remove gender bias in land issues.

Inadequate information regarding land use, land ownership and urban growth. This is another issue discussed in the government’s 2001 Housing Policy. The policy states that “There is often uncertainty regarding land use and land ownership. In the Manzini structure plan, for example, 40% is shown as unknown ownership. This lack of information constrains effective land and housing policy.” The policy document notes that it is government policy to develop a GIS system to guide land use planning in urban and peri-urban areas and in rural growth nodes. The document recommends that the Ministry of Housing and Urban Development along with city council assume responsibility in urban formal and informal areas for preparing the GIS system.⁴⁹

No national land policy. As mentioned above, Swaziland has no national land policy, which results in many different sets of procedures for land acquisition and development. It also results in confusion over the relevant ministries and agencies for particular parcels of land. While this report has not covered Swazi Nation Land, it is clear from discussion with public and private sector representatives that there is considerable confusion over this land, and difficulties in obtaining it. Since more than 50% of Swazi land is zoned as SNL, the government should clarify procedures for obtaining and developing it. There is a Draft National Land Policy, but the government has not yet adopted it. The National Land Policy includes a commitment to unify land administration under a single ministry and to clarify agency and departmental roles.⁵⁰

Recommendations

Establish a government or private website that operates as a centralized resource for land acquisition (lease and purchase) options in Swaziland. The government – most likely through SIPA -- should develop a database that details land available for lease or purchase. The database should include land availability, land zoning, industrial estates and sites, title and ownership information, land values, applicable taxes, and plot size/coordinates. In addition the database should contain links to the acquisition process for government TDL via ministries and local authorities; and, it should contain links to information on the Land Speculation Control Board process and the country’s real estate agencies.

⁴⁸ National Housing Policy, page 11.

⁴⁹ National Housing Policy, page 6.

⁵⁰ Government of Swaziland, Draft National Land Policy, p. 19.

Several estate agencies said they welcome coordination with government in the sale of property to investors. The government and SIPA in particular should work more closely with the private property market to assist potential investors to locate plots: This includes coordinating with estate agents to post property data on a centralized database. Ideally the database would be available electronically on both the Government of Swaziland website and the SIPA website. In the immediate term the database should be available in hard copy at MHUD and SIPA.

Establish and publish criteria for approval of government TDL purchase across all relevant ministries and departments. The government should increase transparency in the approval process for government TDL purchase by establishing and publishing approval criteria. MEE mentioned broad criteria related to how the land would be developed: financial significance of investment and employment generated, for instance. The Mbabane City Council did not mention any criteria beyond whether or not the buyer's development plan meets local planning regulations. MHUD's website, meanwhile, lists Swazi citizenship as a requirement. The government should determine purchase approval criteria and insist that all ministries and local authorities responsible for the sale of government TDL utilize the same criterion. In particular the confusion over the citizenship requirement is troublesome and should be rectified. Since it is unclear when – if ever – this criteria is utilized this should be clarified. In fact, the government should abolish the citizenship requirement altogether since it can be a considerable barrier to entry. Currently MEE requires purchasers to develop industrial land within two years; the ministry established this rule to guard against speculative buying and to ensure that industrial land sales benefit the country's development. However, MEE has never established a firm definition of "development" and therefore investors have sometimes only developed 5% of a plot in order to meet requirements and avoid financial penalties. The government could certainly define this requirement more precisely as a means of guarding against government TDL that is purchased and not utilized.

Establish and publish definitive procedures for approval of government TDL purchase. The government should set consistent approval procedures for the purchase of government TDL. Each ministry that sells government land, including MEE, should be governed by the same procedures to increase transparency in the site acquisition process. Moreover, purchase deposit amounts should be harmonized across all ministries and local authorities and should be consistent with what is written in the relevant regulations. Since the Crown Lands Disposal Regulations are recent (2003), it is likely the acquisition procedures they outline are more recent than those currently in use at MEE and in the Mbabane City Council. If this is true, MEE and Mbabane should change their procedures to reflect the current regulations.

This report does not cover SNL acquisition; however, since sources noted that the SNL acquisition process is wholly non-transparent the government should consider defining approval criteria for this land as well, and setting out approval process guidelines. Moreover, since over 50% of Swazi government owned land is SNL the government might consider shifting some of this land to government TDL for purchase by investors.

Decrease subsidy on government purchase rates, while maintaining subsidy on lease rates. Concessionary lease rates might assist in attracting investors in key sectors. SIPA's mostly lower than market rates for industrial projects in government owned factory shells provide an investment incentive. However, sale prices considerably under market value are less easy to justify, especially since the degree of subsidization is considerably greater for sales than for leases. Private developers have purchased considerable property at these concessionary rates and subsequently lease it at market rates or sell it at market value. In fact, the government just purchased a substantial piece of land (110,000 m²) from SIDC; this

is land that SIDC initially bought from the government at concessionary rates, according to SIDC.

There is no reason why the government, in selling TDL, should not gain this revenue. Since the Crown Land Disposal Regulations, 2003 indicate that government TDL is to be sold at half the market rate these regulations should be amended to abolish the practice. While the government might continue to offer concessionary rates to encourage priority investment, it should establish and track supply and demand data to determine the most effective subsidy rate to maximize both revenue and investment.

Consolidate site acquisition process under one ministry for non-municipal land and devolve approval for municipal land to local authorities. The government should implement the recommendation in its Draft National Land Policy and consolidate non-municipally controlled land acquisition under a single land ministry. Line ministries should be involved in setting use policy and should be consulted initially on approval criteria. However, they should not be a point of contact for investors. Both SIPA and MHUD should have information on all government owned non-municipal TDL for sale or lease and the investor should make these places their initial point of contact for purchase or lease.

The government should also prioritize devolving the municipal land sale process to local authorities, as it is doing with site development processes. MHUD approval, which is a lengthy series of steps, delays approval time considerably and should be done away with. According to the Government of Swaziland website MHUD maintains control over land sales in Mbabane, Manzini, Nhlangano, Pigg's Peak, Siteki, Hlathikhuli, Mankayane, Layumisa, Matsapha, Ezulwini, Vuvulane, and Ngwenya. While clearly some of these relatively new local authorities – Matsapha for instance – currently lack the capacity to control the process entirely, the government should address capacity issues and draft legislation that wholly devolves municipal land sale to the municipal level. Those that are capable, Mbabane for instance, should control the process and the government should work toward enabling those that currently have less internal capacity. The government's Draft National Land Policy recommends a revised management system to empower local authorities with regard to land resources.

Decrease MHUD time delays in completing approval process. While the government is devolving site acquisition to local authorities by boosting capacity and modifying laws and regulations it can still speed MHUD's internal approval process. One step that can be removed is the land valuation report by the Ministry of Natural Resources and Energy. The government should instead have a property list that is updated frequently for all land it controls. This would eliminate that need for a separate land valuation for each property an investor might want to purchase.

Automate land acquisition processes. Automation will also decrease time delays. All ministries, departments, and local authorities involved in the acquisition process should send files electronically, including payment receipts, to speed the process and enable effective application tracking.

Clarify role and procedures of LSCB or abolish it. The government should clarify LSCB's role. Does the board exist to guard against speculative buying, to maintain land in Swazi hands, or to control how land is used by non-citizens? If the LSCB exists to limit speculative buying in the private property market, board members must review applications under specific guidelines that define speculative behavior and provide an evaluation framework. This is difficult to do if the only means available is an "independent" assessor's property assessment. Since the assessor is likely to find a market price that is commensurate with the actual purchase price, based on the laws of supply and demand, the LCB is ineffective. If the government wants to ensure that land is developed it can set and enforce time limits for

development and assess fines and additional taxes if purchasers do not respect these time limits. MEE has established such development requirements for industrially zoned land as part of its site acquisition process; however, to date the ministry has not effectively implemented the requirements. If LCB's goal is to limit speculative buying in the Swazi land market it should include Swazi citizens purchasing land in the private property market as well. Speculative buying is not limited to foreigners, in any country. To further increase the Board's integrity the government should appoint its own independent property assessor.

If LSCB's goal is to maintain land in Swazi hands it has not been altogether effective. According to all sources the LSCB almost universally grants approval. The LSCB should no longer require applicants to provide a work permit, if indeed it does so now. As noted above, it is unclear from the act or regulations whether or not the Board always requires a work permit. The application form merely requests the buyer's nationality; however, some sources noted that the Board does request a work permit. If the LSCB aims to give Swazi citizens a fair shot at acquiring private property it can continue to require that the sale be advertised. However, the government can be more effective in this regard by creating a centralized site for property acquisition information and processes. The government should also clarify the criteria by which it judges buying speculative.

If LSCB's goal is to control the use of private property this is misplaced. The government should utilize zoning regulations to monitor and control land use in the country, not the LSCB. International best practice suggests that mechanisms to guard against land speculation should encourage productive land use with minimal government intrusion.

The LSCB legislation seems outdated and incomplete. Since none of the possible goals are laudable, the government would do best to abolish the Board altogether and find more effective means to attain land policy goals, including the use of fines and taxes for non-development. The government should investigate the most appropriate types and levels of land taxes to ensure that private property is productively utilized.

Draft and pass legislation to introduce sectional title. The government should draft and adopt legislation that allows sectional title in property ownership. This will increase the ability of small and medium sized commercial investors in particular to purchase their business property. It will also enable more individuals to afford residential property.

End gender bias in site acquisition process. The government should draft and implement the legislative changes related to female land ownership that it outlined in the Draft National Land Policy. In particular the government should amend the Marriages Act and the Deeds Registry Act to able women to hold title to all land, including SNL, regardless of marital status.

Improve information on land use, land ownership and urban growth. The government should implement some recommendations from the 2001 Housing Policy, including the establishment of a GIS system. The GIS system would include useful information on each plot: property description, size, landowner, current use, legal standing, access to services, existing and proposed zoning, market value, and development potential.

Implement recommendations in Draft National Land Policy. The government has already completed an analysis of land acquisition and development issues. It should implement a number of the recommendations, including the unification of land administration under a single ministry, whether that is the existing MHUD or a new land ministry.

III. Site Development

Site development procedures in Swaziland have been devolved to local authorities in theory. In practice, however, few local authorities currently have the capacity to oversee this process. Both the Mbabane City Council and the Manzini City Council have control over site development processes in their municipalities and do not require approval from the Ministry of Housing and Urban Development in approving building permit applications. Since the processes for gaining a building permit and completing inspections differ in Mbabane and Manzini, however, this section outlines procedures in both of them. Matsapha Town Board, only a year old, has considerably less in-house capacity and therefore has only nominal control over the site development process in its jurisdiction. The Matsapha building permit and inspections processes are also outlined below.

A. Site Development on Government Owned Land

This section contains a description and analysis of site development processes in three different municipalities: Mbabane, Manzini, and Matsapha. Mbabane and Manzini represent the country's two largest commercial areas. Matsapha is the location of the country's largest industrial estate.

1. Site Development Process in Mbabane Municipality

Unlike the Matsapha Town Board the Mbabane City Council has full planning powers for land within its municipal borders. According to the Mbabane City Council the national government's criteria for the devolution of power to municipalities includes the provision of three professional city planners: If a city council or town board has three professional city planners on staff the national government will allow the council or board complete control over the site development processes within its borders. This explains the different site approval processes in Matsapha, and Mbabane/Manzini and the fact that at no point in the Mbabane and Manzini site development processes is the national level government involved.

The process is governed by the following legislation:

- The Building Act, 1968
- The Town Planning Act
- The Urban Government Act, 1969

Applicants who wish to develop a residential, commercial, or industrial site in Mbabane Municipality, including public and private clients, must complete the following steps for a Building Permit and an Occupancy Permit.

Step 1) Collect and complete application form and pay fee. The applicant (typically the investor's architect) picks up a copy of the Application Form for a Building Permit (Form A) from the City Council office in downtown Mbabane. There is no fee for the application form. The applicant completes the form and submits it to the Planning Department in triplicate with all building plans, including the following:

- Floor plans
- Site plans
- Elevation plans
- Sections plans
- Locality map

The architect will have designed the building to comply with the country's building regulations, which are outlined in the Building and Housing Act. The applicant must also submit proof of ownership (on behalf of the investor) at this time. Proof of ownership could be a title deed, a lease, or a deed of sale. At time of submission the applicant pays a Building Application Fee, which is calculated as 10% of the value of the construction cost plus US \$1.75. The fee calculation is indicated in the Building and Housing Act regulations. The applicant pays the fee at the City Council's Revenue Office, which issues a receipt to the applicant and keeps a copy on file.

The Planning Department distributes copies to the Health Department and Public Works Departments. In addition the Planning Department distributes copies to the city's fire services agency, Swaziland Water Services Corporation, and the Swaziland Electricity Board. Each department, including the Planning Department, completes a comment form noting issues with the plans and therefore recommended changes, or granting approval of the plans. Approval from each department is based on the plan's compliance with Swaziland building regulations. Each department returns the comment form to the Planning Department. The review and comment process takes approximately six weeks to complete.

If all departments have indicated approval the Planning Department sends a letter to the applicant explaining that his plans have been approved and that he may retrieve his Building Permit at the City Council offices. The letter will also indicate to the applicant that upon retrieving the Building Permit he must pay for the first two building inspections upfront.

If departments have indicated that the building plans do not comply with Swaziland's building regulations, the Planning Department advises the applicant of these issues in a formal letter. The architect amends the drawings and resubmits the application. Resubmissions require a fee of US \$7.67. The Planning Department submits the application only to those departments which originally rejected the plans.

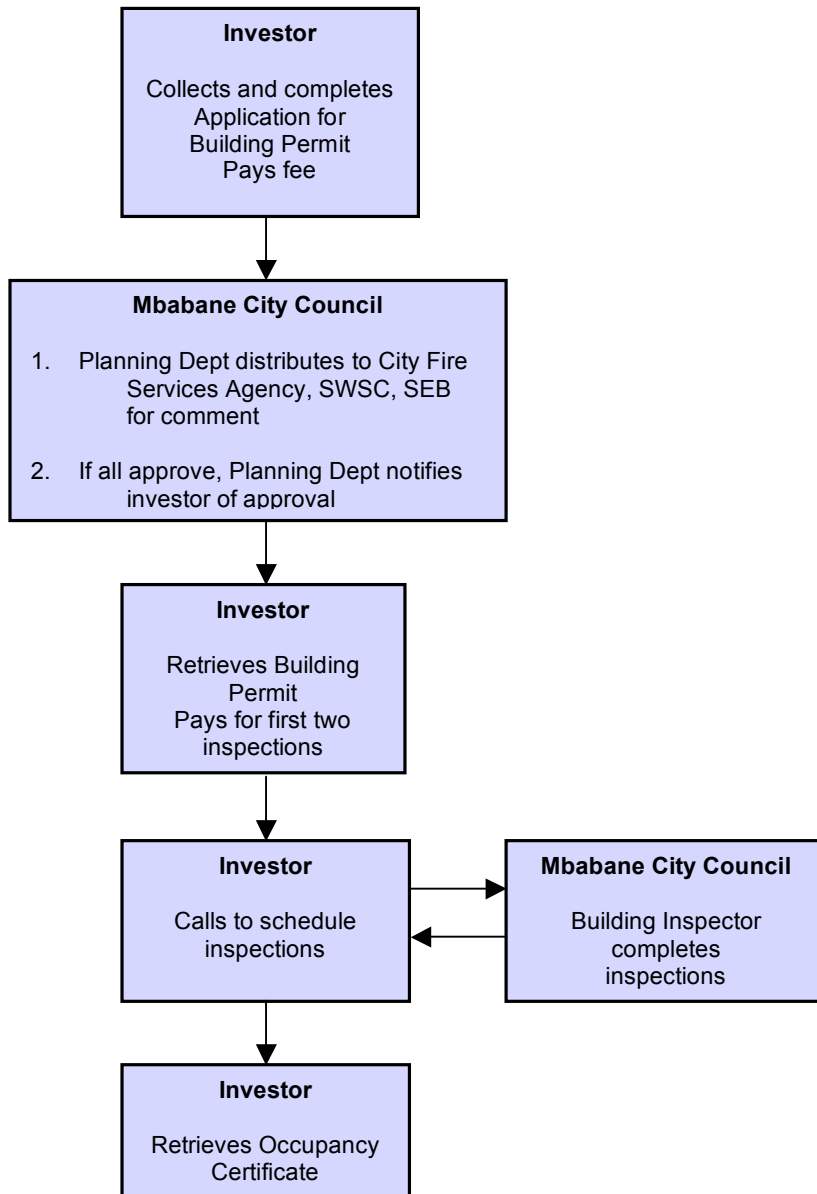
Step 2) Applicant retrieves building permit. The applicant retrieves his building permit and also pays for the first two inspections. Inspection fees depend on the estimated cost of the building construction and the calculation is outlined in the Building and Housing Act regulations. The inspection fee is US \$17.54 for the first US \$17,544 of construction costs and US \$0.10 for each additional US \$175.44 of construction costs.

Step 3) Applicant schedules and completes inspections. Once construction has commenced inspections are scheduled at two stages. The first inspection occurs after the foundation has been dug. The second inspection occurs after the slab has been cast. The applicant calls the Planning Department when he is ready for each of these two inspections. The City Council's Service Standards stipulate that a council inspector must inspect the site on the same day that the applicant calls for inspection. The longest time delay the City Council reports is two days. The City Council has two in-house building inspectors. The same inspector will complete all inspections on a particular project. If the inspector is satisfied with the inspection he makes note in the applicant's file at City Council that the applicant has passed a particular inspection.

Step 4) Applicant schedules and pays for final inspection. At project completion the applicant calls the Planning Department and requests a final inspection. The applicant must first visit the City Council's office to pay for the final inspection. The cost of this final inspection is calculated in the same manner as the first two. The final inspection involves the building inspector and the City Council's health inspector. The City Council has four in-house health inspectors. Provided they are satisfied with the project the two inspectors complete an Occupancy Certificate as soon as they return from the inspection. Inspections take place within forty-eight hours of the investor scheduling them.

Step 5) Applicant retrieves Occupancy Certificate. The Planning Department notifies the applicant that he may retrieve the Occupancy Certificate at the City Council's offices.

Figure 4.3: Mbabane Municipality Site Development Process



2. Site Development Process in Manzini Municipality

This site development process in Manzini, Swaziland's second major urban area, is governed by the following legislation:

- The Building and Housing Act No. 34, 1968
- The Manzini Development Code, 1991 of the Manzini Town Planning Scheme, Town Planning Act No. 45, 1961
- The Urban Government Act No. 8, 1969

The following steps are required to complete the site development approval and inspection process in Manzini. The process does not differ significantly from the Mbabane site development process.

Step 1) Investor completes and submits application and pays fee. The investor, or more typically his architect, visits the Manzini City Council office to obtain an application for building approval. The application requests plot details including plot size, a site plan and architectural drawings. In addition to the completed application form, the applicant submits the following documents to the Building Inspectorate Division of the Manzini City Council Planning Department:

- Copy of plot's title deed
- Building plans (in triplicate), including certification of all structural components

The Building Inspectorate Division's building inspector immediately indicates to the applicant the amount he must pay for the Scrutiny Fee. The Scrutiny Fee is calculated based on the building cost. For the first US \$3,508.77 (E20,000) the fee is calculated at US \$0.26/\$175.44 (E1.5/1,000). For all costs above US \$3,508.77(E20,000) the cost is US \$0.18/\$175.44 (E1/1,000). In addition the Scrutiny Fee includes a US \$1.76 (E10) administrative charge. For instance, a house worth US \$5,263 (E30,000) would be charged a US \$7.02 (E40) scrutiny fee. The applicant pays the scrutiny fee to the City Council's Rates Hall and receives a receipt immediately.

The Building Inspectorate Division copies and distributes the applicant's application package to the City Council's Health Department and the Fire and Emergency Services. The application should theoretically be submitted also to the Water Services Corporation and the Swaziland Electricity Board. However, in the past these two agencies have exceeded the legal time limit (six weeks) required to deliver a response to the applicant and therefore in practice the City Council no longer includes them in the process. For big projects (those deemed category 2 or 3 by the SEA: meaning they have some environmental or significant environmental impact, respectively) an Environmental Impact Assessment and certification from the Swaziland Environment Authority is also required. SEA approval takes between three and four months.

The Health Department and the Fire and Emergency Services review the application and submit comments to the Building Inspectorate Division. Concurrently the town engineer, building inspector, and town planner also review the application. The Building Inspectorate Division consolidates all comments into a single report. This comment and reporting process takes approximately four to six weeks.

The Building Inspectorate Division's City Planner submits the report to the six members of the City Council's Public Works, Planning, and Community Development Committee. This City Council subcommittee is responsible for discussing and recommending planning and engineering issues in Manzini Municipality. The subcommittee is comprised of six members, three of which are among the City Council's twelve elected members and three of which are

technical experts from the City Council's management side. Specifically, the technical experts include the city engineer, the city planner, and the town clerk. The Public Works, Planning, and Community Development Committee reviews the application in a meeting and recommends approval or rejection to Full Council.

If the Public Works, Planning, and Community Development Committee approves the application it recommends approval to the full twelve member City Council. If the City Council approves the application the City Engineer signs the applicant's building plans with an "approval" stamp, and the Town Clerk issues a signed building permit, with a set of six inspection slips. The applicant is then informed of the decision.

Step 2) Applicant retrieves building permit. Upon hearing of approval the applicant visits the City Council offices to retrieve his building plans as well as the building permit and inspection slips. The building permit is valid for twelve months. If the applicant does not commence construction during that period he must reapply for a new building permit. If the applicant abandons building operations for a period of 21 calendar months he loses the permit.

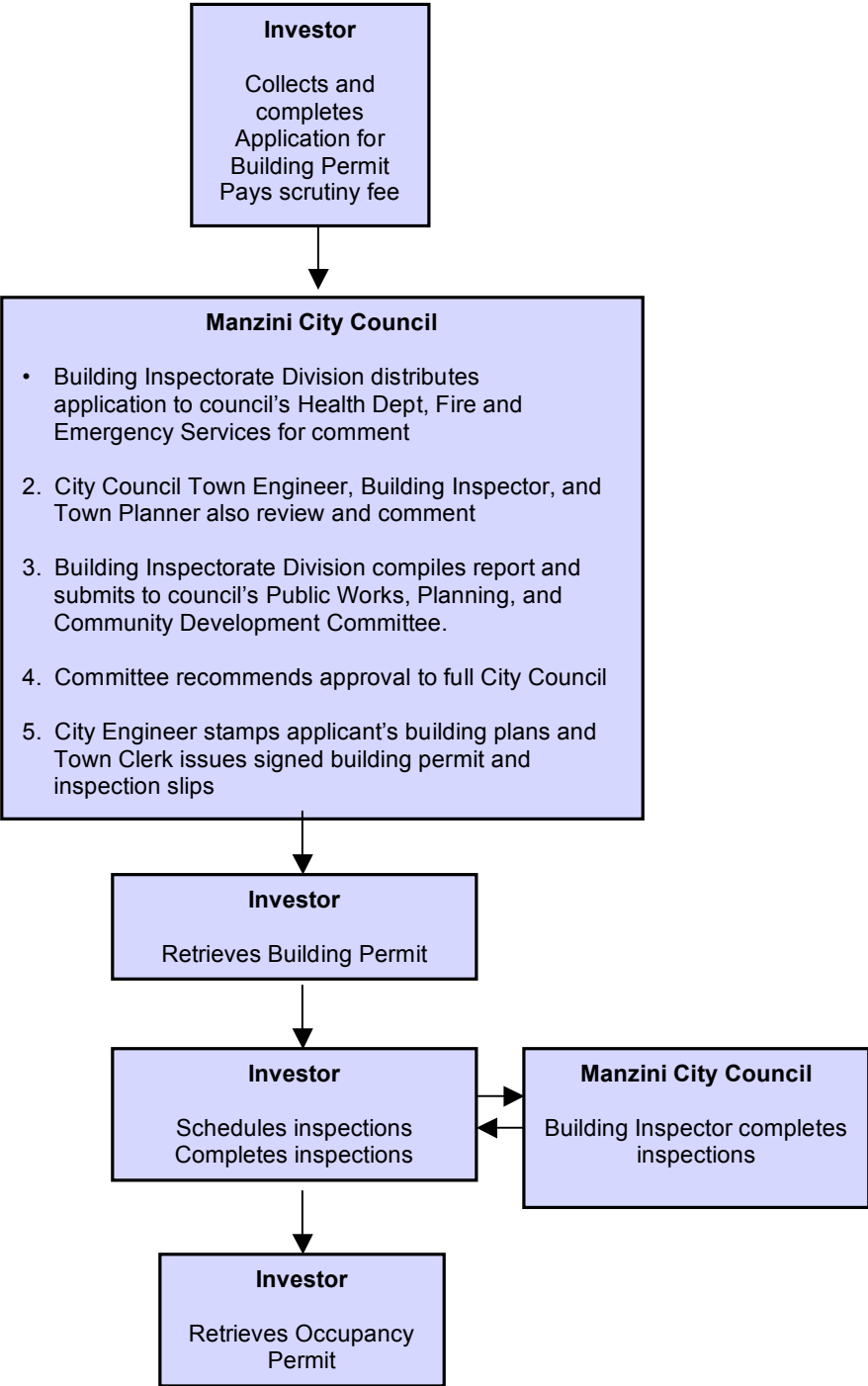
Step 3) Applicant schedules and completes inspections. The applicant must schedule and complete a series of inspections during the construction process. Again, typically this is the investor's architect. Each time the applicant needs to schedule an inspection, according to the inspection slips, he must visit the City Council offices to pay a US \$17.54 fee to the Rates Hall and schedule an appointment with the building inspector. The building inspector can inspect within 24 hours of scheduling. Building inspections in Manzini occur on the following schedule:

- Inspection 1: immediately following site clearing and setting out.
- Inspection 2: immediately following foundation digging, but prior to pouring.
- Inspection 3: immediately following completion of foundation pouring.
- Inspection 4: immediately following floor slab preparation but prior to pouring.
- Inspection 5: when wall has been built to ring beam level
- Inspection 6: at completion of construction

At the final inspection four departments concurrently inspect the building and recommend final approval, which results in the Occupancy Certificate. The following departments complete final inspection: the Department of Fire and Emergency Services; the City Council's town planner, city engineer, and Health Department. Following this inspection the City Engineer signs and issues the Occupancy Certificate.

Step 4) Applicant obtains Occupancy Certificate. The applicant makes a final visit to the City Council offices to pick up the Occupancy Certificate.

Figure 4.4: Manzini Municipality Site Development Process



3. Site Development Process in Matsapha Municipality

This site development process in Matsapha, home of one of the country's largest industrial areas, is governed by the following acts:

- Building and Housing Act, 1968 and regulations
- Local Government Act, 1969 and regulations
- The Government Lands Disposal Proclamation, 1970
- The Consolidated Matsapha Town (Amendment) Regulations, 1970
- The Town Planning Act, 1961
- The National Housing Board Act, 1988

Step 1) Applicant completes and submits application. The applicant (typically the project architect) collects an application for site development approval, called Form A, from the Matsapha Town Board. Form A is contained within the Building and Housing Act regulations. The applicant completes Form A, which includes an estimate of construction costs, and delivers the form and four copies of the working drawings in person to the Town Board. Immediately upon submitting the application the applicant pays a scrutiny fee to the town treasurer and the town treasurer issues a payment receipt. The scrutiny fee is calculated as a percentage of the project construction costs.

The Town Board gives the application and working drawing copies to the township engineer in the Ministry of Housing and Urban Development. The Ministry of Housing and Urban Development completes the scrutiny process on behalf of the Matsapha Town Board. The township engineer distributes copies of the application and working drawings to the following relevant departments:

- Fire and Emergency Services;
- the Ministry of Health;
- the Swaziland Water Services Corporation; and
- The Swaziland Electricity Board.

Each of these departments comments on the application and returns comments to the township engineer at the Ministry of Housing and Urban Development.

The Ministry of Housing and Urban Development's township engineer reviews all departmental comments and either recommends or rejects approval. The township engineer sends a formal letter to the Matsapha Town Board indicating the ministry's approval or rejection.

If the ministry has recommended approval the Matsapha Town Board calls for a meeting of its Public Works Committee. The Public Works Committee meets approximately once a month and includes the following members: two board members and the town engineer. The Public Works Committee reviews the Ministry of Housing and Urban Development's recommendation and the applicant's drawings and recommends site development approval by stamping the applicant's drawings with an "approval" stamp.

The committee subsequently prepares a board paper that recommends site development approval. The committee sends the board paper to each of the five Matsapha Town Board members.⁵¹ The Board meets once a month. The Town Board Chief Executive Officer (CEO) acts as board administrator. If the board approves the applicant's site development project the CEO writes a letter of approval to the applicant. The CEO sends the letter and

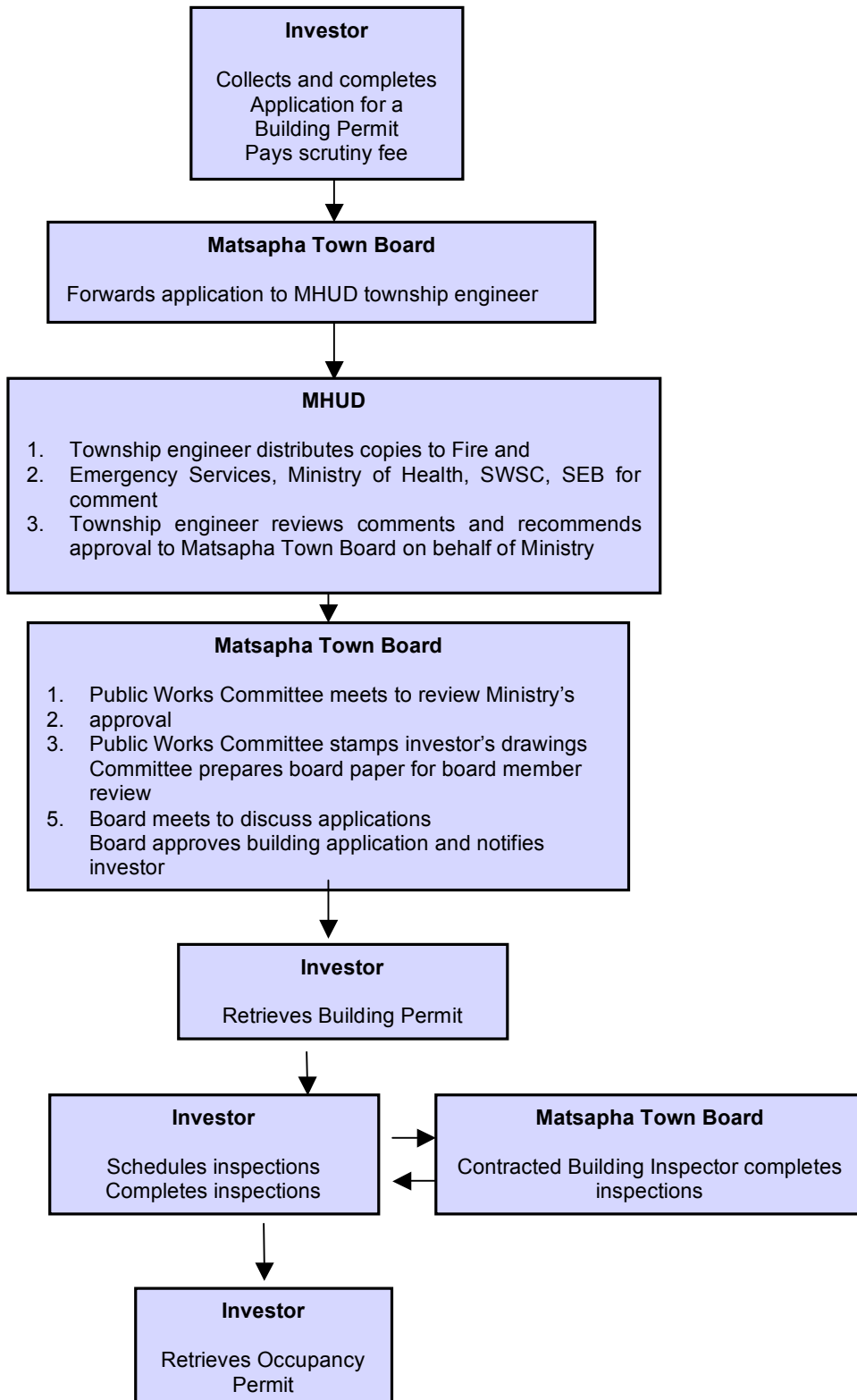
⁵¹ Four Matsapha Town Board members are elected and one is appointed by the Ministry of Housing and Urban Development.

the applicant's working drawings, stamped with the board approval, to the applicant. The entire approval process takes approximately six weeks, according to legislative requirements.

Step 2) Applicant retrieves building permit. Upon approval notification the applicant visits the Town Board offices to retrieve the building permit. The applicant must commence construction within one year of obtaining building approval.

Step 3) Applicant schedules and completes inspections. The applicant must schedule a series of inspections throughout the construction process. The Matsapha Town Board contracts a building inspector to complete the inspections. He is a technician, not a building engineer. The applicant must visit the Town Board to pay an inspection fee and schedule an inspection. The fees depend on the building size, but are typically around US \$52.63 per inspection. The applicant must give the inspector 24 hours notice. After each inspection the building inspector issues the applicant with an Approval Certificate. There are a total of four inspections from the Town Board hired building inspector. The applicant must also schedule an inspection from the fire inspector prior to final inspection by the Town Board building inspector. If the fire inspector approves the construction he sends a letter to the Matsapha Town Board noting his approval. At the final inspection, once construction is complete, the building inspector issues the applicant with a Certificate of Occupancy.

Figure 4.5: Manzini Municipality Site Development Process



B. Analysis

The Ministry of Housing and Urban Development recently published a document entitled *Swaziland Physical Planning Policy*.⁵² This document outlines ministry recommendations to streamline physical planning and development control. The ministry notes that the document “expands on the work carried out thus far by the MHUD by:

- (1) Outlining relevant planning principles to guide planning practice;
- (2) Identifying critical national planning problems;
- (3) Offering institutional recommendations that will address these challenges (e.g. streamlining planning authorities and providing appropriate planning and control measures);
- (4) Outlining associated planning processes and their content, namely a hierarchy of plans and guidelines for a zoning typology and development code; and
- (5) Addressing key planning issues by providing succinct policy statements on each issue that had been raised in ministerial, local authority and agency consultations.

Finally, the policy provides a set of general ‘best practices’ for physical planners. This policy document therefore outlines the basis and content for the formulation of a Physical Planning and Development Control (PPDC) Act and National Development Code.”

In the document the ministry explains that planning statutes are uncoordinated and duplicated across authorities and that some authorities have lengthy approval processes. The ministry points out that some of the country’s planning codes are either out of date, unclear, or have never been gazetted – resulting in a restrictive development environment. The document calls for a “new and effective approach to physical planning... This approach will consist of a new National Physical Planning Policy, a National Physical Planning and Development Control Act, and a new National Development Code.”⁵³ This is a very new policy document and none of its recommendations have been adopted as of yet. Nonetheless, the document is significant in that it signals the government’s awareness of land regime problems and willingness to address them.

Issues

Capacity varies from town to town. The efficiency and speed of the site development process varies throughout the country based on the capacity of the local council involved. Investors suggest that of the three town councils examined, Mbabane is the most efficient. Mbabane’s process is certainly the most streamlined.

Manual administration and processing. The Mbabane City Council has a website that indicates some of the procedures and fees involved in the building permit process. As noted above, the website also has a fairly comprehensive FAQ section. However, application submission and processing is done wholly manually. The same is true of Manzini City Council and Matsapha Town Board, which do not have websites. Manual processing can result in excessive processing times, improper tracking and monitoring, inaccurate documentation and lost files.

Excessive approval time for building permit approval. While each of the local authorities indicated that the building permit approval process was typically completed within six weeks of application, private sector representatives note that the approval time is two to three months, with the longest delay in Matsapha. This delay is too long, particularly since there is no feedback to the investor regarding the progress of his building permit application. The

⁵² Swaziland Physical Planning Policy, March 29, 2005.

⁵³ Swaziland Physical Planning Policy, p. 3.

decision process differs across the three municipalities. In Matsapha the application must be approved by the Ministry of Housing and Urban Development; the application then passes back to the Public Works Committee within the Matsapha Town Board. It is likely that significant delays occur as a result of the manual transfer of application materials to and from Mbabane, and from the committee approval process. In the case of Manzini, although the decision is made by local authorities, a committee and then the full City Council must approve the building permit application. In Mbabane the decision is made internally based on Swaziland building regulations and the Mbabane 1998 Town Planning Scheme; City Council members do not approve the application. Instead, relevant technical departments within the council as well as the water and electrical utilities review the application and recommend changes or approve. Limiting the decision-making to technocrats rather than politicians streamlines the process and increases process transparency.

No informational brochures or printed procedural guidelines. While the Mbabane City Council has made some information on the municipality's building permit approval process available electronically, Manzini and Matsapha offer no printed or electronic guidelines to investors. Application requirements, fees, waiting times, and procedural explanation guidelines would increase process transparency, and enable investors to calculate time and financial expectations. Mbabane's website does explain the procedures and lay out application and inspection costs. However, Mbabane, Manzini, and Matsapha should make the building permit application forms available electronically to eliminate one step by the investor.

Differences in application and approval process across municipalities. As noted above, each of the three municipalities investigated have a different building permit process. Matsapha's process is understandably different from Mbabane and Manzini because MHUD remains involved in the process. It is less clear why significant differences exist in the processes by which Mbabane and Manzini approve building permit applications. In Mbabane the approval process is handled internally by the Planning Department. The Planning Department sends the investor's building plans to its health department and public works department and to SWSC and SEB for comment. The Mbabane Planning Department reviews comments and either requests changes to the building plans or grants approval. At no point does the City Council meet to discuss the application. In Manzini, however, there are more approval process steps. The Building Inspectorate Division sends the investors building plans to its health department and fire and emergency services. While the Building Inspectorate Division is also required to consult SWSC and SEB they no longer do so -- these agencies have typically taken too long to respond and therefore make the division unable to meet its six week approval deadline. Once the Building Inspectorate Division reviews comments from the two consulted departments it drafts a report for the City Council's Public Works, Planning, and Community Development Committee. This committee meets to review applications and forwards approvals to a meeting of the full City Council. The City Council grants approval. This is less desirable than the Mbabane process in which the City Council does not approve or reject building applications.

In Matsapha the Public Works Committee gives the final approval stamp to the applicant's plans; however it is MHUD that recommends approval. It is unclear why the additional step of having the committee meet to rubber-stamp MHUD's decision is necessary.

It is striking that Manzini no longer consults two important utilities providers on building permit application. While it is understandable that Manzini felt pressure to meet the legislation's six-week approval guarantee, the city council should not completely cut out an important oversight step.

Lack of consistency in permitting and inspection requirements. Each municipality outlined permitting and building inspection requirements. However, private sector

representatives note inconsistency in the process. This is particularly true in Matsapha, where sources indicate that building inspections are rare or non-existent, especially if the board knows that a professional engineer and architect are involved in the project. Regardless, the investor is still required to pay an inspection fee. Large projects require a final inspection by the fire department, but sources note that smaller projects typically do not require this final inspection. In fact, Matsapha does not have a building inspector on staff; instead, the board hires a building inspector to complete inspections as needed. The Matsapha Town Board explained that this individual is a technician rather than a building engineer. Private sector contacts explained that government projects do not require building permits. In Mbabane the investor's project undergoes a total of three inspections – the final inspection includes two different inspectors. Manzini completes six inspections, including the final inspection, for each project. The Matsapha Town Board theoretically completes four inspections on each project, but private sector sources notes that inspections rarely take place.

In rural areas the permitting process is apparently nearly non-existent. The project architect does not submit drawings to any authority. Instead he submits site plans to the Swaziland Environmental Authority only.

One investor noted that in the area where he is located there was no local authority until recently. He built without permits until the town board was established. Reviews remain minimal, however, as there is not a well defined or practiced process for evaluating building plans. The investor typically obtains immediate approval by providing a project sketch rather than the detailed drawing required in areas like Mbabane. Authorities inspect upon project completion. While lack of government oversight eases investors' compliance and approval requirements, it does not bode well for public safety and desired building standardization.

Lack of consistency in permit and inspection fees. The building permit and inspection fees that local authorities charge differ across municipalities. In Mbabane the permit fee is a flat 10% of total project construction costs, plus an administrative charge of US \$1.75 (E10). In Manzini, on the other hand, permit fees (called the Scrutiny Fee) are much lower. The administrative charge is US \$1.75 (E10) as in Mbabane; however, the city council charges US \$0.26 (E1.5) per each US \$175.44 (E1,000) worth of construction costs up to US \$3,509 (E20,000). For any construction costs over US \$3,509 (E20,000) the council charges a lower rate of US \$0.26 (E0.18) per each US \$175.44 (E1,000) in costs. For a project that costs US \$6,000, for instance, Manzini would charge a Scrutiny fee of US \$7.76 plus an administrative fee of US \$1.75. In Mbabane the building permit would cost US \$600, calculated as a flat 10% of total construction costs. That is a significant difference. The Matsapha Town Board noted that the Scrutiny Fee is a percentage of construction cost, but did not know the calculation.

There is a similar difference for inspection fees across municipalities. In Mbabane inspection fees – for a total of three inspections – are also calculated as a percentage of project construction costs. Mbabane charges US \$17.54 (E100) for the first US \$17,544 (100,000) of construction costs and US \$0.10 (E0.57) for each additional US \$175.44 (E1,000) in construction costs. Manzini and Matsapha each charge a flat fee per inspection: Manzini charges US \$17.54 (E100) for each of six inspections and Matsapha charges approximately US \$52.63 (E300) for each of four inspections.

Environmental compliance not consistently sought. Neither Mbabane nor Matsapha mentioned that the applicant must submit proof of environmental compliance. Manzini

requires an applicant to submit an SEA approval with his application package if SEA has deemed his a category 2 or 3 project.⁵⁴

Building industry under-regulated. Beyond the differences in permitting and inspection processes across municipalities and rural areas noted above, Swaziland's building industry is not sufficiently regulated. The country has no legislation governing the registration of individuals involved in the building sector, including architects, engineers, and surveyors. Swaziland does have a relevant association – the Swazi Association of Architects, Engineers, and Surveyors - but the association accepts members based on their registration with a recognized professional organization in another country, without government guidelines for evaluating other countries' registration processes. Without established criteria for building professionals Swaziland risks significant public safety problems. Since the government itself does not license or regulate building professionals sources note that unqualified individuals are sometimes responsible for projects. The government has drafted a building professional registration act but it has not yet been enacted. While it may be unfeasible for a country of Swaziland's size to establish its own examination system for building professionals the government should develop criteria for assessing qualifications from other countries. Other countries in the region could serve as an appropriate model in developing such criteria.

Recommendations

Achieve consistent capacity across all municipalities. Similar building approval processes across all municipalities is desirable for a small country like Swaziland. The government should devote the necessary training and resources to improve local capacity, especially in municipalities – such as Matsapha – where the government is targeting FDI to locate.

Automate process to extent possible. All municipalities and the MHUD should make building permit applications available on the internet. While neither Manzini nor Matsapha have websites yet, the MHUD could host a page with application material. The MHUD does have a page with information on the building application process, but the process details only those steps applicable when MHUD is involved in approvals. The Ministry should update the page and create a link to an electronic copy of the application Form A. Allowing investors to download the form over the internet would not only reduce printing and publications costs for government but also improve the accessibility of the process. In addition, movement of application documents around departments, to council members, and to and from MHUD in the case of Matsapha, should be done electronically.

Decrease approval time. Swaziland's Building Act 1968 requires relevant authorities to grant or refuse a building permit within six weeks of application. If the authority does not respond within this timeframe the applicant may proceed "with the proposed operations in the case of demolition and, in the case of construction, proceed therewith to foundation level..."⁵⁵ Mbabane, which has an entirely internal approval process, is much more successful than Manzini and Matsapha in meeting this deadline. Manzini has eliminated SEB and SWSC from consultation in an attempt to maintain the six week deadline. Instead, as noted above, local authorities should automate processes, especially the transfer of documents to and from MHUD in the case of Matsapha and between the Building Inspectorate Division and the Public Works, Planning, and Community Development Committee, and council members. In the medium term local authorities should emulate Mbabane's site development process, which allows internal technical staff to approve

⁵⁴ Category 2 projects have some environmental impact; Category 3 projects have significant environmental impact.

⁵⁵ Government of Swaziland, The Building Act, 1968, p. 10.

building permit applications based on consultations with relevant agencies (SEB, SWSC, fire services) and a town planning scheme. Committee and council approval should be eliminated.

In general once a month approval meetings are not the most efficient method for approving investor's building applications. All municipalities could decrease approval times by implementing a rolling application approval process.

Box 4.1: Experience in United States with Streamlining Site Development Permit Procedures

In recent years, many local administrations in the United States introduced measures to streamline the permitting process. Some of these measures include: installing a business assistance line; introducing compliance assistance service; computerization of the permit process; customer service surveying; creating an expedited process for small projects (such as interior modifications to buildings with some restrictions); fast tracking permitting processes; faxing applications; guaranteed permit issuance times for small and medium projects; offering permit assistance; and creating standardized application and supplemental information forms. Many municipalities accept permit applications over the Internet. Information such as building permit fees, permitting information, contractor requirements, inspection information, building codes and ordinances, contact information, and permit forms are available for download.

In addition, many municipalities have formed databases for industrial and commercial parcels available and made them accessible over the Internet. Thus, investors can quickly review the available parcels and see which one meets their requirements. The databases contain very detailed information such as parcel numbers, zoning information, address at parcel, owner's name and address, last title change, development standards for the property, and size of the property.

In order to facilitate the permit process, some municipalities in the U.S. have created "Permit Centers" where over-the-counter plan review is generally available. Because all community development services such as the issuance of planning, engineering, and building permits are located on the same floor, investors have to make only one stop to get their questions answered about land use, streets, sewers, building code requirements, and business licenses. Every project is assigned a log number that will remain the permanent record number. If the investor cites that log number whenever he has questions about his application or permit, the civil servants can be more efficient in helping the investor.

After the investor receives his permit and begins construction, he or his contractor will need to call for inspections. When the investor is ready for an inspection, he needs to call an inspection request line where he receives instructions as to how to place his request.

Source: Adapted from Foreign Investment Advisory Service, *Turkey Administrative Barriers Study*, page 104.

Develop information brochures and websites for the site development process. Again, Mbabane serves as an example of the way other local authorities should develop and publish information. Mbabane City Council has a good website (www.mbabane.org.sz) where there are comprehensive guidelines regarding the building permit application process. There is even a FAQ section, which includes answers to many interesting and relevant questions. There is reference to a schedule of fees, but there is no document available via the link. This should be corrected. The guidelines should also be made considerably more readable. Other local authorities should develop functional websites with links to application forms and process guidelines. In addition, local authorities should print brochures on site development processes, including fees and expected time delays and make available them available at their offices.

Standardize site development process across municipalities. The MHUD, which still controls Matsapha's site development process to a large extent, should standardize building permit and inspection procedures across all local authorities. Investors expect standardized permitting and inspection processes; moreover, Matsapha's lack of inspections and other areas lack of building oversight are disadvantageous for public safety. While it is understandable that Matsapha's process differs from Mbabane and Manzini as the former builds up internal capacity (hiring adequate town planners for instance), there is little sense for process differences between Manzini and Mbabane.

Establish consistent permitting and inspection requirements. As MHUD is harmonizing building permit approval processes across all municipalities the ministry should harmonize requirements for building permits and inspections. The government should require and enforce building permits in all areas of the country, urban and rural alike. Likewise, inspection requirements, including inspection stages, should be the same across the country. Manzini should not have six inspections while Mbabane has three. The Standard Building Regulations lay out three inspection stages: prior to commencing the foundation; prior to constructing anything above the foundation; and prior to commencing to backfill excavations made for storm water drainage or sewerage work and before enclosing any such work.⁵⁶ Clearly these regulations are outdated; the government should revise them and establish consistent permitting and inspection requirements in all areas of the country.

Establish consistent permit and inspection fees. Permit and inspection fees should be the same across all municipalities. The Standard Building Regulations 1969 indicate lay out fees as follows: US \$0.26 per US \$175.44 of building value up to US \$3,508.77 and US \$0.18 for each additional US \$175.44 of building value. The administrative fee is noted as US \$3.51.⁵⁷ Local authorities are currently charging permit fees based on building costs as defined by the architect/contractor.⁵⁸ Since these regulations date from 1969 they should be updated to reflect reasonable fees for 2005. MHUD should update the regulations with new fees and develop a uniform fee system across municipalities.

Standardize environmental compliance requirements. If an environmental compliance stamp is required from SEA for the building permit application, as it should be, MHUD should modify the regulations to make this a requirement. This is explored in greater detail in the Environmental Compliance section below.

Enact legislation to effectively regulate building industry. As Swaziland continues to develop it is imperative that the government develop and implement a means for regulating the building industry. Beyond harmonizing and enforcing consistent permitting and inspection requirements the government must develop legislation to govern the registration

⁵⁶ Government of Swaziland Standard Building Regulations 1969, p. 18.

⁵⁷ Government of Swaziland Standard Building Regulations 1969, p. 16.

⁵⁸ The regulations stipulate that a certified engineer will value the building.

of building professionals: architects, engineers, surveyors, and contractors. The government should work with the Swaziland Association of Architect, Engineers, and Surveyors to establish and regulate industry standards.

IV. Utilities Connection

A. Water Supply

Swaziland Water Services Corporation (SWSC) provides water and sewerage services to the country. The government, which maintains ownership over the corporation, established SWSC in 1992. SWSC's water supply capacity depends on the supplying city water treatment plant capacity. In Matsapha, for example, the corporation can provide 35 mega liters per day; in Nhlanguano, however, SWSC can only provide 2 mega liters per day. While SWSC's maximum pumping capacity is in Matsapha – 400 liters/second – it rarely pumps at this level. The corporation typically pumps at a maximum level of 260 liters/second, which is equivalent to 22 mega liters per day.

The SWSC has a pamphlet that explains domestic and industrial application procedures, notes the corporation's allocation of service, termination of service, and disconnection for non-payment procedures. The pamphlet includes contact details for all SWSC headquarters, the corporation's revenue offices, and emergency number for operations and maintenance. The Corporation has a website, but the application form is not yet available on the site. The website contains considerable information including the tariff structure. The applicant can get an application form at the reception desk of any of the corporation's four regional offices or any of its six revenue offices throughout the country.

The corporation estimates that it rejects approximately 10% of residential applicants because of the distance from existing service. The corporation rejects 1% of non-residential users for the same reason. Most non-residential applicants are located within SWSC's service areas and connection is established.

SWSC is governed by the following legislation:

- The Water Services Corporation Act, 1992
- The Public Enterprises (Control and Monitoring) Act, 1989

Unlike the other utilities companies, SWSC is also monitored via a "Performance Contract between Government of Swaziland and SWSC."

Investors must complete the following process steps to obtain a water connection.

Step 1) Applicant completes and submits application. The applicant completes the application form, which covers both residential service and non-residential service. The application for non-residential service requires the following information:

- Business project description
- Company owners
- Power of attorney

The applicant submits the application form to a revenue or regional office and pays a Commitment Fee, which is essentially a refundable deposit. The Commitment Fee is US \$171.06 for non-residential users. The corporation's revenue office immediately issues a receipt for payment of Commitment Fee.

The corporation's survey department reviews the application. The department locates the applicant's plot and reviews its proximity to existing service. If the applicant's plot is within 15 meters of existing service the established tariff schedule applies. If the applicant's plot falls outside of the 15 meter limit but under 1 km there are additional costs for water service connection: the applicant must pay any construction costs to connect his plot to existing water lines. If the applicant's plot is further than 1 km from existing water lines the applicant will pay for the required construction for the connection, subject to the corporation confirming the availability of the service extension to the required distance. The water corporation does not have a strict limit; however, once the applicant's plot gets about 1 km from existing service the connection the corporation notes that costs are typically too high for the investors.⁵⁹

During the review stage if the applicant's plot is more than 15 meters from existing service the corporation evaluates the type of project the applicant has proposed. The corporation assesses the applicant's ability to pay and the potential demand that the applicant's project might generate for the water corporation in the future. The SWSC also considers its own capacity to provide sufficient water resources to the applicant's project. The corporation's management evaluates each project's merits and water demand and makes a decision to approve or reject the application.

This review process takes approximately one to two weeks depending on the number of other applications under review.

SWSC calls the applicant when the review is complete. The corporation indicates the connection cost to the applicant.

Step 2) Applicant pays connection fees. The applicant visits one of the corporation's revenue offices to pay the Connection Fee. For non-residential service within 15 meters of existing service the connection fee is US \$294.21 (E1,677), which includes the refundable deposit of US \$171.06 (E975). The initial refundable deposit (the Commitment Fee) is deducted from the quoted balance to leave the actual outstanding balance. If the applicant's plot is over 15 m from existing service the applicant pays the entire construction costs upfront, minus the Commitment Fee already paid, at the department's revenue office.

Once the applicant has paid the full Connection Fee or the construction costs SWSC commences installation and/or connection. Applicants whose plots are within 15 meters of existing service are connected within one week. Connection time for applicants whose plots are further than 15 meters from existing service depends on the amount of construction required based on distance and terrain.

SWSC bills clients monthly via the postal system. Clients make payments by sending in a check to the main office or by visiting one of the corporation's revenue offices.

B. Power Supply

The Swaziland Electricity Board (SEB), a government owned company, has a monopoly on power generation and distribution in the country. SEB has a load capacity of 172 megawatts

⁵⁹ In 2001 the SWSC approved and constructed a water connection (at the applicant's cost) for a textile factory, Zheng Yong, located more than 1 km from existing service. The factory is located near Nhlngano, but it is not within the designated industrial area. Since the applicant's plot is near a water treatment plant the corporation could fairly easily connect the factory. Moreover, Zheng Yong worked with the SWSC to devise a workable water strategy - the company agreed to construct its own treatment plant to recycle water, drilled boreholes for additional water resources, and altered its operations to decrease the amount of washing required at the Swaziland operations.

and a system transmission capacity of 700 megawatts. The company is currently upgrading systems to improve power quality and reliability at the 132kV level, and especially within the Matsapha Industrial Estate.

SEB's generation capacity is 50 megawatts, consisting of hydropower and diesel generators. These sources provide 20% of the Swaziland's energy requirements. SWSC imports the balance of the country's energy needs from South Africa. SEB uses its own power generation during peak periods when imported power is most expensive.

The government is considering opening the sector to competition and establishing an electricity regulator. In 1998 the government began to regulate the water sector, beginning with the commercialization of SEB. The board restructured and focused to a greater extent on customer service and financial soundness. The government has drafted legislation establishing an Electricity Regulator, but has not yet implemented it.

SWSC is governed by the following legislation:

- The Swaziland Electricity Act, 1963
- The Public Enterprises (Control and Monitoring) Act, 1989

The process for connecting to power services in Swaziland includes the following steps:

Step 1) Investor completes and submits application. The applicant obtains an application form from SEB headquarters in Mbabane or one of the other nine SEB depots in the country. SEB has two types of application: Form A is for residential service and Form B is for business service, which includes commercial and industrial users.

Form A requests the following information:

- Customer ID
- Marital status (spouse's name, address, telephone contacts, employer's address and telephone number)
- Marital contract
- Language
- Name, Initials, Address
- Description of premises
- Work and home telephone numbers and fax number
- Parent customer ID and address
- Three contact referees, their home and work addresses and home and work telephone number numbers
- Employer name and address
- Previous premises address; and SEB account number
- Length of time at previous premises and whether applicant rented or owned

Form B requests the following information:

- Designator's ID number
- License number and expiration date
- Name, address, telephone and fax number
- Company name, designation, and address
- Partner/Directors names, titles, home address, home and business telephone numbers
- Bank name, branch, account name and account number

There is another form, also labeled Form B that is for Notification of New Electrical Installation. The applicant building new premises completes this form, giving notice that he is proposing to have an electrical installation erected/extended to a particular premises and that he will require a supply of electricity in due course. The form requires the contractor's name (in fact, it is likely the contractor who completes the form) and indication of what the proposed installation consists of: motors, cookers, water heaters, lighting points, and socket outlets.

Residential applicants who require no installation pay a US \$5.26 fee at the time of application and power is switched on following a site visit by an SEB technician. SEB indicated that residential site visits assist the company in maintaining accurate load projections. If no installation construction is required, as is the case in most urban residential areas, residential service is typically activated within several days of application. SEB's computerized payment and project list system enables an immediate electronic payment record. The electronic record is available to the relevant supplying depot immediately following payment.

For business applicants the process is typically more involved. SEB reviews the business application to determine the size of the line and the load amount required. The application review process includes a site visit by an SEB technician. The technician completes the site visit within one week of application filing. If the project is large, such as a hotel or a large industrial processing activity an SEB engineer – rather than a technician – will carry out the site visit and complete detailed measurements.

Following application review SEB calculates the installation costs required to supply power to the applicant. If the applicant is taking over a factory building that has already been connected to the power system there might be additional installation costs depending on the type of activity the applicant will undertake in the factory. Factory shells in the country's industrial estates and industrial sites are not all directly connected to the power supply unless they have been previously inhabited. In the Matsapha Industrial Estate, however, all factory shells are electrified. The estate has existing 11kV lines within close reach. When an applicant in Matsapha Industrial Estate requires power SEB merely breaks into the main line and connects it to the plot after the due process of application and review has been made. SEB typically completes this process within several days.

SEB sends a letter to the applicant indicating the installation processes required and the cost to the applicant of these processes. SEB indicates, for instance, the size of the transformer, if any, required to supply power, the required line extension, and whether or not a substation must be constructed. SEB also indicates the total cost of the installation processes, all of which are to be borne by the applicant, and the time required to complete the work. The letter includes the name and telephone contacts of an SEB representative who can respond to the applicant's questions. The letter indicates that the applicant must pay SEB 40% of the total installation cost prior to construction commencing. In the letter, SEB outlines a payment schedule for the remaining 60% of installation costs. Costs vary considerably depending on project location and power needs. In the case of applicants who require construction to connect to the power grid, SEB may take up to a month to provide power service. During particularly busy installation periods SEB engages contractors to assist with the additional demand.

Step 2) Investor makes payment. The applicant returns to an SEB office to pay 40% of the cost of construction to supply power. Once the applicant pays the deposit a project order is created in SEB's electronic system. SEB subsequently commences required construction. The applicant can phone the relevant substation to track construction progress. SEB can supply a new line in a rural area in approximately three weeks depending on workload. In many cases SEB works with the government as it is creating factory shells for investors in

rural areas: Sometimes SEB must establish temporary power supply to enable factory shell construction. Typically by the time the factory shell is completed SEB will have established full electrical supply to the factory.

Table 4.1: Swaziland Power Tariffs

Type	Facility Charge E/Month	Energy Charge c/kWh	Demand Charge E/kVA	Minimum Charge E/Month
S1 Domestic	\$1.38 (E7.86)	\$7.28 (E41.47)	N/A	\$5.46 (E31.12)
S2 General Purposes	\$1.38 (E7.86)	\$9.68 (E55.16)	N/A	\$18.81 (E107.21)
S3 Small Commercial	\$1.38 (E7.86)	\$9.68 (E55.16)	N/A	\$18.81 (E107.21)
S4 Off-Peak Water Heating	\$1.38 (E7.86)	\$5.16 (E29.43)	N/A	\$9.48 (E54.02)
K5 Large Commercial and Industrial	\$1.38 (E7.86)	\$3.74 (E21.30)	\$11.89 (E67.79)	Described in Tariff Schedules
K6 Irrigation	\$1.38 (E7.86)	\$3.74 (E21.30)	\$11.89 (E67.79)	Described in Tariff Schedules

C. Telecommunications

Swazi Telecom is governed by the following legislation:

- Posts and Telecommunications Act, 1983
- Public Telecommunications Regulations, 1993
- Posts and Telecommunications Corporation (Staff) Regulations, 1990
- The Public Enterprises (Control and Monitoring) Act, 1989

Swazi Telecom is a division of the Swaziland Posts and Telecommunications Corporation, which has a monopoly on the provision of telephone services within the country. Swazi Telecom provides both local and long distance service to residential and business users. Swazi Telecom also operates an Internet Service Provider (ISP), Swazi.net, which is one of six local ISPs. Swazi Telecoms website is www.sptc.co.sz.

The process for establishing a telephone connection in Swaziland includes the following steps. Business and residential applicants complete the same process steps and the same application form; however, business applicants provide additional information on the application form.

Step 1) Investor completes and submits application. Both residential and business users must apply for a telephone connection at one of Swazi Telecom's six telecenters in the country, including two each in Mbabane and Manzini or one of 36 post offices in the country. Connection applications are only available in hard copy at a telecenter or post office. The applicant fills out the form and either leaves it at one of the post offices or telecenters or mails it to the same.

Business applicants provide the following information in the application:

- Director or partner's names and postal addresses
- Original Certificate of Incorporation (copy retained in file)
- Copy of Form J (document used to open a business bank account) and company letterheads
- Copy of Partnership Letterhead
- Current trading license
- Previous business telephone numbers
- Name of bankers

- Type of account held
- Copies of graded tax certificate
- Current trading certificate
- Passport copy
- One passport size photo

Sole Proprietors must submit the following in addition to the above:

- Two local references and their contact numbers and the capacity in which the investor knows the referees
- Name of spouse and his/her employer's name
- Work contact number for spouse

Swazi applicants furnish the following information:

- Full names and address of two references know for more than five years; they must be relatives; telephone numbers; and in what capacity the investor knows the references
- Two references from place of employment; telephone numbers; position held
- Particulars of immediate family, including spouse name, occupation, and employer; spouse employer telephone number

Non-Swazi applicants for personal and business phone must furnish the following information:

- Two local references, telephone number, and capacity known
- One reference from place of employment, telephone number, position held
- Particulars of immediate family: passport/s, work permits
- One passport size photo

The business applicant must stamp his application with his company stamp. When the investor returns his application to a telecenter or post office the clerk will immediately check the form and indicate to the applicant whether or not the application is complete. The applicant makes no payment for the application form or for the application process.

Swazi Telecom reviews the application. For business applicants or a new residence this typically involves sending out a surveying team to determine if any additional lines must be laid to connect the applicant to the telecom network. If construction is required Swazi Telecom sends a price quotation to the applicant. The quotation includes any installation costs in addition to the required service deposit. The quotation is sent via the postal service.

Step 2) Applicant pays fees. Upon receipt of the quotation the applicant returns to a telecenter or post office to remit the entire installation cost for line service and the service deposit. Applicants who require no installation construction will remit only a service deposit at this time. Business service requires a deposit of US \$64.91. If the applicant is a Swazi or a foreigner who has been in the country a long time he can usually negotiate installation payment over a period of time. There are no set criteria for negotiating the payment schedule, and the investor must himself request a payment schedule. Swazi Telecom prioritizes service establishment for business applicants, including site survey and installation.

Once the applicant completes payment the telecenter or post office issues the applicant with a payment receipt for his records. The telecenters and post offices communicate internally via electronic records that the payment has been made and either installation can commence or service can be activated.

Swazi Telecom offers copper wire service and wireless service to customers. In urban areas Swazi Telecom typically completes a quotation within two business days of receiving an application. Swazi Telecom takes approximately five business days to connect wireless service to applicants from the time of deposit and installation payment. In urban areas Swazi Telecom takes approximately two weeks after installation and service deposit payment to connect business applicants to the copper service network. If the applicant has established a business that is outside of Swazi Telecom's existing network installation requirements will increase the time delay.

Swazi Telecom bills customers monthly via the postal service. Customers make payments at any of the country's six telecenters or 36 post offices. Swazi Telecom's financial department is currently organizing an electronic transfer system so customers do not have to make a physical payment to one of the payment posts.

Swazi Telecom does reject applications if the applicant is deemed to be financially unstable. This typically occurs if the applicant cannot show proof of a bank account, for instance. Swazi Telecom rejects less than 1% of applications.

Swazi Telecom anticipates offering DSL service by June of 2005.

Table 4.2: Swazi Telecom Telephone Service Rates

	Ordinary Telephone (Copper Wire)		Wireless Telephone		Prepaid Telephone Service	
	Business	Residential	Business	Residential	Business	Residential
Installation	\$62.46 (E356)	\$37.38 (E213)	\$62.46 (E356)	\$37.38 (E213)	\$60.62 (E346)	\$36.29 (E207)
Deposit	\$64.91 (E370)	\$15.79 (E90)	\$64.91 (E370)	\$15.79 (E90)		
Rental/Levy (monthly)	\$7.46 (E43)	\$4.12 (E23)	\$7.46 (E43)	\$4.12 (E23)	\$1.01 (E5.8)	\$1.01 (E5.8)
Internal Extension	\$14.32 (E82)	\$14.32 (E82)	\$14.32 (E82)	\$14.32 (E82)	\$13.91 (E79)	\$13.91 (E79)
External Extension	\$18.85 (E107)	\$18.85 (E107)	\$18.85 (E107)	\$18.85 (E107)	\$18.31 (E104)	\$18.31 (E104)
Additional Socket	\$14.32 (E82)	\$14.32 (E82)	\$14.32 (E82)	\$14.32 (E82)	\$13.91 (E79)	\$13.91 (E79)
Telephone Instrument (optional)	\$17.83 (E102)	\$17.83 (E102)	\$17.83 (E102)	\$17.83 (E102)	\$36.74 (E209)	\$36.74 (E209)

D. Mobile Telecommunications

Swazi MTN provides mobile telephone service in Swaziland. MTN, a joint venture with the Swaziland Government, commenced operations in the country in November 1998. The Government owns 51%; Swazi investors own 19%; and managing partner, MTN of South Africa, owns 30%. Swazi MTN is the sole mobile service provider in the country, protected by a government guaranteed ten year monopoly.

Twelve% of the country's population uses MTN's services. In contrast, by MTN's estimate, fixed line users represent only 4% of the population. MTN has aggressively rolled out service throughout the country, increasing mobile users from an initial 30,000 to a current 140,000 clients. MTN's networks service 76% of the country.

MTN's largest client base is personal, rather than corporate, users. Business clients represent a mere 2-3% of the company's total customer base. The majority of clients – 97% – subscribe using MTN's prepaid package. The average cost per minute for Swazi MTN users is US \$0.26.

MTN must connect international mobile calls through Swazi Telecom, adding to the expense. The Ministry of Communications regulates MTN's rates. Swazi MTN is not governed by the Telecommunications Act, but the provider's license outlines its requirements, including a mandate to expand service to rural areas and increase service quality. The company reports regularly to government on its call drop rate and connection rate.

Business applicants call MTN's main headquarters in Mbabane to request service. An MTN account manager visits the applicant's business premises within one or two days. The account manager brings the prospective client an application. MTN's business customer application, called the Subscriber Agreement Business Customer, requires the following information from the applicant:

- Customer details, including if the applicant is an existing MTN client
- Business details, including name and type of business; name of directors/partners and their graded tax numbers; the company accountant and contact details; the business registration number; and the GST number
- Applicant contact details of business, including landlord's name and telephone number
- Banking and debit order details
- Trade references from three business references and their MTN account numbers and credit limits

Once the client submits his application MTN checks the applicant's credit history. Applicants must have an active bank account in Swaziland. If MTN approves the application the client will have service in one to two days. Business clients must sign a minimum two year contract

MTN bills clients monthly via the postal system. Clients can establish a debit order from their bank accounts or they can visit one of MTN's offices to make payment. MTN has an office in Mbabane, and service centers in Manzini and six other locations in the country. The company is currently testing web billing and payment systems, but these are not yet operational.

Swazi MTN has a website: www.mtn.co.sz. The website describes MTN's various service plans and details the tariff structure. The website also has a coverage map to indicate which parts of the country are currently covered by MTN service.

E. Analysis

Numerous investors note that utilities connection, cost, and reliability represent a significant burden on business operations. Building professionals pointed that utility connections are the single most significant hold up in the design and construction process. Parts of the country have no utilities connections and therefore locating investors must pay for all necessary installations. The developer/investor pays for these connections. In the case of industrial users power connections are particularly troublesome because even in areas where power lines exist electrical output is insufficient for investor needs. Even industrial estates are significantly under-sourced for power, and connection delays can be long. Demand for power in factory shells is typically greater than original supply. Industrial estates appear better sourced for water and solid waste; however, the country's biggest industrial

site, Matsapha, handles only normal waste. Investors with other types of waste must make their own disposal arrangements, sometimes at considerable expense.⁶⁰

Utilities companies are generally much better than government ministries and departments in providing written information on their procedures. SWSC, SEB, Swazi Telecom, and MTN all have operational websites, which offer varying degrees of information. SEB, for instance, makes an informational pamphlet, which includes a tariff summary, available at all SEB office. SEB is particularly good at providing contact details for particular complaints. SWSC also provides a brochure that gives very basic information on the application procedure; SWSC's website provides detailed tariff information. Swazi Telecom and MTN both disperse informational packets to applications, including application forms; their websites provide tariff information.

All of Swaziland's utilities are monopoly parastatal organizations. Investors frequently suggested that government should privatize these industries and establish independent regulatory bodies. Most businesses advocate an end to monopoly in the telecom sector and mobile service in particular.

Issues

Power service insufficient and unreliable for industrial users. SEB admits that it has old infrastructure in urban areas. A number of investors noted that power supply is irregular and sometimes insufficient. Power outages are not uncommon, and many companies apparently have backup generators, which they note can be expensive. Some investors also cited power surges as a problem, depending on the business activity. One investor explained that power outages are particularly troublesome for his business since cost is determined by both actual consumption and maximum demand: periodic blackouts require machinery restarts and the company's machines use considerably more power in the start-up phase than they do once they have been running for some time. Consumption and maximum demand determine the cost of power in Swaziland, which is a problem because with the periodic blackouts the company is often restarting its machines. In the textile and apparel business, the machines use a lot of power to startup and gradually use less and less power as they continue running. Therefore, the more power goes out the greater the maximum demand as the usage spikes each time all the machines are started. Since usage spikes with machine startup the company pays a higher power bill than it believes it ought to because of service unreliability.

To be fair, SEB faces some particular challenges in providing reliable power services. Swaziland's mountainous geography and climatic conditions generate frequent electrical storms that can knock out power services.

Application processes not sufficiently automated. All utilities connection application processes should be automated to the extent possible. Unnecessary connection delays result when investors have to complete an additional step to visit the utilities office for an application form.

Excessive delay in obtaining SEB connection. While SEB indicates that connections that do not require any installation processes are typically completed in one to two days, investors note average delays of two weeks. This is a lengthy delay for application approval and simple connections.

Telecommunications costs are expensive and lack modern internet service. Most investors noted that both fixed line and mobile telephone charges are high. Swazi Telecom

⁶⁰ This report does not include an investigation of waste disposal services.

does not offer DSL service, although it plans to by June 2005. Currently internet users, and internet providers, have access to dial up or ISDN service only. Private sector sources note that ISDN lines remain expensive. In addition, the mobile telephone provider does not offer wireless internet service via mobile phones.

Sources suggested that the telecommunications sector be opened to competition, particularly in the mobile services sector. MTN has a ten year government guaranteed monopoly that will expire in 2008 unless the government renews it.

Excessive fixed line connection delays. Numerous private sector sources, including building professionals, indicate that Swazi Telecom connection times are lengthy, especially in cases that require line installation. Some investors explained that they waited months for a connection; one said his company waited eighteen months for a land line connection. This is clearly too long for investors to wait for a primary form of business communication.

Swazi Telecom application form confusing and requests unnecessary information. Swazi Telecom provides a single application form for both residential and business users. It is not entirely clear what information a business user must provide and therefore an investor must ask someone at the company to explain this to him or her. Moreover, the application form requests unnecessary details from business applicants. Sole traders must provide the name of his or her spouse and his or her employer's name and work contact information. Swazi applicants must furnish two references they have known for more than five years; these references must be relatives. Swazi applicants must also provide two workplace references and family details. Non-Swazi applicants must provide two local references and their contact details, one workplace reference, and family details including passports and work permits. Several of these submission requirements are unnecessary, as they do not vitally inform Swazi Telecom's decision to grant an applicant phone service and create extra work and hassle for the investor. Moreover, it is unclear what the difference is between a trading license and a trading certificate.

SEB water supply might be insufficient in the case of increasing demand. Building professionals note that some investors with large water requirements have recently had difficulty securing needed supplies. This could be problematic depending on the type of investment Swaziland attracts in the coming years. Other investors explain that they operate on their own boreholes to guarantee supply. Some businesses have considered using recycled water although they would have to pay to construct recycling facilities. Building professionals note that some investors have approached government to fund such recycling projects in the country's industrial sites that are unable to meet investor's water demand.

Recommendations

Upgrade power infrastructure especially in industrial areas. SEB has a long term upgrading plan to improve system quality and reliability. The company has completed Phase I and anticipates Phase II completion in 2006. SEB is focusing on Matsapha Industrial Estate in particular. The government should continue to prioritize system improvements in the power sector and might consider establishing a performance contract with SEB similar to the one that SWSC has. The performance contract measures SWSC's ability to meet its service requirements.

Automate application processes. All utilities providers should automate their processes to the extent possible. All should definitely make application forms available on their websites.

Decrease electrical connection wait time. If an applicant is located on an existing electrical line and no construction is required to complete connection SEB should complete

this task in a matter of days not weeks. Government should establish a performance contract with SEB that holds the company to firm connection delays.

Open telecommunications sector to competition. The government should move to establish an independent telecommunications regulatory body. The government should also consider opening the sector to competition, and in particular the mobile service sector once MTN's ten year guaranteed monopoly period expires in 2008. International best practice demonstrates that increased competition for vital services like telecommunications tends to lower prices, increase service options, and, ultimately, make an economy more competitive. The government should also create legislation that enables the country's private ISP's to provide wireless internet services. Swazi Telecom should upgrade infrastructure and service plans to allow for DSL internet connectivity.

Modify application requirements and establish performance contract. It is unclear why any investor would wait months for a telephone connection, especially since Swazi Telecom now has wireless capacity. Checking the numerous references and contact details required of applicants might contribute to approval delays. There is no reason why sole proprietors should provide spouse name and spouse employer details unless the spouse signs surety on the service. The same is true of the family and workplace references that all Swazi applicants must provide. Swazi Telecom should also cease requesting that non-Swazi applicants provide family details such as work permits. Swazi Telecom should remove these requirements. The government should also establish a performance contract with Swazi Telecom whereby the company reports on its connection rate and time delays.

Simplify Swazi Telecom application form. The Swazi Telecom forms should be streamlined so that unnecessary information and references are no longer required. Because the references have no legal liability (no should they) for unpaid telephone bills, it is unclear what value collecting references adds. Additionally, the form should be reformulated to clarify the information required for specific user types like businesses and residential users.

Encourage development of water recycling facilities. Swaziland should encourage investors who wish to utilize recycled water resources by sharing recycling facilities construction costs – particularly in areas where they would serve the greatest number of operations.

V. Environmental Compliance

The Swaziland Environmental Authority is responsible for environmental monitoring and compliance within the country. The agency is governed by the Environmental Management Act of 2002 to regulate proposed and existing development in Swaziland from an environmental perspective. SEA is an agency located within the Ministry of Tourism, Environment, and Communications. SEA is governed by the following acts and regulations:

- The Swaziland Environment Authority Act 1992
- Environmental Audit and Assessment Review Regulations 2000
- The Waste Regulations 2000
- The Air Pollution Regulations 2001
- The Water Pollution Regulations 2001
- The Environmental Management Act 2002
- The Ozone Depleting Substances Regulations 2003

There are three categories of projects under the environmental compliance process. All investors must submit a formal letter to the agency, regardless of the type of project, prior to

commencing construction and the agency will determine which category the project falls into. The agency has established the following categories:

- 1) Insignificant Environmental Problems - no major environmental impact; impacts can easily be mitigated.
- 2) Some environmental impacts that are known and can be easily mitigated - The applicant must complete an initial environmental assessment.
- 3) Significant environmental impact - The applicant must complete a full environmental assessment. Examples of these projects include road construction, major irrigation projects, dam construction, mining, and big industries.

Step1) Applicant submits project brief. The investor – typically through his architect or contractor – submits a formal letter to SEA outlining the proposed project. SEA responds in writing indicating the next step for the investors. If the project is category 1 there is no need for further steps. Category 2 and 3, however, require additional steps.

SEA determines project category within a week of receiving investor's letter. There is no cost for SEA to complete this initial review.

A. Category 2 Projects

Step 2) Applicant completes Initial Environmental Evaluation. If the applicant has a category project 2 he completes an Initial Environmental Evaluation and submits it to SEA for review. SEA reviews the Initial Environmental Evaluation and writes to the investor indicating any discrepancies or additional questions. If SEA approves the project it issues the applicant an Environmental Compliance Certificate. This certificate is valid for three years. Once the applicant has the Environmental Compliance Certificate he may commence construction. The Environmental Compliance Certificate contains both general and specific conditions that must be met during project implementation. SEA notes that it typically reviews category 2 projects within a month.

Typically the investor who has a category 2 or 3 project is required to submit quarterly environmental compliance reports to SEA. SEA also completes periodic site visits to review compliance. Inspection frequency depends on project activity and typically occurs once a month to once every six months.

Once the applicant submits the Initial Environmental Evaluation SEA responds within two weeks with approval or additional questions/comments. The applicant pays US \$263.16 (E1,500) fee for the Environmental Compliance Certificate. He or she pays this fee upon submitting the Initial Environmental Assessment to SEA.

B. Category 3 Projects

Step 2) Applicant completes Environmental Impact Assessment. After being deemed a category 3 project by SEA the applicant completes a full environmental compliance report, or Environmental Impact Assessment (EIA). This requires a number of steps:

- a. **The applicant completes a scoping exercise.** This involves placing an announcement in the relevant local newspaper indicating that there will be a public meeting to discuss the proposed project. The time, date, and location are noted in the advertisement. Following the scoping meeting the applicant produces a scoping report. The scoping report contains a terms of reference for the Environmental Impact Assessment. The scoping report also contains the minutes for the scoping meeting; questionnaires; and letters from affected

and interested parties and/or any other evidence that individuals affected by the project had been consulted.

SEA reviews the scoping report and the terms of reference and either accepts or rejects it. SEA rejects the scoping report if it does not include all required components including meeting minutes and terms of reference for waste management.

- b. **Applicant completes full EIA.** Once SEA has approved the Environmental Impact Assessment terms of reference the applicant completes a full EIA and submits the report to SEA.

SEA reviews the EIA and either approves it or requests changes from the applicant. SEA might request, for instance, that the applicant revise the Comprehensive Mitigation Plan, which is a component of the EIA that outlines how the investor intends to avoid against environmental impact. Once SEA is satisfied with the EIA it places the report before public review. SEA places an advertisement in the relevant local newspaper briefly describing the proposed project and indicating where interested parties can obtain additional reports, including the full EIA. SEA makes these reports available in various public and private offices in the relevant locality.

- c. **Applicant places project advertisement.** SEA prepares the advertisement and gives it to the applicant for placement in the newspaper; the applicant is responsible for paying any advertising fees. Advertising costs average US\$ 333.33 (E1,900) for a quarter page advertisement. The public is given a 21 day period in which to comment on the proposed project by sending submission letters to the SEA.

SEA reviews all submissions and disposes of those that lack merit. SEA forwards meritorious submissions to the applicant. The applicant prepares for SEA written comments on each submission letter. SEA responds in writing to each individual who sent a meritorious submission, based on the applicant's comments. The legislation states that if at this point in the public review process if more than ten individuals have objected SEA must call a public hearing. The Minister of Tourism is responsible for appointing a judge and two relevant experts. SEA advertises the hearing in all national print and electronic media. In some cases the SEA also sends written notification to affected parties regarding the hearing date and time. The judge chooses the hearing location, which is typically the project site itself or a venue near the project site.

SEA gives a month notice for the hearing to enable the greatest participation possible. During the hearing the objectors and the applicant make verbal and written arguments before the judge and the experts. The hearing lasts between one and two weeks. The judge communicates his findings via a formal report to SEA. His findings include recommendations on the project. Anyone who is aggrieved by the judge's findings – the applicant or the objectors – may submit a formal written appeal to the Minister of Tourism. The Minister's decision regarding the project is final. Since SEA's inception in 1992 only one category three project has been rejected.

If the public hearing and/or the Minister of Tourism's decision is positive for the applicant, SEA issues the applicant with an Environmental Compliance Certificate. The Environmental Compliance Certificate typically contains

conditions which the applicant must fulfill in completing his project in order to limit environmental impact. For instance, the project must adhere to all effluent treatment processes and the treatment plant must perform as outlined in the certificate. Once the applicant has the Compliance Certificate he may proceed with project development.

The time delay for Category 3 projects depends on the time required to complete the EIA. SEA indicates that the entire process can be completed in three to four months. Category 3 applicants pay US \$526.32 (E3,000) for an Environmental Compliance Certificate at the time of submitting the Environmental Impact Assessment. Each resubmission requires an US \$87.72 (E500) resubmission fee. SEA requires resubmission if the EIA does not cover all issues and/or questions demanded. In addition, the applicant is responsible for all advertising costs associated with the environmental compliance process.

C. Analysis

SEA's compliance process appears well organized and easy to understand. The agency is particularly good at making information available if an investor visits the SEA office or its website (www.environment.gov.sz). The website, one of the best among government ministries and agencies involved in locating processes, provides staff contact details, including photos and a picture of the building where SEA is located. The site also includes links to some of Swaziland's environmental laws and to the Environmental Audit, Assessment, and Review Regulations, and many international environmental laws. In addition SEA's website provides an explanation of the EIA and process guidelines, including detailed descriptions of the Initial Environmental Evaluation and the Environmental Impact Assessment. The site does not list application and approval fees. SEA noted that applicants typically find out about the SEA process from the local authority where they will be building or from SIPA.

On the other hand, a number of investors said that they had not heard of SEA, and two of the three local authorities consulted did not mention that environmental compliance is required for the site development process. Environmental compliance is important for well managed development in Swaziland; the agency, therefore, should strive to increase its profile. Moreover, the government must ensure that the agency has the capacity to review all projects to determine their potential environmental impact.

Issues

SEA not well known to investors. Many investors noted that they are not familiar with SEA or with the existence of an environmental compliance process. In fact, one investor noted that SEA is not entirely functional at present. There are several possible explanations for this. Typically the investor's architect, engineer, or contractor completes the environmental compliance process for the project, usually contracting a specialized assessment company to complete the work. The building professionals consulted did know about SEA and the compliance process. Another explanation might be that SEA inspections, which would typically involve the investor or certainly his management, are haphazard. One company that certainly should undergo inspections indicated that it had never dealt with SEA or hosted any inspections.

Finally, neither Mbabane nor Matsapha require an SEA certification for the building permit approval process. Manzini indicated that SEA approval is required prior to permitting. This is especially troubling in Matsapha, which hosts significant industrial projects.

Process clear and sensible, although delays can be lengthy. Sources familiar with the environmental compliance process – building professionals in particular – comment that the

process as sensible and easy to understand. However, they suggest that the entire approval process is far too lengthy and blame this on agency understaffing. One building professional notes that the majority of his firm's projects are Category 3 and he typically waits six to eight months for SEA approval.

SEA approval expensive. Several sources explained that the environmental compliance process can be expensive merely in fees paid to SEA. The application fee for Category 3 projects is US \$526.32. Each resubmission costs an additional US \$87.72. One building professional indicated that he must resubmit at least once in each approval process. The investor is also responsible for approximately US \$1,754 in advertising fees to complete the process.

Recommendations

Improve SEA outreach to investors and local authorities. Environmental compliance, including regular inspections, is important for any country hosting investment, particularly industrial projects. SEA should boost its profile through informational outreach to all government agencies involved in site acquisition and site development. Brochures on the agency and its requirements and application process should be readily available at MHUD, MEE, SIPA, and all local authorities. Moreover, SEA should send brochures and its website link to all building professionals in the country.

Beyond that the government should determine whether or not SEA approval is required for building permit approval and require local authorities to include this in the application materials if it is. MHUD's website describing the building application process does not mention SEA approval and neither does the Standard Building Regulations, 1969.

Boost SEA staff to speed approval process. If SEA is indeed understaffed and this results in approval delay, the agency should increase staff to necessary levels. The agency reports delays of three to four months for Category 3 project approval. If the time delay is closer to the six to eight months indicated by private sector sources SEA should speed the process.

Decrease application cost by limiting resubmission and seeking concessionary advertising rates. SEA could decrease application costs by reducing resubmission frequency. While the agency's website offers detailed information on the process, the agency might include such detail in informational brochures to broaden its outreach on precisely what is required in submitted reports. Moreover, since the advertising fees are quite high, SEA might seek out concessionary rates with newspapers to limit the cost to investors.

Chapter 5: Operating

I. Introduction

Once established, the enterprise must be registered for the purposes of paying taxes. Throughout its existence the enterprise will be paying various taxes and for this reason it must be prepared to comply with the requirements of the tax laws. If the enterprise will be engaged in manufacturing for export from imported raw materials, it will be concerned about duties and taxes on imports and exports, and must comply with import and export procedures. The business and personnel of most enterprises will need foreign exchange, which is controlled by the foreign exchange laws.

This chapter concerns the various taxes that the enterprise or its personnel will encounter, which are:

- Income tax, collected by the Department of Taxes, and miscellaneous taxes, fees, charges and levies collected by various authorities; and
- Customs duties, excise duty and sales tax, which are collected by the Customs Department..

The chapter also presents in detail the exchange control restrictions and allowances that are prescribed by the Central Bank but administered in most cases by the commercial banks. Finally, this chapter discusses the procedures involved with hosting labour inspections on an on-going basis.

II. Income Tax, Miscellaneous Other Taxes, Fees, Charges and Levies

Income Tax is governed by the Income Tax Order 1975 (King's Order-in-Council No. 21 of 1975) as amended from time to time. Since 1975, twenty-two Amendment Orders have been published.

The taxes that are collected under the Order are:

1. Assessed tax,
2. Pay As You Earn (PAYE),
3. Provisional tax, and
4. Withholding tax.

In addition to these taxes, the Department of Taxes is also responsible for assessing and collecting Casino Tax and Graded Tax.

Swaziland has concluded Double Taxation Agreements with South Africa, the United Kingdom and Mauritius.

A. Company Income Tax (Normal Tax)

Annual income tax is levied on taxable income derived from sources in Swaziland, or deemed to be in Swaziland, by all companies, foreign or domestic, public or private. Taxable income is defined as gross income (excluding capital receipts and foreign and exempt income) less allowable deductions (including loss offsets) incurred in the process of production in Swaziland.

The assessment year closes on June 30 and tax (less provisional tax payments as detailed below) is payable annually. Since company tax and personal income legislation are

integrated, a company can claim exemptions, deductions, and allowances normally appropriate for persons where they are appropriate for a particular company.

For farming companies, net change in livestock and produce held is deemed income and are valued at purchase price or current market prices, whichever is lower.

1. Provisional tax

Companies, directors of private companies, and any person whose income, other than remuneration, exceeds E 1,000 (US\$175) per annum pay in advance a portion of the estimated tax for the year. This advance payment is called provisional tax. The advance payments are made in three instalments based on three estimates as following:

- The first estimated and provisional tax payment must be made within six months after the commencement of the relevant year of assessment. Half of the annual tax estimated then must be paid less any credits due to the provisional taxpayer. The estimate of taxable income for the purposes of the first payment must not be less than the assessed income for the preceding year unless it can be shown that the taxable income for the year will be less than that of the preceding year.
- The second estimate of taxable income and provisional payment must be made by the last day of the year of assessment. Penalties are payable if the second estimate is found to be less than 90% of taxable income as finally determined for the current year of assessment and is also less than the taxable income as assessed for the latest earlier year of assessment for which an assessment has been issued.
- The third estimate must be made within six months after the last day of the year of assessment and must be accompanied by a provisional tax payment of an amount equal to the tax payable on the full estimated taxable income for the year less the provisional tax paid with the first two estimates and any available credits. By this time the taxpayer will be in a position to accurately calculate its taxable income. If the first, second and third provisional tax payments together with credits available from prior year of assessment are found to be less than 90% of the normal tax payable as finally determined, 18% interest is payable on the difference that should have been paid.

2. Exemptions and Deductions

Exemptions include, inter alia, dividend receipts of companies and receipts and accruals (including those from investments) of life insurance companies, pension benefit or provident funds. Also excluded are the non-investment profits of societies and associations that are derived solely through transactions with individual members.

Deductions allowed include⁶¹:

- Expenditures and losses incurred in the production of income (excluding capital expenditures and dividend payments), interest charges, "reasonable" depreciation allowances for plant, and 4% for buildings used in production, along with actual expenditures on repairs and maintenance.
- Any grant made to the University of Swaziland for the purpose of the university undertaking capital projects in the form of buildings, fittings, furniture, as well as other items associated with capital assets needed for the development of the university.

⁶¹ Section 14 of the Income Tax Order 1975.

- An amount spent by a company as direct "listing" fees on the Swaziland Stock Exchange, subject to the proviso that only one third of the expense is claimable in the year of expense; the balance is spread equally in the next two years.
- Contributions to pension schemes - these are limited to 20% of employee remuneration and annuities (less employees' contribution) up to E 6,000 (US \$1,053) per employee. The total contribution by a taxpayer to retirement annuity funds is limited to the greatest of (a) 15% of taxable income accruing to the taxpayer in respect of trade carried on by him, provided such amount shall not exceed E 12,000 (US \$ 2,106) per annum; or (b) E 7,500 (US \$1,316) less contributions made by the taxpayer to a pension fund; or (c) E 6,000 (US \$1,053).
- All expenses relating to the training of Swazi employees for taxpayers engaged in an industry gazetted by the Ministry of Finance with the scheme being approved by the Commissioner. (SEE DETAILS BELOW).
- Non-capital expenditure incurred by a business for scientific research for the development of that business, contributions to any association, institute, college, or university which will be used to fund scientific research relevant to the business, at the rate of annual cost or 4% of the total contract value, whichever is greater. The taxpayer must apply for prior approval of the research project. There is no special form for applying for approval
- Initial allowances are available for machinery or plant, infrastructure machinery, plant or facilities, including transmission equipment, lines and pipes qualifying for wear and tear allowances, and for buildings housing such machinery or plant and used by the taxpayer for the first time in a manufacturing business at the rate of 50% granted in the first year of assessment during which the machinery or plant or building was first used.
- Companies that are considered approved companies in the handicraft and cottage industry sector and companies considered to be engaged in the export of products from the handicraft and cottage industry sector are permitted to deduct from income, (i.e., in addition to the normal amounts permitted under the General Deduction Formula) additional amounts of 133% for cottage industry, and 150% for approved export trading houses, in respect of export promotion expenditure, The additional expenditure allowance is subject to the company achieving an increase in volume of exports in the subsequent year.
- Contributions, whether in cash or in kind, made during the year of assessment toward any national disaster scheme established by the Government.
- Special (100%) deductions (not exceeding 30% of gross income) are allowable for a variety of on-farm expenditures (e.g., irrigation, fencing). Where these deductions are made, initial and depreciation allowances are not allowable.

The training allowance is provided for by sections 14 and 18 of the Income Tax Order. It provides for deduction from income in the form of an allowance to employers in respect of certain expenditure incurred training Swazi employees under approved schemes. Practice Note No. 168⁶² defines "approved training scheme" as a scheme for the training of citizens of Swaziland for employment in industries approved by the Commissioner. The approved industries are: agriculture and agricultural service, forestry, mining, manufacturing, wood

⁶² Issued by the Commissioner of Taxes for the guidance of taxpayers and officials.

products, paper products, chemical products, construction, wholesale trade, retail trade, hotel and restaurant, transport and storage, financial institutions, real estate, and business services.

For a scheme to qualify as “an approved scheme”, the employer must apply to the Commissioner of Taxes for approval of the training or training programme that employees will benefit from. There is no special form required for this purpose. Primarily the training scheme must lead to the acquisition of knowledge and skills which are necessary for the duties of employment, and must be related to increasing effectiveness in the performance of the employees prospective duties in that employment. On approval of the training or training programme, the employer will be issued with a certificate of approval. The employer will be entitled to deduct training expenditure from taxable income as shown in the tax returns. However, the returns must be supported by a claim for training allowance which the employer must make on Form TRA, “Training allowance form”. The allowance will be granted for as long as the provision in the law (sections 14 and 18) remains in force and a claim is made on Form TRA. If the Commissioner no longer considers a scheme to be eligible for the allowance, the Commissioner will notify the employer that the scheme is no longer approved⁶³.

B. Rates of Corporate Tax

The standard rate of corporate tax is 30% of taxable income. As discussed in Chapter three, companies granted DAO pay a tax of 10% of taxable income.

1. Withholding Taxes

A withholding tax is a tax on income imposed at the source. A third party is charged with the responsibility of deducting the tax from specified types of payments and remitting the amount to the Commissioner of taxes. This withholding tax is provided for in Part III of the Income Tax Order as well as section 59 and 59A of the same order.

A withholding tax may be final or non-final. If final, the tax deducted or withheld becomes the final liability of the taxpayer. If non-final, the amount withheld will be credited against the taxpayer’s final liability and adjusted accordingly. The rates of withholding tax are often influenced by Double Taxation Agreements.

A new enterprise may find itself required to withhold tax on certain payments or may have part of expected payments withheld by the payer. The following are the different types of withholding taxes:

2. Non-resident Tax on Interest

Any amount of interest accrued to a company (or to a natural person or the estate of a deceased person or) that is not resident is liable to tax at the rate of 10%. The tax is payable within 14 days after the date of actual accrual.

3. Tax on Dividends to Non-resident Shareholders⁶⁴

This tax is payable by persons or the estate of a deceased person not resident in Swaziland or any company not registered in Swaziland on dividends received from a company domiciled in Swaziland. This tax is payable on both interim and final dividends and is due

⁶³ Extract from Practice Note 168.

⁶⁴ Section 21 of the Income Tax Order 1975 as amended.

within 30 days of the date when the dividend is payable. Legal liability for payment resides with the recipient, but is normally paid by the payer and deducted from remitted dividends.

Exemptions include dividends paid by agricultural cooperatives and dividends received by church, charitable, or educational institutions, as are dividends accruing to non-resident shareholders, which the government has, in terms of a written undertaking, exempted from tax.

Tax is payable at the rate of 12.5% where dividends are payable to a company incorporated (but not a branch of company headquartered in a third country) in Botswana, Lesotho, Namibia, and South Africa. For all other countries the rate is 15%.

4. Tax on Payments to Non-resident Contractors⁶⁵

This tax is payable by every person who makes payment to a non-resident person under an agreement relating to construction operations. The tax is deducted from each payment made to the non-resident. The non-resident is not relieved from any obligations to furnish returns for income tax and any assessment raised on the non-resident for income tax will be credited with the non-resident contractors' tax that has been paid on his behalf. The rate of tax is 15%.

5. Tax on Royalties and Management Charge Paid to Non-resident Persons⁶⁶

This tax is payable by non-resident persons on gross amount of any royalty and management charge derived from a source in Swaziland. The tax is withheld at source and it is a final tax. The rate is 15%.

6. Tax on Branch Profits

Tax is payable on the deemed repatriated income of a branch of a non-resident company. The tax is payable at the rate of 12.5% where repatriated profits are payable to a company incorporated (but not a branch of company headquartered in a third country) in Botswana, Lesotho, Mozambique, Namibia, and South Africa, and 15% where the company is incorporated in other countries.

B. Individual Income Tax (Normal Tax)

This is payable on income received by or accruing to all persons from sources within Swaziland or deemed to be within Swaziland. Tax is payable on assessed "taxable income," which is equal to gross income (excluding capital receipts and exempt income) less losses and allowable deductions. Taxable income includes, inter alia, annuities, wages and salaries, rent, investment income, and benefits in kind (e.g., free housing).

Employees are subject to monthly withholding at source (Pay As You Earn - PAYE); other taxpayers are assessed annually.

Non-residents are liable for income tax on income earned in Swaziland (including benefits in kind received for services rendered); however, dividends and interest payments are subject to withholding tax. Personal income tax legislation is integrated with company tax legislation. Consequently, where exemptions, deductions, and allowances normally appropriate for com-

⁶⁵ Section 59(1) of the Income Tax Order 1975.

⁶⁶ Section 32B of the Income Tax Order 1975 as amended.

panies are applicable to persons (e.g., owner-occupied farms), these may be claimed. For farmers, net change in produce and livestock held is deemed income and will be valued at the lesser of the purchase price or current market price (if purchased), or, otherwise, at standard book value.

There is a Final Deduction System (FDS) for employees, which constitutes a final liability to tax and is related to a full year of assessment. All employees, no matter how much they earn above E 30,000 (US \$5,263) per year, are subject to the FDS, provided they have not derived any other taxable income during the year of assessment. Such employees are not required to furnish an income tax return if the income consists solely of employment income that is subject to FDS.

1. Exemptions and Deductions

Exemptions include, inter alia:

- Where one's annual taxable income does not exceed E 30,000 (US \$5,263);
- Salaries of United Kingdom and South African civil servants, and consular personnel not permanent residents of Swaziland;
- War pensions and gratuities;
- Interest income received by or accrued to an individual from a deposit, savings, or similar investment in a financial institution;
- Interest received by non-residents from Swaziland government securities and bonds;
- Capital sums due from a provident fund or benefit fund;
- Commuted pension - one third of the total value of the annuity to which any employee becomes entitled may be commuted for a single payment;
- Capital sums in commutation of a retirement annuity;
- Severance allowance or notice pay payable under the Employment Act to an employee on the termination of his services; and
- The first E 30,000 (US \$5,263) received by or accrued to an individual on retrenchment or retirement.

Deductions include:

- In addition to those for companies above, where appropriate, employee contributions to pension funds (maximum E 6,000 (US \$1,053) where pension fund is not established by law);
- Death, accident, sickness, or unemployment insurance and contributions to provident and benefit funds (other than a medical aid fund) deductible at a rate of 10% to a maximum of E 360 (US \$63);
- An amount paid by way of mortgage interest not exceeding E 2,400 (US \$420) a year; and
- Contributions to unemployment insurance – up to E 360 (US \$63) a year.

Table 5.1 below shows the rates of taxes on individual Income Tax.

Table 5.1: Rates of Tax on Individual Income (April 2005)

Taxable Income	Marginal Tax Rate in Percentage
0 – 30,000 (US \$5,263)	12
30,001 (US \$5,264) – 45,000 (US \$7,895)	20
45,001(US \$7,896) - 60,000 (US \$10,526)	25
60,001(US 10,527) - 75,000 (US \$13,158)	30
More than 75,000 (US \$13,158)	33
Normal tax in the case of a retiring or redundant individual	
0 - 60 000 (US \$10,526)	12
60 001 (US \$10,527) – 90 000 (US \$15,790)	19
90 001 (US \$15,791) – 120 000 (US \$21,053)	26
More than 120 000 (US \$ 21,053)	33
Trust income	33

D. Income Tax Clearance⁶⁷

Before certain transactions can be authorized, a tax clearance certificate must be shown. The objectives of tax clearance, which concerns only taxes paid under the Income Tax Order, are to bring to charge all those taxpayers having an income and to enforce the collection of all outstanding taxes.

A tax clearance certificate is therefore issued to certify that there is no tax outstanding against the person (natural or corporate) concerned. In this regard, the certificate is issued only under the following conditions:

- The person concerned has furnished all the required returns of income in respect of each year of assessment in question;
- Where applicable, all provisional tax payments in respect of any year of assessment have been fully paid;
- Any dully assessed tax in respect of any year of assessment has been fully paid;
- All remittances as regards PAYE and other withholding taxes have been made; and
- In the case of employees deriving income solely from employment, the production of an employee's tax certificate in respect of the relevant year is prima facie proof that such person has met his/her tax obligations. The employer must provide a tax certificate to an employee from whom the employer has deducted or withheld personal income tax (PAYE)⁶⁸. The certificate must be provided within 14 days of making the deduction. The certificate must show the total remuneration for the employee and the amounts deducted, e.g. the salary for the month and the amount of tax deducted.

A tax clearance certificate is presently required for:

- The issue, renewal, or transfer of any license, other than renewal of motor vehicle licenses, or similar document relating to any trade, business, profession, or vocation;
- The transfer of immovable property or any endorsement to any title deed having the effect of transferring property;
- The registration or deregistration of a company;
- First registration of motor vehicles in Swaziland; and
- The tendering for the provision of goods or services to the government or a parastatal body in excess of E 5,000 (US \$877).

E. Procedures for Registering and Paying Income Tax

⁶⁷ Section 69(3) of the Income Tax Order 1975, and the Income Tax (Clearance Certificate) Regulations 1988.

⁶⁸ Section 13 (1) of the Second Schedule of the Income Tax Order.

1. Persons Responsible

In order to facilitate interaction between companies and the Commissioner of Taxes in matters of income tax, the law requires a company carrying on business or establishing an office in Swaziland to appoint an individual designated "Public Officer" (PO) of the company, who shall represent the company in all matters relating to Income tax. The PO must be appointed and notified to the Commissioner within 30 days of commencing business or opening an office. The PO of a company is personally responsible for the payment of the company's taxes as if he or she were the taxpayer.

Any person who comes within the ambit of the definition of "Provisional taxpayer" is required to register as a provisional taxpayer. A provisional taxpayer is defined as:

- Any person who derives incomes that do not constitute remuneration;
- Any director of a company ordinarily resident in Swaziland or such company is managed and controlled or has its registered office in Swaziland;
- Any company; or
- Any person notified by the Commissioner of taxes that he or she is a provisional taxpayer.

Both individuals and companies must therefore register as provisional taxpayers. If they have people employed for remuneration, they must also register as "employers". Employer is defined as "any authority or person who, as a principal, pays or is liable to pay to any person any amount by way of remuneration." Every person who is or becomes employer must register with the Commissioner of taxes. This includes every individual, partnership, company, and even administrative authorities.

Employees pay tax but it is deducted at the source by the employer. As mentioned earlier the tax deducted from employees' remuneration is called "Pay As You Earn". It is the duty of employer or representative of employer to deduct income tax from certain payments made to employees, and to account to the Commissioner for the tax withheld.

2. Registering for Provisional Tax

In the case of a company, the Public Officer of the company is required to file with the Commissioner a copy of the Memorandum and Articles of Association of the company within two months of the company's registration with the registrar of companies. The Public Officer may at this stage also submit a completed Form IT02, which is the taxpayer registration form for companies. If this does not happen, on receipt of the Memorandum and Articles of Association, the Commissioner will send Form IT02 to the Public Officer to complete it and return it within 30 days.

The information required on the form includes the estimated turnover of the company and other information like company details, details of business, parent company if any, associate company if any, directors of the company, shareholders, and auditors

The applicant for registration is required to "use your judgement to estimate the Company's income for the first period (of Provisional payment), otherwise the Commissioner may use an estimate to calculate provisional payment due."

The application for the registration of individual Provisional taxpayers is made on Form IT01. In addition to personal details, the form requires details of estimated income from the business being registered and also from any other business, employment, pensions, property, and any other income, and estimated total.

Once a taxpayer has been registered, he or she is issued with Form P.T.02 in the case of companies and Form P.T.01 in the case of individuals, notifying that the company or individual has been registered as a provisional taxpayer. On registration a taxpayer is also sent "Provisional Taxation Leaflet" as well as Form P.T.04 (a) in case of companies and Form P.T.05 in case of individuals. These two forms are for remitting Provisional Tax.

3. Registering as employer

Application for registration as employer is made on Form PAYE 01. In addition to information on the applicant, the form calls for information on the date the applicant became employer and the date of registration where the applicant is a company.

4. Remittance of Provisional Tax

Following registration, the applicant is expected to make the first payment of provisional tax.

5. Return of Income Tax - Company

At year-end, the Commissioner issues taxpayers with a Return of Income Tax, Form IT 12 in the case of companies and Form IT 13 in the case of individuals. This is to be completed and returned together with business accounts to the tax office after 30 days from the date of issue. The information contained on the return and accounts is used to determine the tax liability of the applicant.

In the case of company returns, the information includes mention of the amount of the first, second and third payments of the provisional tax paid in respect of the year.

6. Tax Assessment

On receipt of the return, the Commissioner assesses the amount of tax due after making adjustments to the loss or profit declared. The taxpayer is informed through a letter of any adjustments made. Finally a notice of assessment indicating tax liability is sent through the mail to the taxpayer. The tax due is payable within 30 days for the assessment date.

In the case of companies, if provisional payments together with credits available are found to be less than 90% of the normal tax payable, interest at the rate of 18% is payable on the difference between 90% and the amount determined. If the amount assessed is less than the provisional payments made, the difference will be credited to the following year's account of the taxpayer.

7. Remittance of assessed tax

All payment must be made at the cash office by cheque, cash or postal orders. Payments may be brought by hand to the cash office or posted. If posted, the taxpayer will be held liable in case there are delays, and may consequently pay interest or penalties.

F. Appeals

If the Taxpayer does not agree with an assessment issued by the Tax Office, the taxpayer may object to the assessment. Objection must be made in writing within 21 days from the

date of the assessment and must specify in writing the grounds of objection. The Commissioner may allow or disallow the objection, and must communicate his decision in writing.

If the Commissioner does not allow the objection, and the taxpayer is not satisfied with that decision, the taxpayer may appeal to the Court in writing within 21 days after the date of the decision of the Commissioner.

G. Other Taxes, Fees, Charges, and Levies

In addition to income tax and import duties and taxes, there are a number of other taxes, levies and fees that an investor may have to pay. For the sake of completeness, all these miscellaneous taxes, levies and fees are briefly described here. It is to be noted that these charges are raised for various purposes and are not, therefore, of general application.

1. General Sales Tax

General Sales Tax (GST) is the major national consumption tax. It is charged on the following:

- transactions involving imported goods, at the time of importation;
- sales of locally manufactured goods on the date goods are sold by the manufacturer;
- taxable services; and
- hotel accommodation and restaurant sales.

The value for sales tax purposes in the case of goods imported from outside the Customs Union includes the duty paid on the goods. The rate is 14% on goods and services; and 25% on most alcohol and tobacco goods.

The tax is collected by the Customs Department and paid to the central government. There are many exemptions from sales tax. They include necessities, intermediate goods for manufacturing, medical supplies, temporary imports, certain personal imports and electricity.

2. Graded Tax⁶⁹

This tax is payable by all persons (apart from the exemptions noted) resident or domiciled in Swaziland, and is thus akin to a head tax. Tax is determined on the basis of gross income and is payable annually for all except for employees whose deductions are made monthly at source. It is collected by the Tax Department.

3. Exemptions and Deductions

Interest on loans specifically exempt by government (usually government and other public body loans); building society shares; interest from loans to agricultural cooperatives and public utilities established by parliament; interest received by church, charitable, or educational organizations; interest amounting to E 20 (US \$3.5) or less in a full tax year. Also, interest on importer's bills or notes is exempt where these have been handled through the banking system.

Tax due is determined on the basis of gross income as shown in Table 5.2 below.

⁶⁹The Graded Tax Act of 1968, as amended.

Table 5.2: Rates of Graded Tax (2005)

Gross income	Tax payable
E 0 - E 299 (US \$52)	E 4.20 (US \$0.9)
E 300 (US \$52)- E 449 (US \$88)	E 6.00 (US \$1)
E 450 (US \$89)- E 600 (US 105)	E 12.00 (US \$2)
Over E 600 (US 105)	E 18.00 (US \$3)

3. Casino Tax⁷⁰

The tax is composed of an annual license fee and of a levy based on a percentage of the gross gaming room takings of the licensee less any amount paid out as winnings to casino patrons and is payable on an annual basis. A licensee is also liable to normal tax.

The annual license fee is E 2,000 (US \$350). In addition, the levy payable on the gross gaming room takings of the licensee less any amount paid out as winnings to casino patrons are as follows:

- in respect of the first year of operation of the casino, no levy is paid;
- in respect of the second, third, fourth, fifth, and sixth years of operation of the casino, a levy of 2.0% is paid; and in respect of the seventh year and subsequent years of operation, a levy of 4.5% is be paid.

4. Real Estate Tax⁷¹

The rate of tax varies with the size, or dutiable value, of the estate. The formula for determining the rate is: for every E 200 (US \$35) (or part thereof) in dutiable value, the tax rate rises by 0.015%. This is subject to a maximum tax rate of 33.3% (reached at a dutiable estate value of E 445,667(US \$78,187).

5. Transfer Duty⁷²

Duty is levied on the sale or long-term lease of fixed property situated in Swaziland. The person liable for payment of the tax is the party acquiring title to the property, or entering into a lease of 25 years duration or longer, or entering into the lease of a claim for mineral rights for any period. The base for this tax is the value of the property being acquired or leased.

Exemptions include, inter alia, transfers of property by gift for public, municipal, religious, or charitable uses. Also, government purchases and purchases by public hospitals (for the sole use of the hospital) are exempt. Additionally, settlement of jointly owned property between married persons upon divorce, or on the death of one party, is exempt.

The rate of this duty is 2% on the first E 40,000 (US \$7,017) of transferred property value and 4% of any amount exceeding E 40,000 (US \$7,017) but only E 60,000 (US \$10,526) and 6% on any amount exceeding E 60,000 (US \$.10,526).

6. Land Rate

Taxation in the form of rates is collected in the two principal towns (Mbabane and Manzini). Land and improvements are taxed at different rates with valuation being assessed every five

⁷⁰ The Casino Tax Act 1963 (Act No. 56, 1963, as amended).

⁷¹ Land Tax Order, 1974, King's Order-in-Council, No. 35 of 1974.

⁷² Chapter 107 of the Laws, Revised Edition, 1959.

years. If changes in tax rates are desired by the town councils, approval is required by the central government before such changes can be enforced.

Exemptions include government-owned property, and rates are assessed at 4% of the land value and 0.5% of the value of improvements.

7. Mineral Rights Tax⁷³

Holders of mining rights are subject to taxes with respect to properties able to produce precious and non-precious metals to which they hold rights. There are three distinct taxes that are grouped together: (a) a tax on the transfer of mining rights; (b) a ground tax on mineral rights; and (c) a capital gains tax.

(a) Transfer of mining rights is taxed at the rate of 27.5% on the first E 20,000 (US \$3,509) value and 37.5% above E 20,000 (US \$3,509).

(b) The tax on unexploited rights is E 10 (US \$1.80) per hectare in each of the first five years, rising to E 50 (US \$8.80) per hectare thereafter, if there has been no exploitation;

(c) The tax on gains from shares in mineral rights is 37.5% of that gain.

8. Business and Professional License Fees

Annual license fees are charged for betting shops, companies with a place of business in Swaziland, persons or companies trading in Swaziland, and establishments licensed to sell or serve liquor. Company license fees vary from E 20 (US \$3.50) per annum for companies with a share capital of less than E 10,000 (US \$1,754) to E 200 (US \$35) per annum for companies with a share capital above E 50,000 (US 8,772).

Betting licenses are charged on the basis of annual turnover. Trading licenses are subject to a wide variety of rates, depending on the trade carried out, but are generally between E 25 (US \$4) and E 150 (US \$26) per annum. Liquor licenses vary in amount between rural and non-rural areas, with the type of establishment, and the type of beverage sold; they range between E 25 (US \$4) and E 750 (US \$13) per annum.

9. Stamp taxes⁷⁴

These taxes, which are mostly ad valorem with some specific taxes, are payable on a wide range of legal documents (affidavits, bills of exchange, checks, bonds, contract notes, receipts, property transfers, etc.) The government and specified public enterprises are exempted. Stamp duties vary considerably. For example, company and personal cheques carry a 6% stamp duty, receipts for payments of E 2 (US \$0.35) or more carry an E 0.10 (US \$0.02) duty, Customs bills of entry E 0.40 (US \$<0.01) duty, and affidavits, agreements, and contracts an E 1 (US \$0.17) stamp duty

10. Motor vehicle license fees

License fees are levied on an annual basis. Rates vary with both the type and weight of the vehicle. Annual fees for motor vehicles are as indicated in Table 5.3 below.

⁷³The Mineral Rights Tax, Order No. 34, 1973.

⁷⁴Chapter 100 of the Laws, 1959; The Stamp Duties Act, 1970: Act No. 37) and the Stamp Duties Act 1974 (Act No. 13), as amended by the Finance Act of 1985.

Table 5.3: Annual License Fees for Motor Vehicles

Motorcycles	E6 (US \$1.00)
Motorcycles (with sidecar)	E9 (US \$1.50)
Tractors	E9 (US \$1.50)
Tractors (with trailer)	E3 (US \$0.52)
Earthmover	E24 (US \$4.00)
Other vehicles by weight	
0 - 1,300 lbs	E14 (US \$2.45)
1,301 – 1,699 lbs.	E16 (US \$2.80)
Each additional 200 - 300 lbs	E2 (US \$0.35)
3,300 – 4,000 lbs.	E28 (US \$4.90)
Over 4,000 lbs	E28 (US \$4.90)
(Each additional 500 lbs.)	E 3.50 (US \$0.61)

11. Sugar levy⁷⁵

The Sugar Export Levy is a tax on all sugar exported from Swaziland to any country other than Botswana, Lesotho, Namibia, and South Africa. The levy is collected from the Swaziland Sugar Association, which is a statutory body representing all millers and growers.

The levy is on the net ex-mill sales to the European Union under the quota arrangements of the Lome/Cotonou Agreements. Net ex-mill export protocol sales proceeds is the Swazi currency equivalent of the gross amount received by the Association in respect of all sales of sugar exported less expenses as prescribed in the act and is payable on a quarterly basis.

12. Fuel levy

The Fuel levy is charged at E35 (US \$3.10) per litre, and it is included in the price of fuel.

G. Analysis

All things considered there are too many various taxes applied in Swaziland. The more important ones are Income Tax and Sales tax. In addition there is also Import Duty and Excise duty, which are SACU taxes. Some of the taxes must be very difficult to collect, and the amounts may not warrant the cost involved. This is the case, for example with graded tax, which is payable by every adult living in Swaziland. Given the multiplicity of taxes, very many authorities are involved in collecting taxes. One resident in Swaziland may not, therefore, be certain of the taxes one is certain to pay and to which authority. Even if one may not be liable to pay most of the miscellaneous taxes, they give the potential investor the impression that Swaziland is a country of too many taxes, which is not conducive to investment.

The general sales tax, could be revised to absorb the small “nuisance taxes”, but the private sector perceive it to be difficult to administer and costly to pay. It was also said that it is not appropriate where the integrity of tax collectors is doubtful. The better option for Swaziland is Value Added Tax (VAT).

Swaziland is the only country in SACU that has not introduced VAT. All the other countries have done so no doubt because of established merits of the tax. According to Alan A. Tait, countries introduce a VAT because they are dissatisfied with their existing tax structure. This dissatisfaction falls broadly into one, or possibly all, of four categories:⁷⁶

⁷⁵Sugar Export Levy Act No. 4 of 1997.

⁷⁶ Value Added Tax (VAT), International Practice and Problems, International Monetary Fund, 1988

- The existing sales tax is unsatisfactory;
- A customs union requires discriminatory border taxes to be abolished;
- A reduction in border taxes is sought; or
- The evolution of the tax system has not kept pace with the development of the economy.

The four reasons may possibly apply in the case of Swaziland, but this can only be established by research focusing on this issue. The same author points out that VAT is a sure source of increased revenue in most countries that have introduced it. He notes that “VAT, as a buoyant revenue source, closely linked to increase in consumption, has become a crucial part of overall revenue for all countries using it. Indeed, many countries find that their initial revenue from the first year of VAT turns out substantially higher than forecasts based on past sales-tax bases or on national income accounts”

The other reason for Swaziland and SACU is that introduction of VAT in all the SACU countries would facilitate future efforts to harmonize internal taxes and to eliminate border formalities between the member states.

It is understood that the government has decided to introduce VAT. However, the private fears that it will take years for the decision to be materialized given the slow pace of enacting legislation in Swaziland.

As regards the income tax regime, the companies that were interviewed expressed satisfaction that it is investment-friendly. As shown in table 5.4, Swaziland rates of corporate tax are the second lowest in 11 SADC countries, where the rates of corporate tax range from 25 to 35%. Swaziland is also more competitive in this regard than certain other small economies, including several Caribbean countries (Table 5.5). Box 5.1 shows that Swaziland has also a large range of special tax allowances that are designed to reduce the taxable income of the enterprise and increase its profit margins.

Table 5.4: Ranking of SADC Rates of Corporate Tax

Ranking	Corporate Tax Rate	Country
1	25%	Botswana Mauritius
2	30%	Malawi South Africa Swaziland Tanzania Zimbabwe
3	32%	Mozambique
4	35%	Lesotho Namibia Zambia

In general the private sector does not have complaints regarding the administration of income tax. Assessments are made in time, and audits are carried out. The income tax department is perceived as efficient, although there is a lot of room for improvement, and it is customer friendly. It has published a number of small pamphlets that provide much useful information for the guidance of the taxpayer.

Table 5.5: Corporate Tax Rate in Selected Caribbean Countries

Country	Corporate Tax Rate
Antigua and Barbuda	35%
Barbados	40%
Dominican Republic	25%

Jamaica	33.3%
St. Kitts and Nevis	35%
St. Lucia	33.3%
Trinidad and Tobago	30%

Source: Investment Promotion Agencies, 2003

The income tax regime would be even more attractive if it was simpler and the rates were lower. Simplicity is likely to be one of the objectives of the proposed new income tax legislation. As regards the rates, it is unlikely that they can be lowered before Swaziland introduces VAT since this is expected to boost tax revenue.

Box 5.1: Summary of Tax Allowances Available in Swaziland

1. Capital Allowances in respect of:

- Industrial buildings 50% of cost of any building
- Machinery and plant 50% of cost of machinery or plant
- Hotels 50% of cost of capital expenditure plus 4% annual allowance
- Farm improvements 100% of expenditure but not more than 30% of gross income derived from the farm
- Mining operations 100% annual capital expenditure less any recoupment of capital expenditure

- 2. Training expenses allowance 100% of training expenses
- 3. Approved export promotion expenditure 133% - 150%
- 4. Carrying forward of losses Set off against income in later years
- 5. Research and educational allowances Up to E25, 000 (US \$4,386) allowed
- 6. Home ownership and improvement allowances 100% of the interest
- 7. Development Approval Order Payment of only 10% corporate tax; No withholding tax
- 8. Exemption from non-resident shareholders tax and non resident tax on interest 100% where government has undertaken to grant such exemption

Issues

There are too many taxes some of which are difficult and costly to collect, and Sales tax is antiquated and costly to payer and government. Some of the taxes like, the graded tax are nuisance taxes which could be abolished if VAT is introduced. There is perception that the General Sales Tax is out of date and also costly to comply with and to administer. Several companies and auditing firms expressed preference for Value Added Tax pointing out that Swaziland is the only country in SACU that does not have VAT.

The income tax legislation is old and not codified. The income tax legislation dates back to 1975 and there has seen a number of amendments over the years. The law is therefore scattered over a number of Amendment Orders and not readily accessible. The Department has put together in one manual all the amendments and the 1975 legislation, but the manual is only for ease of use, and cannot be cited as legislation. A bill to codify and introduce changes in the income tax law has been circulated to stakeholders and responses obtained, but the law may not be passed soon since the legislative process in Swaziland is notoriously slow.

The Tax Department does not have a website of its own. The Tax Department does not have a website of its own but uses that of SADC where there is also information of other

countries. This is not satisfactory since it might not occur to a foreign investor seeking information on income tax in Swaziland that it is available on the SADC website.

The provisional tax system is burdensome to new businesses. Within six months of commencing business few companies, especially small and medium enterprises (SMEs), will have been established well enough to have a stable pattern of revenue and expenditure on the basis of which they can assess their potential profit for the year. Furthermore they may not have generated enough revenue to be able to pay interest on loans and provisional tax.

There is no external tax appeals institution. The income tax legislation provides for appeal to the judicial courts from the final decision of the Commissioner. This is not satisfactory because of the slow process involved in using the normal judicial system. Often the courts have a long list of pending cases; furthermore the civil procedures are often too complicated for lay people. Decisions need to be made fast and with minimum cost to the taxpayer.

Recommendations

Introduce VAT replace the number of taxes that are now in force and to replace GST. The Ministry of Finance should expedite the enactment of a Value Added Tax legislation to widen the tax base. This would also be in keeping with what other SACU countries have done, and will facilitate harmonization of internal taxes within SACU.

The Ministry of Finance and Planning should make every effort to get the tax reform bill passed into law. With the declining textile sector, every measure that can be taken to show that the country is improving the investment climate should be taken expeditiously. Even if a new Income tax legislation is enacted, the Department should continue issuing the manual and maintaining its own website. However, the manual would be more user-friendly if it is crafted in an explanatory style, which would serve as a commentary on the legal text. The legal text could be reproduced in the manual for ease of reference.

The Tax Department should establish its own website. Considering the usefulness of a website for an organization like the Tax department, the Department should incur the relatively modest cost for developing and hosting a website. According to available information⁷⁷ the development cost would be in the region of E30, 000 (US \$5,263). This will be spent on design and capturing the initial information that needs to be on the website. It would be much less if the information is already in electronic format. The cost for hosting a website is a nominal E240 (US \$42) a month and would greatly improve transparency related to tax administration.

Phase out provisional Tax. Given the financial burden of a new enterprise during the first year of business, its phasing out during the first twelve months would be a further investment incentive that the government could provide. This would provide the badly needed cash flow of the new enterprise. Tax would be paid in two installments, the first installment at the end of December, and the last installment at the end of June of the following year of business.. If the draft bill still includes provisions for provisional tax, the Commissioner could consult countries that do not have provisional tax to learn their experience. The Commissioner would then be in a position to advise the government on this issue.

Establish a tax appeals tribunal. The first step in setting up such a tribunal would be preparation of document that would facilitate consideration of the issue by all stakeholders. For the purposes of such a document there is ample information, model legal texts and experience in the region.

⁷⁷ Information supplied by Real Image Internet Service Provider.

III. Importing and Exporting

A. Import Duties and Taxes⁷⁸

Swaziland together with Botswana, Lesotho, Namibia and South Africa are Members of the Southern Africa Customs Union (SACU). As a Custom Union the five countries have a single Customs territory in terms of the Customs tariff. They have a common external tariff, but each country has an internal tax that applies to imports from the other Member states as well from third countries. In Swaziland this tax is the General Sales Tax, GST, which is governed by the Sales Tax Act (Act No.12 of 1983).

The Customs and Excise Act, Act No. 21 of 1971, governs Customs and Excise duties. The Act also provides for the implementation in Swaziland of the SACU Customs Tariff as amended from time to time. The rates of Customs duty and Excise Duty are determined at SACU level. The taxes collected are remitted into the SACU revenue pool from which it is distributed to the five countries in accordance with an agreed revenue sharing formula.

The Import Duty and Excise Tariff is contained in Part 1 of Schedule No.1 of the Act. but for practical purposes it is published separately. The Tariff is based on the Harmonised Commodity Description and Coding System (Harmonised System) of the World Customs Organization. It has 98 chapters with a number of schedules providing for excise duties and rebates and exemptions from duties. In addition to the general "Most Favoured Nation" column, the tariff has a column for European Union preferential rates of duty, and another for South African Development Community (SADC) preferential rates. Subdivisions of the tariff code are at 8-digit level.

For a number of products the tariff provides for both *ad valorem* and specific rates of duty. The *ad valorem* rates of duty range from 0-40%. Most products originating in SADC countries are duty free.

As explained in Chapter 3, goods imported for certain uses enjoy rebates, and the duty on temporary imports is suspended pending their re-exportation.

For the purposes of charging *ad valorem* rate of duty goods are valued in accordance with the WTO Agreement on Customs Valuation. The countries have opted for FOB price as the basis for calculating duties.

B. Excise Duties

The Excise Tariff is contained in Part 2 of Schedule No. 1 of the Act. Excise duty is charged on both imported and locally manufactured goods, but it applies only to a limited number of consumer products, like prepared foodstuffs, beverages, spirits, vinegar, tobacco, beer made from malt, traditional African beer, wines, cigarettes and cigars.

The rates of duty are specific. Examples are:

- Non-alcoholic beverages - E 4.36 (US \$0.76) per 100 litres;
- Spirituous liquors - E 1,314.96 (US \$231) per 100 litres of absolute alcohol; and
- Malt beer of pre-fermentation relative density of 1,040 degrees or less - E 39.27 (US \$7) per 100 litres.

⁷⁸Customs Union Agreement, 1969: Legal Notice No. 71 of 1969; Customs, Fiscal, Excise, and Sales Duties Act, 1971: (Act No. 21 of 1971).

Goods manufactured for exportation are exempted. Since Excise duty is a SACU tax, the tax collected is remitted into the SACU Revenue pool.

C. Import and Export Procedures

1. Registration and Import Permits

As explained in Chapter 3, importers claiming rebates of duty and taxes must be registered with the Customs Department. Regular importers are also registered if they have to make use of certain facilities like duty deferment and manufacturing under bond. Exporters to the USA, the European Union, and to other COMESA and SADC countries are registered for the purposes of controlling the origin of goods that can enjoy preferential treatment in these markets.

Import permits are required for certain imports, which include all agricultural products, mineral fuels, mineral oils, motor vehicle parts, used cars, drugs, and electrical appliances,

Applications are sent to the Ministry of Finance, where they are considered by an ad hoc committee that sits every Wednesday. A license to import from outside SACU can be denied if the goods are available in SACU. It takes a week to get a license if all the necessary information is provided with the application. This includes description of the goods including the tariff heading, their value and quantity, and the supplier and the country of exportation.

A license is valid for one shipment, and its validity extends for one year from the 1st of April to the 31 of March.

2. Import and Export Logistics

Swaziland is a landlocked country, surrounded almost entirely by South Africa except for Mozambique with which it shares its eastern border. Imports from overseas and exports to overseas are moved in transit through the maritime neighbours. Almost all the imports from overseas come by sea to Durban in South Africa, and from there by road or rail to Swaziland. Generally, time sensitive goods would be transported by road to and from Durban. For example most exports to the United States are transported by road in order to be able to comply with the Manifest closing requirements.

Exports also go through the port of Durban, except for sugar, mainly to the EU market, which is transported in bulk from the port of Mozambique. Time sensitive exports can be picked up from Maputo by tramp vessels, which call as and when captive cargo is available.

Since Swaziland is a landlocked country, the importer must decide on the appropriate term of delivery. If the importer would not like to take delivery at the port of Durban the importer would insist on CIF Matsapha where the Dry Port is located. If the importer opts for CIF or C & F Durban the importer must arrange for taking delivery in Durban and transporting the goods to Swaziland. Whatever option is taken will be reflected in the Letter of Credit, which is the most common mode of payment.

3. Customs Procedures for Imports

Customs transit is therefore a very important Customs procedure for Swaziland, and the efficient movement of the country's imports and exports is dependent on the facilitation of transit traffic by the two countries. Other Customs procedures are importation for home use,

outright exportation, warehousing in bond, and removal in bond. These procedures are governed by the Customs and Excise Act and Customs Regulations made under the Act.

As mentioned in the analysis section below, Swaziland is introducing the computer system called CAPE which is used by the South African Revenue Services (SARS) to automate the processing of Customs clearance. Because of this, the Customs clearance procedures and documentation will change drastically. In view of this change, only the salient features of the present procedures and documentation are explained here.

Imports from overseas to Swaziland enter SACU through the Port of Durban. Under the Customs laws of SACU, Customs clearance of imports into the Customs Union can take place at the first office of entry into the Customs Union or at their final destination. For the convenience of importers and for commercial and administrative purposes, goods are cleared at their final destination. For example, if the terms of the letter of credit include a through bill of lading, the importer would not like to take delivery in Durban. Furthermore, it is more convenient for importers to clear goods at destination where all the formalities for home use can be accomplished. These include payment not only of import duties but also sales tax.

From Durban imports have to be declared for transit. Transit formalities require a security bond if the goods are being moved by road, to cover the duty and taxes due on them should the goods be illicitly diverted into home use in South Africa. No security is required for goods moving by rail because of the very low probability that they can be illicitly diverted for home use. If goods are entered for home use in Durban, South African VAT would have to be paid unless the goods are declared for movement to Swaziland. If so, a security would be required to cover the risk of losing South African value added tax (VAT) should the goods be illicitly diverted into home in South Africa. There is therefore no advantage of clearing for home use at Durban goods consigned to Swaziland.

Most of the companies interviewed either use a customs clearing agent (CCA) located in Swaziland to do their Customs clearance or have an in-house import-export section to handle Customs clearance the logistics. This is because the process is complex process and can be slow and costly if not done professionally. The other advantage of using a CCA is that the importer need not then be concerned with formalities in South Africa. A reputable CCA will entrust the task to a correspondent in South Africa that is registered with the South African Revenue Service. Transporters, freight forwarders and CCAs that are accredited to SARS have a general security bond that is debited with the amount required by a particular transaction and credited when the transaction is discharged. Furthermore, the amount of bond required depends on the probability of loss; the least amount will be required of a reputable CCA or freight forwarder that has a clean record. Such a CCA may also afford to charge a cheaper premium.

When the goods arrive in Swaziland they can be entered for home use or for processing as raw materials or inputs that will enjoy the rebates discussed in Chapter 3. The goods can also be entered for warehousing where they will be stored in bond until the importer is ready to enter them for home use or for re-export

Following are the specific steps required to import into Swaziland.

Step 1) Prepare the necessary documents. Whatever customs procedure is opted for Customs clearance requires a number of documents, the following of which are standard:

- The bill of entry (Form CE 500): this is the declaration showing the country of importation, the means of transport used, the port where the goods were discharged, the point of entry into the country, the exporter, the importer, the nature and quantity

of the goods, their tariff number, their value and the basis of the value, the rates of duty and taxes applicable to them, and the amounts.

- Supporting Documents: these include the commercial and transport documents like invoices, bills of lading, road manifest, packing list, and administrative documents like import permits, SPS certificates, and certificates of origin.

As mentioned in Chapter 3, the SACU tariff is based on the Harmonized System of the World Customs Organization, and subdivisions are at 8-digit level. Swaziland, like the other members of SACU, also applies the WTO Agreement on Customs Valuation for the purposes of valuing imports with ad valorem rates of duty. Value for duty purposes is based on the FOB price of the goods. The value for the purposes of the other taxes includes the FOB price and the duty amount payable.

Step 2) Submit documents to Customs for processing. The processing of documents includes checking:

- that all the necessary documents are attached and are completed properly;
- the correctness of codes entered for different purposes;
- the tariff headings entered for the goods;
- the basis of the value for the goods and the correctness of the calculation;
- the calculation of the amounts of duty and taxes; and
- entitlement to rebates and exemptions.

Where the Customs concludes that the invoice price is too low, they require the importer to justify the circumstances warranting such a low price. If the Customs are not satisfied with the importer's justification, the Customs may value the goods on the basis of previously imported identical or similar goods.

Step 3) Pay import duty and taxes. Once the Customs are satisfied with the declaration, the importer is required to pay the duty and taxes where goods are not duty-free or duties and taxes not rebated. Before releasing the goods, the Customs may decide to examine them physically. The decision is based on a number of factors, like the nature of the goods, the perceived integrity of the importer or the CCA clearing them, and other circumstances surrounding the importation.

Step 4) Take delivery of the goods. Once the Customs formalities are completed, the goods are released by the Customs. On average clearance takes one day, but can take up to three days in case there are issues to settle, like the value of the goods, and their Customs tariff classification.

4. Customs Procedures for Exports

As mentioned earlier, most exports go through the Port of Durban. Sugar exports go through the port of Mozambique where they are picked by a chartered vessel. Most exports to Durban go by road since this mode provides more certainty about meeting deadlines for manifest closing.

The companies interviewed pointed out that the process for exportation is less involved than that of importation. However, they still use professional CCAs or freight forwarders since they can handle the export logistics in South Africa, which include provision of a security bond to cover the goods while they are in transit to Durban. For exports the bond covers taxes, and any duty and taxes that were rebated or suspended pending exportation of goods manufactured under the inward processing procedure.

Step 1) Load the transport unit. If the exportation of goods will result in the refund of duty or taxes or in the discharge of a security, the Customs should be called to supervise the loading if it is taking place at the exporter's premises. The supervising officer will write a record of the goods loaded or approve a packing list that will be submitted with the export and supporting documents to get a refund or to discharge the security.

Step 2) Prepare export documents. These will include the export bill of entry, Form CE550, Exchange Control Form F178 and supporting documents like the invoice, road manifest, and certificates of origin. There is little that the processing of documents involves since there are no issues of valuation and calculation of duties. The consignment may be examined especially if there will be a claim for refund or discharge of a security after their exportation.

Step 3) Seal the unit of transport. Following document processing and examination of the goods the unit of transport is sealed by the Customs with Customs seals and released for exportation. When a unit of transport is sealed, the Customs offices en route, even in South Africa, are supposed only to check the integrity of the seal. If it is intact the goods have not been interfered with.

E. Analysis

Under the SACU arrangements each of the five countries have a national Customs enactment implementing the Customs provisions of the SACU Agreement in its territory. Since their source is the same, the provisions of the national legislation are identical in all material aspects. As the senior partner, South Africa was the custodian of the SACU Customs laws. South Africa initiated amendments to the tariff and to the Customs management legislation, and issued regulations, called Rules, applicable in South Africa and at SACU level. The South African Customs also issued administrative instructions, called "Code of Instructions."

The five countries still have a common principal legislation but there is a growing difference in the regulations and administrative procedures and documentation differ significantly. Botswana and Namibia have common Customs clearance procedures based on the same computer software, the Automated System for Customs Data (ASYCUDA), which was developed and is maintained by the United Nations Conference on Trade and Development (UNCTAD). South Africa's clearance procedures are based on their own CAPE system.

Swaziland and Lesotho are not yet computerized. However, Swaziland is introducing the CAPE system with technical assistance from SARS and funding from the government of Taiwan. The system is currently being piloted at the Ngwenya border post on the border with South Africa. It is expected that by July 2005 it will be rolled out to the Dry Port in Matsapha, and all the main Customs clearance offices will be computerized by mid-2006. The documentation and procedures of the CAPE system used in South Africa are therefore replacing the current Customs clearance procedures and documentation.

The computerization of Customs clearance alone will not bring the Swazi Customs to the level of modernization that is conducive to investment and export promotion. The computerization would need to be accompanied by improved capacity of human resources through recruiting adequate and appropriate staff, providing technical and supervisory training and improving the management and professional skills of managers. Training and management practice would aim at changing the attitude of staff so that they can accept and fit in a new paradigm where the Customs is a service-provider and the private sector a valuable client and partner. The organizational structure would need reviewing to introduce more performance-oriented structures.

Computerization is, therefore, only one of the measures for modernizing the Customs administration. Given these challenges, it would have been prudent for the modernization process not to start with computerization but with a diagnostic study that would examine current processes, the law, and the management and administrative aspects of the Customs Department. However, there is another consideration: the Ministry of Finance desires to establish a Revenue Authority, and has taken the first step of the process by employing a consultant who will spearhead the project. The major and immediate change which is introduced when a revenue authority is established is the merging of the revenue services – Customs and Inland Revenue - and providing an effective organizational structure. The new organization is then left to address the issues of staffing in terms of quality, numbers, and training, and to modernize its services.

The diagnostic study and other modernization aspects should therefore await the establishment of the Revenue Authority; in the meantime the introduction of the CAPE systems should continue.

Going by the experience of most of the countries that have established Revenue Authorities, their establishment has improved the investment climate. Box 5.2 below details why the investment climate has improved and the reasons for the success of revenue authorities...

There are several models of revenue authorities and Swaziland will need to research and decide on the appropriate model for the country. It will also be important to effect all the staff changes necessary to have a strong organization in terms of the quality of staff. Finally, the Ministry of Finance needs to establish a plan of activities with a timeframe for implementing the project, and a strong project team for implementing the plan. The team can tap on the experience of Botswana, Lesotho and South Africa and other countries in the SADC region, including Tanzania, Malawi, Zambia and Zimbabwe.

Issues

Delaying interventions by South African Customs frustrate trade. The Customs Department of SARS causes serious delays of imports of inputs into Swaziland because of checks that are done on the South African side of the border. The South African Customs also opens export containers in transit to Durban that have been sealed by Swazi Customs and imposes severe penalties even on minor errors in documents. SARS also requires large amounts of security bond for goods in transit. There are undue delays in refunding security deposits and discharging bonds. The Swazi private sector laments that the Commissioner of Customs of Swaziland has not taken steps to negotiate with his counterpart in South Africa on behalf of importers and exporters.

The Customs laws are outdated and not codified. Like the income tax legislation, the Customs law is very old and not codified. The forms used are ancient and not aligned on the UN Layout Key. Their completion and duplication is therefore cumbersome, and they are not suitable for use with modern technology equipment like electronic computer printers, scanners, etc. As noted above, Customs clearance is not computerized and there is no computerized management information system, but the South Africa Customs processing system, CAPE, is being introduced in Swaziland, and is now being piloted at one border station.

The Customs administration is antiquated. There are complaints that the Customs administration handles business in an old fashioned manner. The department is not customer oriented - even at the head office in the old building there was no front desk or

public relations office, or public education office to direct or help the public. Occasionally document-certifying officers are absent, and this leads to delays in shipping exports.⁷⁹

The Customs Department is not able to produce timely trade statistics. The publication of trade statistics is nearly three years behind schedule. This is a serious setback since potential investors and development agencies cannot find up-to-date official trade data. It is also embarrassing to the government in trade negotiations and negotiations with donors.

Recommendations

Expedite the establishment of the proposed Revenue Authority. The Ministry of Finance should establish a project team headed by the appointed consultant to oversee the establishment of the revenue authority. The team should prepare a project plan with activities output and timeframes. This will enable the Ministry to assess a realistic date for completing the project and the resources required to implement it. It will also facilitate the monitoring of progress through periodic reports with clear outputs achieved.

The task of modernizing the Customs and Direct Tax services should be left to the revenue authority. The revenue authority should be in place soonest since delay in establishing it is also delaying the modernization of the revenue services. Box 5.2 summarizes some of the positive features of successful revenue authorities.

Box 5.2: Success of Revenue Authorities

Some of the benefits of revenue authorities are noted below:

- They have been more responsive to policy demands and most of them have capacity to carry out studies and advise their governments (e.g. on tariff re-structuring).
- They have improved revenue collection and abolished “nuisance taxes.” (Taxes with very small yield and are difficult to collect).
- They have significantly succeeded to fight smuggling and improved voluntary compliance through taxpayer education and inducements; this has resulted in a level playing field for businesses and removal of price distortions.
- They have significantly succeeded in fighting corruption thus maintaining equitable treatment of all tax payers;
- They have introduced professionalism, efficiency and good corporate culture comparable to that of well-managed private sector corporations.

The success of revenue authorities is attributable to a number of factors including the following:

- Staff remuneration and other terms of service are improved significantly and made comparable to those of best paying institutions like the Central Bank.
- The staff of the old departments who have a record of doubtful integrity or poor performance are not absorbed into the new organization.
- Managers are recruited from strong candidates with private as well as public sector background.
- The organization has a very clear understanding of its mission and vision of what it needs to be to achieve its objectives and targets.
- Senior managers are employed on performance contracts which can be terminated on account of poor performance or doubtful integrity.
- The centralized management creates a strong management team with each member accountable to management and management accountable to a board of directors.
- The board of directors is determined to achieve given goals within the period of its tenure.
- There is more transparency in individual activities and less opportunity for exercising personal influence on decision making and for pursuing personal gain.
- They work closely with the private sector stakeholders as partners sharing common national goals.
- Facilities are improved and operation resources are increased.

⁷⁹ An example given took place on the day the border station of Lomahasha was opened.

Establish a project team to oversee the computerization of Customs clearance. The Commissioner of Customs should appoint a project team to oversee the implementation of the project. The team should include officials from other government agencies like the Ministry of Trade, the Bureau of Statistics, and the Central Bank as well as representatives from the private sector, including the Association of Employers and Chambers of Commerce and Freight Forwarders Association. This is because the systems should have the potential for interfacing with other systems (e.g. those of freight forwarders initially for Direct Trader Input (DTI) and later for Electronic Data Interchange (EDI)) and for catering for the interests of all concerned with revenue, trade statistics, transport, and trade facilitation.

Establish a Customs team to review the Customs regulations in the light of those of SARS. Concurrently with installation of the CAPE system, the Department should review the regulations and adopt those of SARS. A number of forms need to be updated, and certain features like the accreditation system of CCAs and transporters need to be considered. The team should also prepare a training package suitable for Customs officials and the private sector.

It is recognized that the revision of the principal legislation can only be done at the SACU level. This is one of the tasks that should be entrusted to the newly formed SACU Secretariat.

Establish a project to modernize the compilation of trade statistics. There is need for concerted efforts among the all stakeholders that are producers and users of trade statistics to address the delay in the production of trade statistics. The task cannot be left to the Customs and Statistical Office alone. They should therefore establish a project that will identify the constraints and implement solutions for removing them. The project team can learn much from the countries in the region that are up to date with their statistics. Donor assistance may also be available.

Negotiate and agree with SARS on the best way of controlling transit traffic. The Commissioner of Customs should lead negotiations with SARS to agree on the best measures for controlling transit traffic to and from Swaziland. If bilateral consultations fail the Commissioner should raise any outstanding issues in the appropriate SACU organs. The Commissioner should be seen to represent the interests of Swazi exporters and importers while at the same time making sure that they comply with agreed SACU procedures.

IV. Complying with Currency Controls

A. Introduction

The national currency of Swaziland is the Lilangeni, which is exchanged at par with the South African Rand. The Rand is used freely in Swaziland, but the Lilangeni is used only in the country. Swaziland is a member of the Common Monetary Area (CMA) together with Lesotho, Namibia and South Africa.

The law governing exchange control is the Kings Order-in-Council No. 40 of 1974 (the Exchange Control Order). This empowers the Minister of Finance to promulgate regulations relating to the control of the purchase, sale and loan of foreign currency, gold and securities. The Minister of Finance promulgated the Exchange Control Regulations, 1975, (Legal Notice

No. 2 of 1975), which are administered by the Central Bank by virtue of Section 48 of the Central Bank of Swaziland Order as amended. The Central Bank has in turn delegated a number of the exchange control functions to the commercial banks, which are designated authorized Dealers.

The regulations stipulate what may not be done without administrative authorization from the banks or Central Bank, and what must be done in particular circumstances, e.g. permanent residents must declare and sell in the prescribed manner all foreign currency receipts. The regulations also provide for penalties for contraventions. What may not be done or must be done depends on the exchange control residential status of the person concerned. There are three categories of residents: permanent residents, temporary residents and non-residents.

Permanent residents include companies operating in Swaziland and trusts established in Swaziland. Temporary residents are those individuals who are non-citizens and whose permanent residence is outside of the CMA. Certain distinctions are made between companies according to the degree of non-resident control, if there are non-resident shareholders. Temporary residents include mainly contract and expatriate personnel who are employed temporarily in Swaziland and have to meet financial obligations in their countries. The temporary resident status is automatic for the first six years of residence. It may be extended depending on the length of a new employment contract. The term Non-resident is applied to permanent residents on their emigration from the CMA or temporary residents on their permanent departure from the CMA.

B. Dealings in Foreign Currency

No person is permitted to hold or deal in foreign currency other than an authorized dealer. A resident requiring foreign currency for permissible purposes must apply through an authorized dealer, and a resident who acquires foreign currency must sell it to an authorized dealer in exchange for local currency

Residents wishing to buy or sell foreign currencies (currencies other than Emalangeni or Rand) or gold may do so only through an authorized dealer in foreign exchange.

C. Type of Accounts

1. Blocked Accounts

A blocked account is an account in Swaziland to which exchange control restrictions are being applied. For instance, excess balances on emigration are credited to such accounts and can only be dealt with in a manner prescribed to authorized dealers. Such balances may be used for investments in Government Bonds, Building Society shares or such other investments as may be approved by the Central Bank.

2. Non-resident Accounts

Non-residents accounts are accounts maintained in the CMA on behalf of non-residents. Funds in these accounts may be used for payments to residents and non-residents of the CMA for any purpose and may be used to purchase foreign currency. They may only be funded with proceeds of sales to an authorized dealer of foreign currencies, payments from other non-resident accounts and payments which are not inconsistent with the authority delegated to the banks.

3. Resident Accounts

Resident accounts are the accounts of residents of Swaziland, whether permanent or temporary.

4. Foreign Currency Investment/Deposit Accounts

Private Individuals (natural persons) resident in Swaziland and who are tax payers in good standing and over the age of eighteen years are allowed to deposit and hold the equivalent of E750,000 (US \$131,579) in foreign currency with authorized dealers or actually invest abroad an equivalent of E750, 000 (US \$131,579) in securities.

5. Foreign Currency Accounts

Permanent residents and temporary residents of Swaziland and non-residents of the CMA may open foreign currency accounts with an authorized dealer in Swaziland, subject to such account being funded with foreign currency emanating from sources outside the CMA and to any foreign currency accrual being retained on the account for a period not exceeding 90 days from the date on which such an accrual was first credited to the foreign currency account. At the end of the 90 days period any unutilized foreign currency accruals must be immediately be offered for sale to an Authorized Dealer and converted to local currency.

6. Foreign Bank Accounts Maintained by Residents

Permanent residents of Swaziland are not permitted to maintain Bank accounts outside the CMA except where special permission has been granted by the Central Bank. Foreign exchange receipts are required to be declared and offered for sale on an authorized dealer in Swaziland and may not be credited to accounts held outside without prior special exemption. People or firms intending to operate such accounts should apply to the Central Bank through their bankers giving details of the purpose of the account, the balances needed and duration of maintaining the account. Temporary residents may maintain accounts abroad

D. Foreign Exchange Out Payments

Authorized dealers have been delegated powers to approve most transactions, and persons intending to affect a transfer should consult them. Applications that are not within the powers of the bank concerned have to be submitted to the Central Bank by the authorized dealer on behalf of customers.

1. Payment for Imports

A local importer may buy foreign currency for payment to an overseas supplier subject to the specified terms and conditions. These conditions include production of documentation evidencing that the goods have been or are to be received in Swaziland, such as bills of lading, relative invoices and parcel post receipts, where appropriate.

For goods subject to import permit, the import permit must be produced. It is required for endorsement of the amount used. Advance payments for imports are not normally approved but exceptions may be allowed by the Central Bank

2. Foreign Travel

Permanent Residents may purchase up to E160,000 (US \$28,070) worth of foreign exchange per adult per calendar year and E50,000 (US \$8,772) per child under twelve years of age per calendar year for business or holiday travel or both without distinction between countries.

It is also possible for firms to be allowed an omnibus for business travel by their employees and directors subject to approval by the Central Bank.

3. Medical Expenses

The cost of specialized or emergency medical treatment outside the CMA can be allowed upon submission of proper documentation.

4. Education Abroad

Swaziland residents undergoing full time course outside the CMA may be allowed foreign exchange to cover the cost of board and lodging, books and other expenses up to a maximum of E 160,000 (US \$28,070) per annum for single persons and E320,000 (US \$54,140) for married persons accompanied by their spouses. In addition, tuition, maintenance and other incidental expenses may be settled on submission of documentary evidence. An additional E 50,000 (US \$8,772) per annum for single persons and those accompanied by their spouses up to E 100,000 (US \$17,544) per annum may be allowed to cover traveling expenses during vacation periods.

5. Maintenance, Gifts and Personal Loans

Permanent residents may transfer E9,000 (US \$1,578) per receiving family unit per month to near relatives residing outside the CMA who are in needy circumstances provided that no other person in the CMA is effecting the same transfer to the same beneficiary. Monetary gifts and loans up to E30,000 (US \$5,263) per applicant in anyone year may also be made to non-residents or residents temporarily abroad for purpose of study. However, gift parcels may be sent instead to the same value but excluding gold or gold jewellery.

6. Current Transfers by Temporary Residents

Temporary residents may transfer to countries outside the CMA their local monthly-earned income. Such transfers may be for monetary gifts and loans, for holiday travel, for meeting financial obligations at home (e.g. tax and insurance payments) and for other legitimate purposes.

7. Gratuity, Leave Pay and Bonuses

Authorized Dealers may allow temporary residents to transfer gratuities, leave pay and bonuses. Bonuses include an additional salary of one month paid to an employee at the end of the year (13th cheque). Remittance must be supported by a letter from the employer concerned and confirmation from the Commissioner of Taxes in Swaziland that all tax commitments have been met.

8. Accumulated Savings on Departure from the CMA

Upon submission of an application, an authorized dealer will permit the transfer of savings held with banks or otherwise invested in Swaziland up to total income earned during temporary resident whilst in the country

9. Emigration

Persons regarded as permanent residents of Swaziland for Exchange Control purposes will at the time of emigration to countries outside the CMA be accorded a settling-in-allowance of up to E1.5 million (US \$263,157) per family unit and E750,000 (US \$131,579) for single persons at a current rate of exchange. In addition emigrants will be permitted the normal travel allowance on their departure

Further more, emigrating individuals are allowed to export household and personal effects amounting to E500,000 (US \$87,719) as well as exportation of motor vehicles, caravans, trailers and motor cycles within an overall insured value of E500,000 (US \$87,719) per family unit or single person. Export of these items are declared on Form N.E.P

E. Local and Foreign Currency Banknotes

1. By Residents

Swaziland residents traveling to countries outside the CMA are permitted to take out foreign bank notes up to the applicable travel entitlement availed of. In addition they may import or export up to E5,000 (US \$877) in local bank notes at anyone time which must be reduced by the value of any bank notes issued by other member countries of the Common Monetary Area which are permitted to be exported or imported. The E5,000 (US \$877) in local currency does not count against a resident's travel allowance but any foreign notes supplied should be endorsed in the traveler's passport and counted as part of the allowance.

2. By Tourists and Short-term Visitors

Visitors are allowed to bring with them a maximum of E5,000 (US \$877) in local currency per person to meet initial expenses in the country, but visitors arriving from Lesotho, Namibia and the Republic of South Africa are not restricted in this way. On departure from the CMA and within a period of twelve months of the date of arrival, visitors may take up to a maximum of E5,000 (US \$877) in local currency bank notes and any foreign currency bank notes which can be proven to have been originally imported by them or which represent the proceeds of foreign currency traveler's cheque or other instruments of exchange sold through authorized dealers.

F. Capital Transfers, Capital Issues, Securities and Local Borrowing by Non-residents

1. Inward Transfer of Investment Funds into Swaziland

To avoid inconvenience on subsequent repatriation of income accruing in Swaziland from all inward capital transfers from outside the CMA, such transfers should be effected through normal banking channels, i.e. either in foreign currency direct or in local currency through a non-

resident account and the funds documented on the exchange Control Form CBS 34 for inward transfers.

Transfers of loan funds to Swaziland from outside the Common Monetary Area must have the prior approval of the Central Bank of Swaziland. Applications should be submitted through an authorized dealer and be supported by the relative loan agreement together with details of the lender.

2. Capital Issues

Raising capital in Swaziland by issue of bonds and shares in aggregate amount of more than E100,000 (US \$17,543) during a period of twelve months requires approval. Applications in this connection, supported by the relevant details, should be routed through a bank in Swaziland for consideration by the Central Bank.

3. Local Borrowing by Non-residents

Non-resident persons, and companies that are more than 25% directly indirectly non-CMA owned or controlled need prior exchange control approval of the Central Bank before raising loans or bank overdrafts or advances within CMA. Non-residents are, of course, expected to arrange a fair share of funds from their own sources.

4. Transactions in Securities Between Residents and Non-residents

Dealings in both resident and non-resident owned or controlled securities by residents and by non-residents require prior approval. "Security" means any share, stock, bond, debenture stock, unit certificate and includes any letter or other document conferring or containing any evidence of right in respect of any security.

G. Dividends and Profits, Interest, Director's Fees and Royalties

1. Dividends and Profits

As part of government policy to attract foreign investment, dividends derived from current trading profits are freely transferable on submission of documentation (including latest annual financial statements of the company concerned) subject to provision for non-resident shareholders tax. Local credit facilities may not be utilized for paying dividends.

2. Interest

On borrowing abroad, which is subject to prior Exchange Control approval, the remittance of interest (less non-resident withholding tax) is allowed

3. Director's Fees

Companies having Directors whose normal place of residence is permanently outside the CMA can remit to the latter in fees amounts against proof of nonresident status and copy of resolution of the Board confirming payment to the beneficiary.

4. Royalties

Payment to non-residents in respect of royalties and fees arising from the use of patents, trade marks, copyrights, and designs may be made on the basis of agreements which have received exchange control approval clearance.

H. Foreign Exchange Receipts

All foreign currencies accruing directly and indirectly to residents must within a period of thirty days after accrual be sold to an authorized dealer in exchange for local currency. Permanent residents may not maintain accounts abroad without prior approval

1. Exports

When goods are exported, a declaration that export proceeds will be repatriated in the prescribed manner and within the stipulated period has to be made on Form F 178 and submitted to the exporter's commercial bank. The bank stamps it and a copy is returned for presentation to the Customs with other export documents. Exporters cannot waive or delay payment for more than six months after shipment or seven days after accrual. Special exchange control approval should be obtained for any permissible and necessary disbursements to be charged against foreign exchange proceeds.

2. Other Income in Foreign Exchange (Invisible Exports)

By law, residents are obliged to repatriate amounts due to them by non-residents and to sell such amounts to an authorized dealer for exchange into Emalangeni. These would include dividends, interest, profits, salaries, wages, directors' fees, and commissions.

3. Borrowing Abroad

Residents are not permitted to borrow funds from abroad without prior approval. In genuine cases and on reasonable terms, approval is not unnecessarily withheld. Approval is given with implied commitment that payment of the principal and interest will be authorized in due course.

I. Analysis

Given Swaziland's membership of the CMA, the exchange control regime reflects the monetary policies of the CMA. As one publication⁸⁰ notes, "Membership of the CMA serves Swaziland well by ensuring tight monetary discipline and capitalizing upon close economic integration and cooperation with South Africa. The rate of inflation in Swaziland also tracks that of South Africa, with the kingdom dependent largely on the overall price level and exchange movements in this neighbour. Fairly liberal regulations apply to the rest of the world, and the Central Bank has liberalized exchange control on a gradual basis."

The private sector persons interviewed in this study generally expressed satisfaction with the exchange control regime and with the efficiency of the commercial banks in this regard. There is no exchange control restriction or prohibition that can be considered a hindrance to investment, and the allowances were considered generous.

⁸⁰ Swaziland Review 2005, published by Swazi Review of Commerce and Industry (Pty) Ltd, 2005.

V. Hosting Labour Inspections

A. Regulatory Regime for Labour Inspections

The Department of Labour under the Ministry of Enterprise and Employment is responsible for formulating and implementing Swazi labour policy. The principal pieces of legislation governing labour in Swaziland are the:

- Employment Act, 1980, which sets rules related to contracts between an individual employer and worker;
- Occupational Safety and Health Act, 2001, which established the regulatory regime for workplace safety;
- Industrial Relations Act, 2000, which governs termination, collective employment, and dispute resolution;
- Factories Machinery and Construction Works Act, 1972
- Wages Act, 1964

The Department is divided into several units, two of which interact directly with investors through their mandate to inspect firms. The units include:

- General Inspectorate – inspecting firms for compliance with various labour laws and regulations
- Factories Inspectorate – inspecting firms for compliance with the Occupational Safety and Health Act, 2001
- Workmen’s Compensation – administering the payment of injury compensation through an employee’s insurance company
- Employment Services – registration and placement of workers and localization policy and programs
- Industrial Relations – handling industrial relations matters and prosecutions
- Statutory Bodies/International Relations – reviewing wages and legislation and answering questions asked by the International Labour Organization (ILO)

The Department manages the functions of several institutions that serve different advisory, dispute resolution, and mediation roles. These include:

- Labour Advisory Board – established to advise the Minister on amendments to Swazi labour legislation and international labour agreements and standards, among other matters.
- Wage councils – there are 15 presently operating with representation from sectoral labour groups, employers’ interest groups, and government. Each negotiates wage agreements and minimum work standards on a sectoral level.
- Industrial and Vocational Training Board
- Occupational Health and Safety Technical Committee
- Essential Services Committee – addresses employment issues for “essential” sectors like power, water, and health.

In Swaziland union-employer negotiations and resulting collective bargaining agreements play a significant role in labour relations. These agreements are submitted to the Commissioner of Labour, Minister of Enterprise and Employment, and Industrial Court for ultimate ratification. These agreements are gazetted as a legal notice. Labour inspectors will monitor these agreements to ensure that they are implemented appropriately.

In Swaziland, there is no mandatory labour registration and hiring and firing are largely governed by internal contractual agreements between an employer and employee according to the country's legal framework.

The Department of Labour has two inspectorates: the General Inspectorate and the Factories Inspectorate. The former is in charge of enforcing several pieces of Swazi legislation, including:

- The Employment Act, 1980
- Industrial Relations Act, 2000
- Wages Act, 1964
- Workmen's Compensation Act, 1982

The Factories Inspectorate is primarily involved with inspecting companies for compliance with the Occupational Safety and Health Act, 2001, which complements and modernizes the Factories, Machinery and Construction Works Act, 1972. Any private sector entity that employs someone is subject to inspection by both Inspectorates.

According to the Department of Labour, an investor should undergo both a General Inspectorate and Factories Inspectorate inspection within the first year, ideally within the first few weeks of operations. Labour inspections can be surprise inspections or pre-arranged depending on the type and purpose of the inspection. According to the Labour Department, about one-third of inspections are unannounced. The Labour Department uses various means to identify companies that it should inspect, including conducting a survey of existing enterprises in Swaziland in 2003, liaising with SIPA, and from reports of business activity from the public.

B. Process for Hosting a Routine Labour Inspection

Routine labour inspections can take up to two days, depending on the size and type of the company, but many are completed within two hours. The number of workers is the main factor in determining how long a routine labour inspection takes, as conducting interviews with randomly selected workers in various functional roles within a company, in addition to management, is part of the inspection process. At present, General Inspectorate inspectors tend to visit companies Tuesday, Wednesday, and Thursday. The inspector is guided by an inspection form, "D.L.I. Labour Inspection Report: Revised 1987," and based on the contents of the form an inspection report would be completed. The form asks the inspector to record several items, including:

- Names of interviewees;
- Number of workers by nationality, race, and immigration status (including the number of workers without a temporary labour permit);
- Payment and leave details for employees;
- Details of child employment;
- Safety, health, and death issues;
- Status of employment records;
- Condition of the physical working environment;
- Economic security programs, such as pensions and workmen's compensation;
- Housing and sanitation conditions; and
- Nature of industrial relations, including presence of works councils and unions.

The labour inspection results in a report that is mailed to the investor. Mailing a report typically takes between one to two days, labour officials say. According to the Department of Labour the report takes between one and two weeks to complete, depending on the volume of inspections and reports to be done at the time. If a company is not judged to be in violation of any of the labour laws, the report will summarize the conditions of the work site and state that there are no improvements required.

If, however, a company is in violation of a labour law the report will cite the violation and the inspector will determine a period of time in which the problem should be fixed. Typically, Factories inspectors will give a company two months to fix the violation. The timeframe is at the discretion of the inspector and determined based on the severity and nature of the problem. A follow up inspection should be scheduled shortly after the end of the grace period for remediating the violation.

The General Inspectorate lacks the legal authority to fine persistent violators, but it can prosecute companies under the Industrial Relations Act and can issue an order to cease operations.

If an investor wishes to appeal the findings of a General Inspectorate labour inspection, he or she may contact the Commissioner of Labour. Labour officials suggest that inspections are rarely appealed.

The Department charges no fee for inspections or transport.

C. Process for Hosting a Factories Inspectorate Inspection

The Factories Inspectorate operates in a similar manner as the General Inspectorate. Factories inspectors use a different form than the General Inspectorate. The Factories Inspectorate inspections can take up to three days depending on the size and complexity of the inspection. For example, some of the country's large sugar mills can require a three day inspection. For the Factories Inspectorate the number and type of machines and number of workers are the most important factors that determine the length of time needed for an inspection. At present, Factories Inspectorate inspectors visit companies Monday through Thursday and prepare reports and handle other tasks on Fridays.

The inspector is guided by the "Factory Inspection Registration Form," which asks for an examination of such aspects of the workplace as:

- Number and gender of workforce;
- Existence of written safety policy;
- Status of medical facilities, equipment, and supplies;
- Number of steam boilers, pressure vessels, and elevators and date of their last inspection;
- General safety aspects of machinery, the work space, fire fighting equipment, and drinking water;
- Noise and vibration;
- Thermal conditions;
- Presence of chemical agents;
- Presence of dusts; and
- Status of ergonomics.

The result of the inspection is a report that is mailed to the investor, Ministry of Health, and the Fire Department. Both the Ministry and the Fire Department may inspect as well. Mailing a report typically takes between one to two days, Labour officials say. According to the Department of Labour the report takes an average of one week to complete, depending on the volume of inspections and reports to be done at the time. If a company is not judged to be in violation of any of the labour laws, the report will summarize the conditions of the work site and state that there are no improvements required.

If, however, a company is in violation of a labour law an Improvement Notice will be completed in front of the investor at the end of the inspection. The report will cite the violation and the inspector will determine a period of time in which the problem should be fixed. Typically, inspectors will give a company one or two months to fix the violation. The timeframe is at the discretion of the inspector and determined based on the severity and nature of the problem. A follow up inspection should be scheduled shortly after the end of the grace period for remediating the violation.

The Factories Inspectorate does not fine companies, although the Occupational Safety and Health Act permits fines up to E 10,000 (US \$1,744.38) to be assessed to violators of the law. The Factories Inspectorate can issue a prohibition notice that stops a company's operations after the third violation or if a practice is discovered that is particularly dangerous on the first inspection.

D. Analysis

Swaziland's labour inspection regime was generally well regarded by investors and not considered intrusive or a constraint to operations. Several investors said that Swaziland's labour inspectors are relatively professional, know what they are inspecting for, and are easy to deal with. A couple issues emerged related to labour inspections.

Issues

Labour inspectors lack sufficient resources. One reason why labour inspections are not considered a burden to businesses in Swaziland is because they are less frequent than they intended under the workplace safety policy. Several investors said that labour inspections were conducted less than once a year. Other observers note that the labour Inspectorates lack the resources, including good testing equipment, to do the job they should be doing. They Inspectorates also need to have resources to educate employers and workers about occupational health and safety issues.

Inspections do not always strictly adhere to the regulations. A few investors suggest that labour inspectors do not always follow the regulations appropriately. There may be instances and certain sectors where the regulations offer insufficient guidance. One investor claimed that sometimes the inspectors create arbitrary requirements, like having masks and chairs for garment workers, when these things are not required by law and not standard for the industry.

Recommendations

Increase labour inspection resources. Increasingly, global corporate culture is more diligent about adhering to good occupational health and safety standards. Indeed, in some industries buyers will want to see assurances that suppliers are adhering to prevailing norms regarding workplace safety and environment. Therefore, both the private sector and the government have an interest in ensuring that labour inspections are demonstrably efficient, effective, and

unobtrusive. Toward that end, it is recommended that the Department of Labour undertake a needs assessment of critical capacity deficits, including training, equipment, and personnel, and develop a plan to improve capacity.

Standardize conduct of inspections. Because most investors suggest labour inspections are well conducted the Labour Department has demonstrated a good level of capacity. This good conduct should be standardized through the inspectorates. Additionally, the Labour Department should assess to what extent existing regulations are adequate for the countries various industry sectors and make changes accordingly.

Annex A: Interview List

1. Mr. M. G. Dlamini, Governor,

Central Bank of Swaziland

Tel.: (268) 404-2197/408-2111

E-mail: martind@centralbank.org.sz

2. Mr. Siphephiso A. Dlamini, Executive Director
Conciliation, Mediation & Arbitration Commission

1st Floor, Mbabane House

P.O. Box 3942

Mbabane, Swaziland

Tel.: (268) 404-8877/9685

Mob.: (268) 602-8567

Fax: (268) 404-8875

E-mail: sdcmac@realnet.co.sz

3. Mr. M. Vilakazi, Commissioner for Customs and Excise
Department of Customs and Excise

Tel.: (268) 404-5370/3

Fax: (268) 404-0774

Mob.: (268) 622-0106

4. Mr. A.T. Mdluli, Deputy Commissioner of Customs
Department of Customs and Excise

Tel.: (268) 404-5370/3

Fax: (268) 404-0774

5. Mr. M. O. Dlamini, Senior Customs Officer
Department of Customs and Excise

Tel.: (268) 404-5370/3

Fax: (268) 404-0774

6. Mr. Michael Mavuso, Senior Customs Officer (Refunds)
Department of Customs and Excise

Tel.: (268) 404-5370/3

Fax: (268) 404-0774

7. Mr. Richard Gamedze, Senior Customs Officer, Training
Department of Customs and Excise

Tel.: (268) 404-5370/3

Fax: (268) 404-0774

8. Mr. A.M. Hlophe, Chief Commercial Officer
Ministry of Enterprise and Employment

Tel.: (268) 404-3201

E-mail: mee@realnet.co.sz

9. Ms. Pumelele Dlamini, Industrial Officer
Ministry of Enterprise and Employment

Industrial Department

E-mail: mee@realnet.co.sz

10. Mr. Meshack M. L. Shongwe, Deputy Principal Secretary for Policy and Planning

Ministry of Finance

Tel.: (268) 404-8149/606-3030

Fax: (268) 404-3187

E-mail: shongwemesh@finance.gov.sz

11. Mr. Dumisile E. Magagula, Director of Fiscal and Monetary Affairs

Ministry of Finance

Tel.: (268) 404-8147/9

Fax: (268) 404-3187

E-mail: Magagula@gov.sz

12. Mr. Sandile A. Pato, Director International Trade Department

Ministry of Foreign Affairs and Trade

Tel.: (268) 404-5180

Fax: (268) 404-3833

E-mail: itd@realnet.co.sz

13. Mr. Richard Maphalala, Director

Geological Survey & Mines Department

Tel.: (268) 404-2412

E-mail: geo.director@swazi.net

14. Mr. Edmund J. Dlamini, Principal Health Inspector

Health Inspectorate Department

Ministry of Health

P.O. Box 5

Mbabane, Swaziland

Tel.: (268) 404-2431

Mob.: (268) 603-7416

Fax: (268) 404-2092

15. Mr. Mbuso Dlamini, Principal Secretary

Ministry of Housing and Urban Development

Tel: 268-404-1173

E-mail: minhouse@realnet.co.sz

16. Ms. Sbongile Lukhele, Director, Housing and Human Settlements

Ministry of Housing and Urban Development

Tel.: (268) 41-741

17. Mr. Mandla Mhlongo, Land Officer

Ministry of Housing and Urban Development

E-mail: mhlongom@gov.sz

18. Mr. Sibusiso Dlamini, Land Officer

Ministry of Housing and Urban Development

Tel.: (268) 404-174

E-mail: dlaminisib@gov.sz

19. Mr. S. P. Mophe, Chief Immigration Officer

Department of Immigration

Ministry of Home Affairs
P.O. Box 372
Mbabane, Swaziland
Tel.: (268) 404-7106/2941/5
Fax: (268) 404 4303

20. Mr. P. M. M. Dlamini, Senior Immigration Officer
Department of Immigration
Ministry of Home Affairs
P.O. Box 372
Mbabane, Swaziland
Tel.: (268) 404-2941/5
Mob.: (268) 607-0473
Fax: (268) 404 4303

21. Mr. Nhlawhla Hlatshwayo, Acting Registrar
Industrial Court
Mbabane, Swaziland
Tel.: (268) 404-5609
Mob.: (268) 624-8582
Fax: (268) 404-3305

22. Mr. Gibson D. Ndlovu, Registrar of Companies
Ministry of Justice
Mbabane, Swaziland
Tel.: (268) 404-6010/9
Mob.: (268) 606-7370
Fax: (268) 404-3531

23. Mr. Jinno L. Nkhambule, Labour Commissioner
Department of Labour
Ministry of Enterprise and Employment
P.O. Box 198
Mbabane, Swaziland
Tel.: (268) 404-5155
Mob.: (268) 606-2902
Fax: (268) 404-1966
E-mail: jinnohn2001@yahoo.co.uk

24. Mr. Dickson Mkhonta, Senior Assistant Secretary
Training and Localization Section
Department of Labour
Ministry of Enterprise and Employment
P.O. Box 198
Mbabane, Swaziland
Tel.: (268) 404-3201
Fax: (268) 404-4711

25. Mr. Ernest S. S. Tsabedze, Senior Labour Officer
General Inspectorate
Department of Labour

Ministry of Enterprise and Employment

P.O. Box 198

Mbabane, Swaziland

Tel.: (268) 404-1971/3

Mob.: (268) 606-5952

Fax: (268) 404-1966

E-mail: deptlb@realnet.co.sz

26. Mr. Peter Mauuso, Factories Inspector

Factories Inspectorate

Department of Labour

Ministry of Enterprise and Employment

P.O. Box 198

Mbabane, Swaziland

Tel.: (268) 404-1971/3

Mob.: (268) 617-1494

Fax: (268) 404-1966

27. Mr. Madoda Dlamini, City Engineer

Manzini City Council

Tel.: (268) 505-2465

E-mail: madodad@yahoo.com

28. Mr. Mandla Hlophe, Town Engineer

Matsapha Town Board

Tel.: (268) 518-6637

E-mail: Mandla.mtsb@africaonline.co.sz

29. Mr. Bafana Dlamini, Town Treasurer

Matsapha Town Board

Tel.: (268) 518-6637

E-mail: Bafana.mtsb@africaonline.co.sz

30. Mr. Phesheya Gumedze, Public Works Director

Mbabane City Council

Tel.: (268) 602-3142 (mobile)

E-mail: phesheyag@mbacity.org.sz

31. Ms. Fiksile Dlamini, Acting Director of Planning Department
(City Planner)

Mbabane City Council

Tel.: (268) 608-4446

E-mail: fiksile@mbacity.org.sz

32. Mr. Phesheya Gumedze, Public Works Director

Mbabane City Council

Tel.: (268) 602-3142 (mobile)

E-mail: phesheyag@mbacity.org.sz

33. Ms. Fiksile Dlamini, Acting Director of Planning Department

Mbabane City Council

Tel.: 608-4446 (mobile)
E-mail: fiksile@mbacity.org.sz

34. Mr. Robert Biyela, Inspector of Mines
Minerals Inspectorate
Tel.: (268) 404-2412/4
E-mail: biyela34@hotmail.com

35. Mr. Archie Magwaza, Senior Infrastructure Engineer
Project Management Unit (PMU)
Tel.: (268) 404-1001
E-mail: abm@realnet.co.sz

36. Mr. Petros Dlamini, Senior Manager Business Units
Swazi Telecom
Tel.: (268) 405-2444
E-mail: petrous@sptc.co.sz

37. Mr. Phumelela Shongwe, Business Units Marketing Manager
Swazi Telecom
Tel.: (268) 405-2000
E-mail: Pssho@sptc.co.sz

38. Mr. Edward Ntshangase, Systems Maintenance Senior Manager
Swazi Telecom
Tel.: (268) 405-2214
E-mail: emntshangase@sptc.co.sz

39. Mr. Luke Mswane, Executive Manager
Swaziland Electricity Board (SEB)
Tel.: (268) 404-2521
E-mail: mswanel@seb.co.sz

40. Mr. Jameson Vilakati, Director
Swaziland Environmental Agency
Tel.: (268) 404-7893
E-mail: seabiodiv@realnet.co.sz
E-mail: sea@realnet.co.sz

41. Mr. Mboni Dlamini, Senior Environmental Officer
Swaziland Environmental Agency
Tel.: (268) 404-6420

42. Mr. Dan D. Ntshalintshali, Manager, Property Department
Swaziland Industrial Development Company Ltd.
Tel.: (268) 404-3983
E-mail: dan@sidc.co.sz

43. Ms. Tshidi Masisi-Hlanze, Company Secretary
Manger, Legal Department
Swaziland Industrial Development Company Ltd.

Tel.: (268) 404-3391
E-mail: tshidi@sidc.co.sz

44. Mr. Bhekis R. Dlamini, Chief Executive Officer
Swaziland Investment Promotion Agency
Swaziland Investment Promotion Agency
7th Floor, Mbandzeni House
Church Street
P.O. Box 4194
Mbabane, Swaziland
Tel.: (268) 404-0470
E-mail: e.nathi@sipa.org.sz

45. Mr. Nathi Dlamini, Director, FDI
Swaziland Investment Promotion Agency
Swaziland Investment Promotion Agency
7th Floor, Mbandzeni House
Church Street
P.O. Box 4194
Mbabane, Swaziland
Tel.: (268) 404-0470
E-mail: e.nathi@sipa.org.sz

46. Mr. Hezekiel G. Shongwe, Deputy Director – Investor Facilitation
Swaziland Investment Promotion Agency
7th Floor, Mbandzeni House
Church Street
P.O. Box 4194
Mbabane, Swaziland
Tel.: (268) 404-0470/4
Fax: (268) 404-3374
E-mail: info@sipa.org.sz

47. Mr. John Creamer, Director, SME
Swaziland Investment Promotion Agency
P.O. Box 1857
Manzini, Swaziland
Tel.: (268) 404-0470
Fax: (268) 505-4377
E-mail: funekile@sipa.org.sz

48. Ms. Funekile Mkhonta, Deputy Director, SME
Swaziland Investment Promotion Agency
P.O. Box 1857
Manzini, Swaziland
Tel.: (268) 404-0470
Fax: (268) 505-4377
E-mail: funekile@sipa.org.sz

49. Mr. Prince Lonkhokhela, Chairman
Swaziland National Provident Fund
P.O. Box 1857

Manzini, Swaziland
Tel.: (268) 505-3730
Mob.: (268) 602-4425
Fax: (268) 505-4377
E-mail: lonkhokhela@africaonline.co.sz

50. Mr. Jameson Mamba, Senior Benefits Officer
Swaziland National Provident Fund
P.O. Box 1857
Manzini, Swaziland
Tel.: (268) 505-3731/4
Mob.: (268) 604-3795
Fax: (268) 505-4377

51. Mr. Patrick Bhembe, Compliance Director
Swaziland National Provident Fund
P.O. Box 1857
Manzini, Swaziland
Tel.: (268) 505-3119
Mob.: (268) 602-8507
Fax: (268) 505-4377
E-mail: pbhembe@snpf.co.sz

52. Mr. Ike Herbst, Operating Director
Swaziland Water Services Corporation
Tel.: (268) 416-3608
Fax: (268) 416-3617
Mob: (268) 602-8680
E-mail: ike@swsc.co.sz

53. Mr. Philda Ntombi Msibi, Commissioner of Taxes
Department of Taxes
Tel.: (268) 404-6154
Fax: (268) 404-2753
E-mail: incometax@realnet.co.sz

54. Mr. Maxwell M. Lukhelle, Deputy Commissioner of Taxes
Department of Taxes
Tel.: (268) 404-4119
E-mail: depcomtax@realnet.co.sz

55. Mr. Namcebo Marrengane, Acting Deputy Commissioner, Legal
Department of Taxes
Tel.: (268) 404-51 77
E-mail: marenganen@gov.sz

56. Ms. Nomcebo Marrengane, Acting Deputy Commissioner (Legal)
Department of Taxes
P.O. Box 186 Mbabane
Tel.: (268) 405-5177
Fax: (268) 404-2753

Mob: (268) 604-4270
E-mail: marrenganen@gov.sz

57. Ms. Alma T. Andrade, New Business Manager

Tibiyo Taka Ngane

Tel.: (268) 518-7979

E-mail: Andrade.alma@tibiyo.com

58. Mr. Sandile Pato, Director
International Trade Department

Trade Promotion Unit

P. Box 418 Mbabane

Tel.: (268) 404-5180

Fax: (268) 404-3833

Mob: (268) 617-2961

E-mail: it@realnet.co.sz

Private Sector

1. Ms. Virginia du Toit, Sales Director

Aïda Real Estate Agents, Property Management, Property Sales and Leasing

Tel.: (268) 404-2155

Fax: (268) 404-0373

E-mail: aida@ninggroup.com

2. Mr. Flip Lombard, General Manager

Arrow Feeds

Tel.: (268) 518-6300

Fax: (268) 518-4643

3. Mr. John Resting, Director

Bicon Consulting Engineers

Tel.: (268) 404-1956

Fax: (268) 404-2227

E-mail: johnrest@realnet.co.sz

4. Mr. Brad Walker

Brad Walker Architects

Tel.: (268) 404-9709

Fax: (268) 404-9709

E-mail: brad.walker@realnet.co.sz

5. Greg Stock, General Manager

Cadbury Schweppes

Tel.: (268) 518-6168/9

Fax: (268) 516-173

E-mail: greg.stock@csplc.com

6. Rob Cloete, Managing Partner

Cloete Corporate Attorneys, Notaries and Conveyancers

Tel.: (268) 404-3144

Fax: (268) 404-3136
E-mail: RoBCOETE@TRIPEC.CO.SZ

7. Bheki Nkwanyama, Plant Manager

D.D. Williamson

Tel.: (268) 518-4869
Fax: (268) 518-5068
E-mail: bheki_nkwanyama@ddwimson.com

8. Mr. Martin Evry, Partner

Ernst & Young

Tel.: (268) 404-2016/7
Fax: (268) 404-5012
E-mail: martin.evry@za.ey.com

9. Mr. D. G. Miller, Director

Fashion International (Pty.) Ltd.

7th Avenue, Matsapha, Swaziland
Mob.: (268) 602-3633
E-mail: doug@fashion.co.sz

10. Mr. Chris Grobler, General Manager

FedEx Express Swaziland

Tel.: (268) 422-0961
E-mail: chrisg@fedex.myexpress.co.za

11. Senator Charles M. Ndzimandze, Managing Director

Interfreight (Pty) Ltd

Tel.: (268) 422-0699
Fax: (268) 422-0701
E-mail: Interfreight@realnet.co.sz

12. Ms. Sarah-Jane Thomson

Kemp Thomson Inc., Attorneys & Conveyancers

Tel.: (268) 404-2549
Fax: (268) 404-2588
E-mail: ktiattorneys@realnet.co.sz

13. Darron Raw, Director

Mantenga Craft Centre

Tel.: (268) 416-2180
Fax: (268) 416-1040
E-mail: darron@rawafrica.com

14. Mr. Mabandla Manzini

M. J. Manzini & Associates

Tel.: (268) 404-3222
E-mail: mabandlam@yahoo.com

15. Simon Cheung, General Manager

Matsapha Knitwear (PTY)

Tel.: (268) 518-6202
Fax: (268) 518-5188
E-mail: mknit-swd@africaonline.co.sz

Mr. Themba Mkhululi Khumalo, CEO

MTN

Tel.: (268) 406-0000
E-mail: thembak@mtn.co.sz

16. Mr. Musa Dlamini, Attorney

Dlamini & Associates

Tel.: (268) 602-8167
E-mail: dlaminim@triplec.co.sz

17. Mr. Ambrose M. Dlamini, Managing Director

Nedbank

P. Box 68 Mbabane
Tel.: (268) 408-1242
Fax: (268) 404-8356
Mob: (268) 602-8241
E-mail: amdlamini@nedcor.com

18. Mr. Chas Prettejohn,
Managing Director,

Ngwenya Glass

Tel.: (268) 442-4053
Fax: (268) 442-4053
E-mail: ngwenya@ngwenyaglass.co.sz

19. Ms. Emily Kao, Merchandising Manager

Orient Sun

March 14
Tel.: (268) 442-4773
E-mail: orientsun@realnet.co.sz

20. Mr. Lean Drinkwater

Pam Golding Properties

Tel.: (268) 416-1555
Fax: (268) 416-7022
E-mail: Swaziland@pamgolding.co.za

21. Mr. Brent Harmond, Managing Director

Pick 'N Pay

Tel: (268) 416-3426/27
Fax: (268) 416-3425

22. Mr. Robert Maxwell, Managing Director

ProCan

Tel.: (268) 518-5227
Fax: (268) 518-5227
Mob: (268) 615-7151

E-mail: md.procan@swazi.net

23. Ali Resting, Managing Director,

Real Image Internet

Tel.: (268) 404-7432

Mob.: (268) 602-0519

E-mail: ali@realnet.cosz

24. Mr. Zwelethu D. Jele, Attorney

Robinson Bertram Attorneys, Notaries, and Conveyancers

Ingcongwane Building

P.O. Box 24

Mbabane, Swaziland

Tel.: (268) 404-2953

Fax: (268) 494-5080

E-mail: zdjele@robinsonbertram.law.sz

25. Mr. Paulo Samina, Director

Mr. Rueben Msibi, Director

Roots Civils (Construction Company)

Tel.: (268) 550-4037

Fax: (268) 550-4038

26. Mr. Dave Codner, Contracts Manager

S&B Building (Pty) Ltd. Building & Civil Engineering Contractors

Tel.: (268) 518-5006

Fax: (268) 518-5015

E-mail: dave@bgroup.co.sz

27. Mr. Siphon A. Nkosi, Attorney

Nkosi & Associates

453 Gilfillan Street, Kent Rock

Mbabane, Swaziland

Tel.: (268) 404-3208/3244

Fax: (268) 404-4388

E-mail: sankosi@realnet.co.sz

28. Mr. Dale R. Allen, Managing Director

Swazi Wire Industries Ltd.

Tel.: (268) 404-2376

Fax: (268) 518 6429

E-mail: swaziwire@africaonline.co.sz

29. Mr. Greg Uys, Managing Director

Swaziland Beverages

Tel.: (268) 518-6309

Fax: (268) 602-8200

E-Mail: greg-uys@swazibrewers.co.sz

30. Mr. Gideon J. Mahlalela, Chief Executive Officer

Swaziland Railway

Dzeliwe Street
P.O. Box 475
Mbabane H100 Swaziland
Tel.: (268) 404-2486/2094
Mob.: (268) 602-9065
Fax: (268) 404-5009
E-mail: Gideon@africaonline.co.sz
gmahlaela@swasirail.co.sz

31. Mr. Bingo Wu, Factory Manager
Tuntex Textile Co. (Pty.) Ltd./Tuntex Garment Co. (Pty.) Ltd.
Site 513, Matsapha Industrial Area
P.O. Box 1898
Matsapha, Swaziland
Tel.: (268) 518-5447/5485
Mob.: (268) 617-8278
Fax: (268) 519-0011
E-mail: bingo@tuntex.co.sz

32. Mr. Steven Niu, Human Resources Manager,
Unique Garments International (Pty.) Ltd.
Lot No. 549, King Mswati III West, Matsapha Industrial Area
P.O. Box 1418
Matsapha, Swaziland
Tel.: (268) 518-7765/7756
Fax: (268) 518-7768
E-mail: niu_yue_steven@yahoo.com

Other Stakeholders

1. Ms. Zodwa F. Mabuza, Director of Trade and Commerce
Nkosinathi Gumede, Director of Industrial Relations and Social Policy
Federation of Swaziland Employers and Chamber of Commerce
Emafini Business Centre
Malagwane Hill
P.O. Box 72
Mbabane H100, Swaziland
Tel.: (268) 409-0768/4408
Mob.: (268) 603-8545/(268) 605-7950
Fax: (268) 409-0051
E-mail: zodwa@business-swaziland.com/nathi@business-swaziland.com

2. Ms. Allison Andrews
Hotels and Tourism Association
Mbabane, Swaziland
Tel.: (268) 404-2218
Mob: (268) 604-1529
E-mail: aliand@realnet.co.sz

3. Mike McDermott, Consultant
Ministry of Agriculture Food Security Project

E-mail: mikemackd@hotmail.com

4. Mr. Robert Maxwell, Spokesman
Mr. Bingo Wu, Chair
Swaziland Textiles Exporters Association
Site 513, Matsapha Industrial Area
P.O. Box 1898
Matsapha, Swaziland
Tel.: (268) 518-5447/5485
Mob.: (268) 617-8278
Fax: (268) 519-0011
E-mail: bingo@tuntex.co.sz

5. Hon. Lewis W. Lucke, Ambassador
Ms. Shannon Dorsey, Political and Economic Officer
Ms. Dorothy Mlambo, Commercial Assistant
Embassy of the United States of America
Central Bank Building
P.O. Box 199
Mbabane, Swaziland
Tel.: (268) 404-6441/5
Fax: (268) 404-1695