

FACT SHEET



IMPROVING THE LEGAL ENVIRONMENT FOR BUSINESS IN ESWATINI

If you are considering forming a company or already own or manage a company in Eswatini, a proposed new Eswatini Companies Bill will affect the way you register your business, raise capital, report changes to your business and its ownership, disclose certain business activities, file your annual returns, wind down your operations, and undertake other necessary requirements.

Through the proposed new Companies Act, the Government of the Kingdom of Eswatini is aiming to modernize and clarify Eswatini's business legal environment, ensure Eswatini meets international reporting requirements, particularly anti-money laundering / countering the financing of terrorism obligations, and enabling technology to streamline and simplify the ways businesses interact with government, including providing for all company filings to be submitted to the Registrar to be available online.

The proposed new law will change the rules around:

- **starting a company**, including registration and incorporation of companies, and simplifying company structures;
- **maintaining a company**, including clarifying director duties and shareholder protections, and streamlining the processes for reporting and compliance (including de-registration), and winding up;
- **capital raising**, by loosening the rules around requiring a prospectus and;
- **closing a business**, including liquidation, receivership, and voluntary insolvency; and
- **issues related to any-money laundering**, including beneficial ownership, director residency, shadow directors, and bearer shares.

INVESTOR ROADMAP UNIT
MINISTRY OF COMMERCE, INDUSTRY AND TRADE,
GOVERNMENT OF THE KINGDOM OF ESWATINI.

STARTING A BUSINESS

ELECTRONIC REGISTRATIONS

The proposed Bill provides for electronic registration of companies through a planned online companies registry.

This simplifies the registration process and removes the need to travel in order to register a business and fulfil other reporting requirements. The transition to the new electronic register (once activated) will require all companies to re-register as a company in the new system. This will allow the new registry to commence with accurate, up-to-date information that is compliant with the new information requirements.

STREAMLINED COMPANY TYPES

The proposed Bill removes company subtypes, including removing the distinction between private and public companies, to create a one-size-fits-all company structure.

This makes the law easier to understand, makes it easier to start a business, and makes it easier for private companies to raise capital.

SIMPLIFIED START-UP REQUIREMENTS

The proposed Bill removes the needs for new companies to file numerous ancillary documents, including Memorandum of Association, Articles of Association, and a Declaration of Compliance, in favour of a simple online form that collects all necessary information about the company. The new law would also provide for a set of "model rules" that companies may choose to accept rather than provide their own customised rules or a constitution.

This makes it easier for entrepreneurs to enter the formal sector, without encountering the expense of drawing up multiple documents, customised rules, or a constitution. However, a company would always be free to write up its own customised rules if it wishes.

CHANGED ACCOUNTING RULES

The proposed Bill removes the concepts of "stated capital" and "par value" in favour of placing an affirmative duty upon directors to make appropriate decisions regarding issuance of shares, fair value, dividends, and distributions.



MAINTAINING A BUSINESS

DIRECTORS DUTIES

The proposed Bill clarifies the various duties of company directors and specifies the processes for shareholders to take action against any breaches of these duties.

Duties include acting in the best interest of the company; complying with the Act and with a company's internal rules; prohibitions on reckless trading, taking on obligations the company cannot perform, and disclosing self-interest in transactions. The Bill also allows a protection for directors, by allowing them to rely on external expert advice when making decisions, as well as defining a director's "duty of care" which provides for an affirmative defence if faced with any charges of misconduct.

MEMBER (SHAREHOLDER) PROTECTIONS

The proposed Bill clarifies and affords more specific protections to members, including providing more fairness for minority members by requiring the company to acquire dissenting shareholder shares in certain cases; the right to speak and to propose binding resolutions at shareholder meetings; and access to annual reports and other company information.

SIMPLIFYING COMPANY COMPLIANCE

The proposed Bill specifically recognizes the legality of an online, electronic registry. By allowing for online registrations and reporting, this will significantly streamline the formation and information-updating processes, which will save time and money for all companies. For the Registrar, administration and maintenance of an online registry will be far more efficient, allowing for reassignment of staff to higher-level activities such as compliance monitoring.

CAPITAL RAISING

EASIER ACCESS TO FINANCE

The proposed Bill makes it easier for business to access capital by loosening the requirement to produce an expensive prospectus before offering shares to the public. It would also enable non-traditional capital-raising approaches, such as crowdfunding and internet-based platforms. However, consumer protections would still be in place: any director or other promotor of the company would be subject to criminal liability for any fraudulent claims made in promoting their company.

The Ministry believes that the future development of a Personal Property Securities Act (PPSA) would also benefit companies. This law would allow for movable assets (not land or buildings) to more easily serve as collateral for loans. The Ministry will look to begin work on a PPSA in the near future.



CLOSING A BUSINESS

SIMPLIFIED RECEIVERSHIPS, LIQUIDATIONS, AND INSOLVENCIES

The proposed Bill allows secured creditors to directly appoint a receiver where a company is in default, allows shareholders to more easily request for a liquidator be appointed by the court, contains "business recovery" provisions aimed at trying to help to revive struggling businesses

FACILITATING BUSINESS/CREDITOR COMPROMISES

The proposed Bill also allows companies to enter into compromises with creditors without oversight from the court, which may allow viable companies time to recover before they are forced into liquidation.

ADDRESSING ANTI-MONEY LAUNDERING ISSUES

BENEFICIAL OWNERSHIP

The proposed Bill requires companies to maintain beneficial ownership information in their internal share register and make that information available to the Registrar and other law enforcement authorities upon request.

International anti-money laundering (AML) and anti-terrorism directives require countries to be able to determine the ultimate beneficial owners of companies (parties that effectively occupy the position of a shareholder, without appearing as such on the register). Eliminating the possibility for these arrangements to be secretive means they cannot be used to facilitate money laundering or avoid taxation.

RESIDENCY REQUIREMENTS

The proposed Bill requires that at least one director of an Eswatini company reside in the country.

International AML mandates do not yet require this but may move in this direction. The new law accounts for this anticipated change.



ADDRESSING ANTI-MONEY LAUNDERING ISSUES (ctd)

SHADOW DIRECTORS

The proposed Bill ensures that the management structure of a company is transparent, eliminating the possible existence of “shadow directors”—a person who exercises the powers of a director over a company but is not officially named as a director in the company registry.

This means that bad actors cannot hide their involvement in the management of a company, and that foreign citizens cannot exercise control over a local company without the foreign control being apparent.

BEARER SHARES

The proposed Bill eliminates “bearer shares”—an equity security that is owned by the person that physically possesses the actual share certificate, and whose ownership is not monitored or reported.

These are eliminated because of their potential to be used for money-laundering purposes, since the ownership of the share is not registered anywhere.

For more information, visit

www.business.gov.sz

These important business reforms are led by the **Investor Roadmap Unit**, a department of the Ministry of Commerce and Trade, Government of the Kingdom of Eswatini.

The **Investor Roadmap Unit** aims to create a conducive environment for business to thrive by eliminating impediments, bureaucratic red tape and procedures by cutting the time it takes and the costs involved in doing business.



INVESTOR ROADMAP UNIT
MINISTRY OF COMMERCE, INDUSTRY AND TRADE,
GOVERNMENT OF THE KINGDOM OF ESWATINI.



Investor Roadmap Unit
Ministry of Commerce, Industry and Trade,
Government of the Kingdom of Eswatini.



The Government of New Zealand, through the New Zealand Companies Office, is assisting with these reforms.