

THE CENTRAL BANK OF SWAZILAND ORDER, 1974

(Entire Act amended by substitution of words “Bank” and “Central Bank” for “Authority” and “Monetary Authority” respectively A.2/1979.)

Date of commencement: 1st April, 1974.

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PART I

PRELIMINARY

Short title.

1. This King's Order-in-Council may be cited as the Central Bank of Swaziland Order, 1974.

Interpretation.

2. In this Order, unless the context otherwise requires —
“Bank” means the Central Bank of Swaziland established under section 3;

“bank”, “financial institution”, and “licensed financial institution” shall have the meanings ascribed thereto under the Financial Institutions (Consolidation) Order, No. 23 of 1975; (Amended K.O-I-C. 23/1975.)

“board” means the board of the Bank established under section 10;

“chairman” means the chairman of the board;

“common monetary area” means the area covered by the Multilateral Monetary Agreement between the Governments of the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and Swaziland, as amended from time to time; (Amended A.1/2004.)

“deputy governor” means the deputy governor of the Bank;

“director” includes the governor and deputy governor;

“governor” means the governor of the Bank;

“Minister” means the Minister responsible for public finance; (Amended A.14/1982.)

“statutory organisation” means a quasi-Government organisation established and administered by a law enacted specifically for this purpose. (Added A.14/1982.)

PART II CONSTITUTION

Establishment of Bank.

3. (1) There is hereby established the Central Bank of Swaziland which shall have the functions provided for in this Order and which shall be administered, managed and controlled in accordance with this Order.

(2) The Bank shall be a body corporate and shall be capable of performing all such acts as are necessary for or incidental to the carrying out of its objects and the performance of its functions under this Order, and of doing or performing such acts and things as bodies corporate may by law do and perform, and without derogating from the generality of the foregoing —

(a) shall have perpetual succession;

(b) may have a common seal;

(c) shall be capable of suing or being sued in its own name;

(d) shall, subject to this Order, be capable of entering into contracts and of purchasing and otherwise acquiring and of alienating any movable or immovable property and any real rights in or to such property; and

(e) may incur such expenditure as it deems necessary for the proper discharge of its functions.

(3) The Bank shall not be wound up save by a law enacted for such purpose.

Principal objects of Bank.

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

(Amended A.8/1986; replaced A.1/2004.)

Head office, branches, agents and correspondents.

5. The Bank shall have its head office in Mbabane, or such other place as Government may direct, and may establish branches within Swaziland, and appoint agents and correspondents within Swaziland and abroad.

PART III

CAPITAL, PROFITS AND RESERVES

Capital.

6. (1) The authorised capital of the Bank shall be one million emalangeni (E1 000 000) but may be increased from time to time by such amounts as may be proposed by the board and approved by the Minister.

(2) There shall be paid up by Government out of the Consolidated Fund, upon the establishment of the Bank, an amount of five hundred thousand emalangeni (E500 000) and thereafter such further amounts as may from time to time be proposed by the board and approved by the Minister.

(3) Government shall be the sole subscriber to and holder of the capital of the Bank, and its holdings of such capital shall not be transferable in whole or in part or subject to any encumbrance whatsoever.

(4) No reduction of the authorised or paid-up capital of the Bank shall be effected except by an amendment to this Order.

(5) The Minister, notwithstanding any other law, shall cause to be transferred to the ownership of the Bank non-negotiable non-interest-bearing securities issued by Government from time to time for such amount as is necessary for the purpose of preserving the paid-up capital from any impairment whenever, in the opinion of the board, the assets of the Bank are less than the sum of its liabilities and paid-up capital.

Profits.

7. The net profits of the Bank for any financial year shall be determined by the Bank after meeting all current expenditures for such year and after making provision for —

- (a) the cost of printing and minting new currency, bad and doubtful debts, depreciation in assets, and contributions to staff and pension fund; (Amended A.1/2004.)
- (b) such other purposes as the board may deem necessary.

General reserve.

8. (1) The Bank shall establish a general reserve to which may be allocated at the end of the financial year of the Bank a sum not exceeding twenty-five percent of its net profits, subject to the approval of the Minister. (Amended A.14/1982.)

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

(Amended A.8/1986; A.1/2004.)

(3) The balance of the net profits for the financial year remaining after all deductions under subsections (1) and (2) have been made shall be paid to the Consolidated Fund as soon as practicable after the end of each financial year.

(4) No deduction under subsection (1) or (2) shall be required to be made nor shall any payment under subsection (3) be made if, in the judgment of the board, the assets of the Bank are, or after the deduction or payment, would be, less than the sum of its liabilities and paid-up capital.

(5) The general reserve established under subsection (1) may only be used to offset losses of the Bank after the application of any funds made available for this purpose under section 35(4). (Replaced A.1/2004.)

PART IV

BOARD, MANAGEMENT AND STAFF

Powers of board.

9. (1) The powers of the Bank shall be vested in a board of directors which shall be responsible for the policy and general administration of the Bank.

(2) The board may make by-laws and issue directives to regulate the conduct of the business of the Bank.

Membership of the board.

10. (1) The board shall consist of nine directors, as follows —

- (a) a governor;
- (b) a deputy governor;

- (c) seven other directors, one of whom shall be a public officer of the Ministry responsible for Public Finance.

(Amended A.14/1982.)

(2) Subject to sections 11 to 14 inclusive, the governor shall be appointed and may be removed from office by the King in consultation with the Prime Minister, and the other directors shall be appointed and may be removed from office by the Minister.

Governor and deputy governor.

11. (1) The governor and the deputy governor shall be persons of recognised qualification and experience in financial matters, and shall be appointed for a term not exceeding five years. (Replaced A.1/2004.)

(2) Subject to this Order, the governor and the deputy governor shall be appointed on such terms and conditions as may be set out in their letters of appointment, and shall be eligible for reappointment.

(3) The governor shall —

- (a) serve as chairman of the board;
- (b) serve as chief executive officer of the Bank responsible to the board for the execution of its policy and the management of the Bank;
- (c) except as may otherwise be provided in this Order, the by-laws of the Bank or resolutions of the board, act, contract, sign instruments and documents on behalf of the Bank and, with the approval of the board, may delegate these powers to other officers of the Bank; and
- (d) on behalf of the Bank and under the control and supervision of the board, perform the duties and functions of Registrar of Financial Institutions under the Financial Institutions (Consolidation) Order, No. 23 of 1975, and, with the approval of the board, may appoint an Assistant Registrar; and (Amended K.O-I-C. 23/1975.)
- (e) on behalf of the Bank and under the control and supervision of the board perform the duties and function of the Registrar of Building Societies under the Building Societies Act, No. 1 of 1962. (Added K.O-I-C. 35/1976.)

(4) The deputy governor shall exercise such powers and carry out such duties as may be delegated or assigned to him by the governor and, in the absence of the governor, shall act as governor.

(5) The governor and the deputy governor shall devote the whole of their professional services to the Bank and, while holding office, shall not, without the written approval of the Minister —

- (a) receive any salary or supplement thereto from any source other than the Bank;
- (b) occupy any other office or employment, whether remunerated or not, except as nominee of the Bank or the board:

Provided that the governor or the deputy governor may —

- (i) act as member of any board, committee or commission established by Government;

- (ii) become governor, director or member of the board or other body of any international financial institution of which Swaziland is a member.

Other directors.

12. (1) The directors, other than the governor and the deputy governor, shall be appointed from among persons of recognised standing and experience in business, professional or academic matters.

(2) Such directors shall be appointed for terms not exceeding three years and shall be eligible for re-appointment.

(3) Such directors shall be entitled to such fees and allowances as may be prescribed by the board with the approval of the Minister.

Ineligibility.

13. No person shall serve as director who is at the time of his appointment or later becomes —

- (a) a member of the legislature of Swaziland; or
- (b) except as may be determined by the Minister and in respect of not more than any two directors at any time, an officer, employee, or owner of, or shareholder in, any licensed financial institution. (Amended A.2/1979; A.14/1982.)

Disqualification.

14. No person shall be appointed or remain a director who —

- (a) is mentally or physically incapable of carrying out his duties as director;
- (b) becomes an insolvent or has anywhere been declared bankrupt and has not been rehabilitated;
- (c) has anywhere been convicted of an offence involving dishonesty;
- (d) has been found guilty of gross misconduct in relation to his duties as director;
- (e) has, in the case of a person possessed of professional qualifications, been disqualified or suspended (other than at his own request) from practising his profession by the order of any competent authority made in respect of him personally by reason of his misconduct; or
- (f) has incurred an unreimbursed loss attributable to a charged-off obligation at a financial institution licensed by the Bank. (Added A.1/2004.)

Resignation.

15. The governor may resign his office on giving not less than one month's notice in writing to the King and the Prime Minister, and the other directors may resign their respective offices on giving not less than one month's notice in writing to the Minister.

Vacancy.

16. If any director dies or resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person shall be appointed at the earliest opportunity to fill the vacancy.

Meetings of the board.

17. (1) The board shall meet as often as the business of the Bank may require but not less frequently than once in every two months. (Amended A.14/1982.)

(2) Pursuant to its by-laws, the board may provide for regular meetings for which no notice shall be necessary and special meetings to be convened at the written request of the governor or any two other directors, for which notice shall be required.

(3) A quorum at any meeting shall consist of four directors, including the governor or the deputy governor.

(4) Except as otherwise provided in this Order, decisions of the board shall be adopted by a simple majority of the votes of the members present:

Provided that, in the event of an equality of votes, the chairman shall have and exercise a second or deciding vote.

(5) No act or proceeding of the board shall be invalidated merely by reason of the existence of a vacancy or vacancies among the members of the board.

(6) All acts done by a person acting in good faith as governor, deputy governor or other director shall be valid notwithstanding that some defect in his appointment, eligibility or qualification be afterwards discovered.

Appointment of officers, employees, agents and correspondents.

18. (1) All appointments of officers and employees of the Bank shall be only to positions created by or pursuant to decisions of the board and at such remuneration and on such other terms and conditions as shall be prescribed by the board.

(2) All appointments of agents and correspondents of the Bank shall be made pursuant to decisions of the board.

(3) No salary, fee, wage, or other remuneration, or allowances paid by the Bank shall be computed by reference to the net or other profits of the Bank.

Conflicts of interest.

19. (1) No director other than directors determined by the Minister in terms of section 13(6), shall act as representative of any commercial, financial, agricultural, industrial or other interest, or receive or accept directions therefrom in respect of duties to be performed under this Order. (Amended A.14/1982.)

(2) Every director shall fully disclose to the board any interest, whether personal, commercial, financial, agricultural, industrial or other, which he may directly or indirectly hold or be connected with and which becomes the subject of board action, and shall refrain from voting on any matter related thereto:

Provided that such an interest, if so disclosed, shall not disqualify the interested party for the purpose of constituting a quorum.

(3) No director, officer or employee of the Bank shall accept any gift or advantage for himself or, on his behalf, for any person with whom he may have family, business, or financial connections if the acceptance thereof would result, or give the appearance of resulting, in a diminishment of his impartial devotion to his duties under this Order.

(4) Any person who contravenes this section shall be guilty of an offence and liable on conviction to a fine of E1 000 or imprisonment for one year or both.

Secrecy.

20. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under any law, no director, officer or employee of the Bank or auditor appointed under section 51(2) shall disclose to any person any information relating to the affairs of the Bank or of any financial institution or other person which he has acquired in the performance of his duties or the exercise of his functions.

(2) Every person referred to in subsection (1) shall, before acting under this Order, take and subscribe before a Commissioner of Oaths or a Justice of the Peace, such oath of fidelity or secrecy as may be prescribed.

(3) Every such person who, in contravention of the true intent of the oath of fidelity or secrecy taken by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in the performance of his duties or the exercise of his functions shall be guilty of an offence and shall be liable on conviction to a fine of E 5 000 or imprisonment for two years or both. (Amended A.1/2004.)

(4) If any person acts in the execution of his office before he has taken the prescribed oath, he shall be guilty of an offence and shall be liable on conviction to a fine of E 500. (Amended A.1/2004.)

Indemnity from personal liability.

20bis. Members of the board, the governor, the deputy governor and any officer or employee of the Bank shall not be held liable for damages for the commission of any act under this Order, the Financial Institutions (Consolidation) Order, or any law for which the Bank is acting as agent for the Government, if such action or inaction was done in good faith and within the scope of duty and without gross negligence. (Added A.1/2004.)

PART V

MONETARY UNIT, NOTES AND COINS

Monetary unit.

21. (1) The monetary unit of Swaziland shall be the lilangeni (plural emalangeni), divided into 100 cents; the symbol for lilangeni (or emalangeni) shall be "E":

Provided that the Minister may, by notice in the Gazette, prescribe any other name for the fractional units of the lilangeni.

(2) Any reference to an amount of money expressed in terms of Rand in any law of Swaziland in force at the commencement of this Order, including any instrument having effect

by virtue of any law, or any rules or regulations giving effect to any law, shall be construed as a reference to the same amount of money expressed in terms of emalangeni.

(3) The external value of the lilangeni may be determined from time to time in a manner proposed by the Central Bank and approved by the Minister. (Added A.8/1986.)

Sole right to issue notes and coins.

22. (1) The Bank shall have the sole right to issue in Swaziland notes and coins which are legal tender within Swaziland.

(2) No person other than the Bank shall issue in Swaziland notes or coins or any documents or tokens payable to bearer on demand, having the appearance of or purporting to be currency.

(3) Any person contravening subsection (2) shall be guilty of an offence and liable on conviction to a fine of not less than E 100 000 but not more than E 1 000 000 or imprisonment for not less than seven years but not more than 14 years. (Amended A.1/2004.)

Legal tender.

23. Only notes and coins which are issued by the Central Bank and which may be exchanged by the Central Bank at full value under section 26 shall be legal tender in Swaziland in the case of —

(a) notes or gold coins, for the payment of any amount;

(b) coins, for the payment of any amount not exceeding ten emalangeni.

(Amended A.8/1986.)

Manufacture and characteristics of notes and coins.

24. (1) The Bank shall arrange for the printing of notes and the minting of coins and for all matters relating thereto, and for the security and safekeeping of unissued notes and coins and for the custody and destruction, as necessary, of plates, dies and retired notes and coins.

(2) Notes and coins issued by the Bank shall be of such denominations, composition, form and design as shall be approved by the Minister on the recommendation of the board.

(3) The characteristics of notes and coins to be issued by the Bank shall be published in the Gazette.

Power to recall.

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

Provided that any holder of such notes and coins shall be entitled within a period of not less than five years, or such period as may be prescribed by the Bank to claim payment from the Bank of the face value thereof. (Replaced A.1/2004.)

Exchange of notes and coins.

26. (1) Upon surrender by any person to the Bank or to its authorised agents of any notes or coins which it has issued, the Bank shall, subject to subsections (2) and (3), exchange on demand and without charge such notes or coins for notes and coins of equivalent value and of such denominations as may be requested:

Provided that in the event of the unavailability of a requested denomination, the Bank may deliver notes and coins of available denominations which most nearly approximate those requested.

(2) Coins which have been perforated, cut, clipped, broken, or on which any mark has been privately impressed, or which show signs of non-monetary use, or the design of which is not distinguishable, shall not be exchanged by the Bank.

(3) The conditions under which mutilated or otherwise damaged notes may be exchanged at partial or full face value shall be determined from time to time by the Bank and published in the Gazette.

Penalty for mutilation of notes.

27. Any person shall be guilty of an offence and liable on conviction to a fine of E 10 000 or imprisonment for six months or both if he, without the permission of the Bank, wilfully —

- (i) cuts, tears, perforates, or in any other way whatsoever mutilates any note issued by the Bank;
- (ii) writes, prints, stamps or draws anything upon any such note; or
- (iii) attaches or affixes any seal or stamp to or upon any such note.

(Amended A.1/2004.)

Recovery of lost or stolen notes and coins.

28. No person shall be entitled to recover from the Bank the value of any lost or stolen notes or coins, except as may be provided under the terms of a waiver expressly executed in respect of the assumption by the Bank of risks incident to shipments of notes and coins:

Provided that nothing in this section shall affect the liability of the Bank for any loss suffered by any person in consequence of the negligence or misconduct, in the course of his official duties, of any director, officer, employee or agent of the Bank.

Counterfeiting.

29. (1) The Bank shall assist in the enforcement in Swaziland of any law related to the counterfeiting of notes and coins.

(2) Notwithstanding the provisions of any other law any person who counterfeits, forges, or, without the permission of the Bank, photocopies or otherwise reproduces any note or coin issued by the Bank or by a foreign central bank or other monetary authority commits an offence and shall be liable on conviction to a fine of not less than E 100 000 but not more than E 1 000 000 or to imprisonment for a term of not less than seven years, but not more than 14 years, or to both. (Replaced A.1/2004.)

(3) Certification by a duly authorised officer of the Bank that any note or coin is or is not genuine shall be *prima facie* evidence of such fact in any legal proceedings in Swaziland. (Amended A.1/2004.)

PART VI

EXTERNAL RESERVE, FOREIGN EXCHANGE OPERATIONS, CONVERTIBILITY INTO RAND AND REVALUATION RESERVE ACCOUNT

External reserve.

30. The Bank shall maintain, on such terms and conditions as the board, with the approval of the Minister, may from time to time prescribe, an external reserve which shall consist of —

- (a) the reserve tranche position of Swaziland in the General Resources Account of the International Monetary Fund; (Amended A.8/1986.)
- (b) any special drawing rights held by Swaziland;
- (c) all or any of the following —
 - (i) notes and coins, other than those issued by the Bank which are legal tender in the rand monetary area;
 - (ii) balances held abroad with banks within the Rand monetary area;
 - (iii) other foreign exchange in the form of notes and coins of bank balances held abroad;
 - (iv) gold;
 - (v) such other internationally recognised external assets as may be specified from time to time by the board with the approval of the Minister.

(Amended A.14/1982.)

Adequacy of external reserve.

31. (1) The Bank shall use its best endeavours to maintain the external reserve referred to in section 30 at a level adequate for the international transactions of Swaziland.

(2) If such external reserve has declined or, in the judgment of the board, appears to be in danger of declining to such extent as to jeopardise its adequacy, the Bank shall submit to the Minister a report on the reserve position and the causes which have led or may lead to such a decline together with recommendations concerning the measures that may be deemed necessary to forestall or otherwise remedy the situation.

(3) Until such time as, in its judgment, the situation has been rectified, the Bank shall make further reports and recommendations at intervals not exceeding six months.

Operations in gold and foreign exchange.

32. (1) The Bank may, subject to such terms and conditions as may from time to time be prescribed by the board —

- (a) buy, sell or deal in gold coins or bullion or other precious metals;

- (b) buy, sell or deal outright or by way of repurchase agreement in foreign exchange using for these purposes any of the instruments commonly used in such transactions; (Amended A.1/2004.)
- (c) buy, sell or deal outright or by way of repurchase agreement in treasury bills and other securities issued or guaranteed by foreign governments or international financial institutions; (Amended A.1/2004.)
- (d) open and maintain accounts with central banks and other banks and financial institutions outside Swaziland;
- (e) open and maintain accounts and act as agent or correspondent for foreign central banks and monetary authorities, banks and other financial institutions outside Swaziland, foreign Governments and their agencies, and international financial institutions:

Provided that such terms and conditions shall be prescribed with due regard for the obligations which Swaziland has assumed in accordance with the provisions of any international monetary agreement, including any agreement relating to the rand monetary area, to which it is a party or to which it has adhered.

Issuance of notes and coins.

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

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

(Inserted A.1/2004.)

Exchange of notes and coins for Rand.

33. As from a date to be appointed by the Minister by notice in the Gazette, the Bank shall claim compensation for any foreign currency circulating in the country on a formula to be agreed to by the Bank and on demand exchange notes and coins against payment of Rand at its head office or at such other places and in such manner as shall from time to time be prescribed by the board. (Replaced A.1/2004.)

Limitations.

34. The Bank shall, in connection with the operations enumerated in sections 32 and 33, deal only with Government, its statutory corporations and agencies, licensed financial institutions, foreign Governments and their agencies, foreign central banks and monetary authorities, banks and other financial institutions outside Swaziland, and international financial institutions:

Provided that, with the approval of the Minister, the Bank may deal with any other person on such terms and conditions as the board may prescribe.

Revaluation reserve account.

35. (1) The gains arising from any change in the valuation of the Bank's assets or liabilities in, or denominated in, gold, special drawing rights or foreign currencies as a result of any change in the values, parities or exchange rates of gold, special drawing rights or foreign currencies in terms of emalangeni, shall be credited to a revaluation reserve account.

(2) The losses arising from any such change shall be set off against any credit balance in the revaluation reserve account and, notwithstanding any other law, if such balance is insufficient to cover such losses, Government shall cause to be transferred to the ownership of the Bank non-negotiable non-interest-bearing securities issued by Government to the extent of the deficiency.

(3) Neither the gains referred to in subsection (1) nor the losses referred to in subsection (2) shall be included in the computation of the annual profits or losses of the Bank.

(4) Any credit balance in the revaluation reserve account at the end of each financial year of the Bank shall be applied first, on behalf of Government, to the redemption of all securities issued and outstanding under subsection (2) hereof or section 6(5), and one-fifth of the remaining balance shall be paid to the Consolidated Fund:

Provided that the governor with the approval of the board may apply part of the remaining balance to be remitted to the profit and loss account of the Bank whenever the need arises, it being understood that the general reserve established under section 8 shall first absorb the losses that have given rise to such needs. (Replaced A.1/2004.)

(5) No credits or debits shall be made to the revaluation reserve account except in accordance with this section or section 8(2).

PART VII

RELATIONS WITH BANKS AND OTHER FINANCIAL INSTITUTIONS

Opening accounts for financial institutions.

36. The Bank may open accounts for, and accept deposits from, licensed financial institutions, under such terms and conditions as the board may from time to time prescribe.

Operations with account holders.

37. (1) For the purpose of this section, "account holders" means financial institutions which maintain accounts with the Bank under section 36.

(2) The Bank may, on such terms and conditions as the board may from time to time prescribe —

(a) purchase from, sell to, discount and rediscount for account holders bills of exchange and promissory notes drawn or made for *bona fide* commercial, industrial, or agricultural purposes, bearing two or more good signatures of which at least one shall be that of a bank, and maturing within one hundred and eighty days from the date of their acquisition by the Bank; (Amended A.8/1986.)

(b) purchase from, sell to, discount and rediscount for account holders any treasury bills or other securities issued or guaranteed by Government, forming

part of a public issue and maturing within one hundred and eighty days of the date of their acquisition by the Bank; (Amended A.8/1986.)

- (bb) purchase and sell in the open market securities by the Central Bank; (Added A.8/1986.)
- (c) grant to account holders advances for periods not exceeding one year — (Amended A.8/1986.)
 - (i) secured by —
 - (aa) instruments referred to in paragraph (a) or (b) or subparagraph (bb); (Amended A.8/1986.)
 - (bb) other securities issued or guaranteed by Government and forming part of a public issue;
 - (cc) warehouse warrants and documents of title issued in respect of staple commodities or other goods duly insured;
 - (dd) holdings of any assets which the Bank is permitted to buy, sell or deal in under section 32; or
 - (ee) assignment or sub-mortgage of claims of financial institutions in respect of lending for purposes of agricultural development on such terms and conditions as may be approved by the Bank; or (Added A.14/1982.)
 - (ii) unsecured or secured by such other assets, on such special terms and conditions as the board shall prescribe when, in its judgment based on the affirmative vote of at least five of its members, such an advance is necessary to meet the liquidity requirements of the borrower. (Replaced A.1/2004.)

Determination of rates for discounts and advances.

38. The Bank shall determine and publicly announce from time to time its rates for discounts, rediscounts and advances, and may determine differential rates and ceilings for various classes of transactions or maturities.

Registrar.

39. (Repealed K.O-I-C. 23/1975.)

Required reserves of banks and other financial institutions.

40. (1) The Bank may, from time to time, prescribe by publication in the Gazette and by written notice to the principal place of business in Swaziland of each licensed financial institution the maintenance of required reserves, including marginal required reserves, against such deposit and other similar liabilities as may be specified by the Bank for this purpose.

(2) Such required reserves shall be maintained by way of cash holdings or by way of deposits with the Bank or by both in such proportion as the Bank may from time to time prescribe.

(3) No interest shall be paid by the Bank on any part of such required reserves.

(4) The Bank may prescribe different reserve ratios for different classes of deposit and other similar liabilities and may prescribe the method of their computation:

Provided that —

- (a) the Bank shall not, without the prior approval of the Minister, require a financial institution to hold a total amount of reserves in excess of twenty-five percent of its total deposit and other similar liabilities;
- (b) the initial prescription of, or any increase in, the required reserve ratios shall be effective only after reasonable notice, not less than thirty days, or such shorter period as the Minister may determine, has been given and shall not relate to a period prior to the initial date of notice;
- (c) the Bank may determine that the requirements of this subsection may be met by meeting the prescribed reserve ratio on the basis of any averaging period as the Bank may prescribe;
- (d) the prescribed reserve ratios, the method of their computation, and any averaging period prescribed under paragraph (c) shall be uniform for all banks;
- (e) the prescribed reserve ratios, the method of their computation, and any averaging period prescribed under paragraph (c) shall be uniform for all other financial institutions within the same class.

(5) The Bank may impose on any financial institution which fails to maintain required reserves in the appropriate ratio prescribed under this section a levy not exceeding one-tenth of one percent per day on the amount of deficiency in such institution's reserve holdings until the deficiency is corrected.

Regulation of interest and credit.

41. (1) The Bank may, with the approval of the Minister, prescribe by publication in the Gazette and by written notice to the principal place of business in Swaziland of each licensed financial institution —

- (a) the methods of computation and maximum and minimum rates of interest payable in respect of any class of deposit and other similar liabilities;
- (b) the permissible purposes, aggregate ceilings, maximum amounts beyond which the approval of the Bank is necessary, minimum cash margin or security, maximum maturities, and maximum interest rates chargeable in respect of —
 - (i) the making of any class of advances, whether by loans or overdrafts, and investments;
 - (ii) the discounting of any class of bills of exchange, promissory notes and other commercial, industrial, agricultural or financial paper;
 - (iii) the issuing of any class of letters of credit;
 - (iv) the granting of any class of acceptances and other forms of credit;
- (c) the minimum and maximum commissions, service charges and other fees which may be levied on any class of transactions with the public;
- (d) the manner of disclosure to the public and to —

- (i) each depositor, of the effective annual interest rate payable in respect of deposits made therewith;
- (ii) each person to whom credit is extended, of the terms of obtaining such credit, including the effective annual interest rate payable in respect thereof:

Provided that the Bank in its notices under this subsection may differentiate in respect of the aforesaid items between —

- (aa) banks;
- (bb) other financial institutions or classes thereof;
- (cc) other creditors referred to in subsection (2), or classes thereof, or members of such classes.

(2) With the approval of the Minister, the provisions of subsection (1) may be made applicable by the Bank, by publication in the Gazette and by written notice, to any person a substantial share of whose operations, in the opinion of the Bank, includes the extension of credit.

(3) The Bank shall have power to call for and examine the accounts, books and papers of any person who it has reason to suspect is extending or has extended credit in violation of subsection (2).

(4) Any notice issued under this section shall come into effect on such date as is specified but in any case not earlier than thirty days after the date of issue.

(5) Any financial institution which fails to comply with a notice issued under subsection (1) shall be guilty of an offence and liable on conviction to a fine of E 100 000. (Amended A.1/2004.)

(6) Any person to whom the provisions of subsection (1) have been made applicable, pursuant to subsection (2) and who —

- (i) fails to comply with a notice issued under subsection (1);
- (ii) knowingly supplies false information to the Bank; or
- (iii) fails to furnish, within the time prescribed by the Bank any documents called for by the Bank under subsection (3);

shall be guilty of an offence and liable on conviction —

- (a) in respect of an offence under subparagraphs (i) or (ii) to a fine of E 100 000 or imprisonment for twelve months or both; (Amended A.1/2004.)
- (b) in respect of an offence under subparagraph (iii) to a fine of E 10 100 for every day during which such offence has continued. (Amended A.1/2004.)

Special funds.

41bis. The Bank may enter into an agreement or make such other arrangements with the Minister of Finance for the purpose of administering or managing any special fund. (Added A.8/1986; Replaced A.1/2004.)

Clearing facilities.

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

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

(Replaced A.1/2004.)

Ombudsman.

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

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

(Added A.1/2004.)

PART VIII

RELATIONS WITH AND FOR GOVERNMENT

Bank to be adviser to Government.

43. (1) The Bank shall serve as adviser to Government on monetary and financial matters.

(2) The Minister may request the Bank to render advice and to furnish reports on matters relating to the objects of the Bank.

(3) It shall be the duty of the Bank to inform and advise the Minister about any matter which in the opinion of the Bank is likely to affect the achievement of its objects.

Monetary Policy Consultative Committee.

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

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

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

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

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

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

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

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

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

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

(Added A.1/2004.)

Accounts for Government and statutory organisations.

44. The Bank may open accounts for and accept deposits from Government and statutory organisations on such terms and conditions as may be agreed between the Bank and the Minister:

Provided that Government and statutory organisations may maintain balances with and generally use the services of any bank or other financial institution on such terms and conditions as may be agreed between the Minister, the Bank and such bank or other financial institution, as the case may be.

(Amended A.14/1982.)

Advances to Government and statutory organisations.

45. (1) The Bank may, on such terms and conditions as the board may from time to time prescribe, grant temporary advances to Government and to statutory organisations which maintain accounts with the Bank in accordance with section 44, in respect of temporary deficiencies of current budget revenue, subject to repayment within six months following the end of the financial year of the Bank in which they were granted, at such rates of interest and upon such security as the board may determine.

(2) If at the end of any financial year, any advance remains unpaid within the period provided for under subsection (1), such advance shall be taken into account when determining the maximum advances that may be made under that subsection in the following year.

(3) Without prejudice to the generality of subsection (1), the Bank may grant advances to Government, on such terms and conditions as may be agreed between the Bank and the Minister, in respect of subscriptions and other payments resulting from, or incidental to, the membership of Swaziland in any international financial institution, the participation of Swaziland in any account thereof, and any transaction and operations undertaken in connection therewith.

(Amended A.14/1982.)

Acquisition of securities issued or guaranteed by Government.

46. The Bank may on such terms and conditions as the board may from time to time determine, buy, sell or deal in notes, bills, stocks, shares, securities or other evidences of indebtedness issued or guaranteed by the Government or any statutory organisation which are publicly offered for sale or form part of an issue which is being made to the public at the time of acquisition by the Bank and which mature in not more than twenty years.

(Amended A.14/1982; A.1/2004.)

Management of public debt.

47. The Bank shall, as agent for Government, undertake the issue, placement and service of any Government securities, including treasury bills.

Credit to Government and statutory organisations.

47bis. (1) Except in accordance with this section and sections 37, 45 and 46 of this Order, the Bank shall not, directly or indirectly, make advances to Government or acquire the notes, bills, securities or other evidences of debt of, or guaranteed by, Government or any statutory organisations:

Provided that this section shall not be construed as prohibiting the acquisition by the Bank of securities in accordance with subsection (5) of section 6 and subsection (2) of section 35 of this Order or its granting advances in accordance with subsection (3) of section 45 of this Order.

(2) The total amount of outstanding advances made by the Bank to Government and the holdings by the Bank of notes, bills, securities or other evidences of debt of, or guaranteed by, Government and statutory organisations exclusive of credit permitted under subsection (5) of section 6 and subsection (2) of section 35 of this Order shall at no time exceed twenty percent of the average annual ordinary revenue of Government, except as provided in subsection (5) of this section.

(3) For the purposes of subsection (2) of this section —

(a) the ordinary revenue of Government shall include revenues from taxes, levies, duties and fees, rents, profits and income from any investment or undertaking by Government and any contribution to the revenue of Government from any statutory organisation but shall not include loans, grants, other forms of economic aid or capital raised;

(b) the average of the annual ordinary revenue shall mean the average of the annual ordinary revenues for the three financial years immediately preceding the year for which accounts are available.

(4) If in the opinion of the board, the limit provided for in subsection (2) of this section appears likely to be exceeded, the Bank shall submit to the Minister a report containing such recommendations as it deems appropriate to remedy the situation and shall make further reports at intervals not exceeding three months until such time as in its opinion, the situation has been rectified so as to conform with subsection (2).

(5) If the limit provided for in subsection (2) of this section is reached, the Bank shall forthwith notify the Minister of the fact and shall permit no further increase, whether directly or indirectly, in the Bank's advances to Government and holdings by it of Government debt.

(Added A.14/1982.)

Agent for the administration of exchange control.

48. (1) The Bank shall act as agent for Government in the administration of any law in force relating to exchange control, in accordance with such regulations, instructions and directives as the Minister may from time to time issue for this purpose.

(2) Returns, statements, accounts or information required to be submitted to the Minister under the provisions of any such law shall be transmitted through the Bank.

Depository and fiscal agency for international financial institutions.

49. The Bank shall, upon designation by the Minister, serve as the depository of, and the fiscal agency through which, dealings shall be conducted with any international financial institution of which Swaziland is a member.

PART IX

ACCOUNTS AND STATEMENTS

Financial year.

50. The financial year of the Bank shall coincide with the financial year of Government.

Accounts and audit.

51. (1) The accounts of the Bank shall be kept in either of the official languages.

(2) The accounts of the Bank shall be audited by auditors appointed annually by the board with the approval of the Minister.

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

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

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

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

(Added A.1/2004.)

(4) Without prejudice to subsection (2), the Minister may at any time require the Auditor-General to examine and report on the accounts of the Bank or any aspects of its operations, and the Bank shall provide the Auditor-General with all necessary and proper facilities therefor. (Amended A.1/2004.)

Accounts, annual report and monthly return.

52. (1) The Bank shall, within three months after the close of each financial year, transmit to the Minister — (Amended A.14/1982.)

(a) a copy of the annual accounts certified by the auditors; and

(b) a report of its operations and affairs during that year;

which accounts and report shall be published by the Bank.

(2) The Minister shall, as soon as possible after their receipt —

(a) cause a copy of the annual accounts and the report of operations to be laid before the legislature of Swaziland; and

(b) cause a copy of the annual accounts to be published in the Gazette.

(3) The Bank shall, as soon as possible after the last working day of each month, make up and publish a return of its assets and liabilities as at the close of business on that day, a copy of which shall be transmitted to the Minister, who shall cause it to be published in the Gazette.

PART X
GENERAL

Prohibited activities.

53. (1) The Bank shall not —

- (a) engage in trade, purchase the shares of any corporation or company, including the shares of any bank or other financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial or other undertaking;
- (b) acquire by purchase, lease or otherwise any real right in or to immovable property except so far as the Bank shall consider necessary or expedient for the provision of premises for the conduct of its business and for the housing of its staff and similar requirements incidental to the performance of its functions under the provisions of this Order;
- (c) guarantee loans or advances for the Government, any statutory organization or any person or entity. (Added A.1/2004.)

(2) Nothing in this section shall prevent the acquisition by the Bank in the course of satisfaction of debts due to it of any interests referred to in subsection (1)(a) or rights referred to in subsection (1)(b):

Provided that all such interests or rights so acquired shall be disposed of at the earliest suitable opportunity.

Policy directives by Prime Minister.

54. (1) If, after consultation between the Minister and the Bank, the Minister is of the opinion that the policies being pursued by the Bank are not adequate for, or conducive to, the achievement of the objects of the Bank set out in section 4, the Minister shall submit a recommendation to the Prime Minister, and the Prime Minister may, by directive, determine the policy to be adopted by the Bank.

(2) The Minister shall inform the Bank of the policy so determined and that Government accepts responsibility for the adoption of the policy.

(3) The Bank shall thereupon give effect to such policy while the directive remains in operation.

(4) Any directive issued under subsection (1) shall be published forthwith in the Gazette and the Minister shall cause to be laid before Parliament, within fifteen sitting days after the Minister has informed the Bank of the policy determined, a copy of such directive together with statements by Government and the Bank in respect of the matter on which the directive was issued. (Added A.1/2004.)

54bis. (Added A.14/1982; Repealed A.1/2004.)

Exemption from Financial Institutions Order.

55. The Bank shall not be subject to any of the provisions applicable to financial institutions under the Financial Institutions (Consolidation) Order, No. 23 of 1975. (Amended K.O-I-C. 23/1975.)

Exemption from taxes.

56. The Bank shall be exempt from the payment of any taxes, levies and duties, including, without derogating from the generality of the foregoing, stamp and transfer duty, in respect of its profits, operations, capital, property and documents, as the case may be, or any transaction to which it is a party.

Regulations.

57. The Minister may, in consultation with the Bank, make regulations for the better carrying out of the purposes and provisions of this Order.