SWAZILAND

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

Swaziland is a landlocked kingdom located in Southern Africa. Swaziland's investment climate has become less conducive to U.S. investment due to; increased government entanglement, corruption, and the higher costs involved with doing business. The official policy is to encourage foreign investment, as a means to drive economic growth but the pace of reforming the investment policies are slow. In 2012, Swaziland re-launched its 2005 Investor Roadmap aiming to improve the country's competitiveness. The roadmap details procedural, administrative and regulatory barriers that hinder investment in the country and recommends regulatory reforms. Most of the identified reforms remain unaddressed.

Increasingly, the government of Swaziland (GOS) is competing with the private sector through state owned enterprises (SOEs) or companies owned by the royal family. The implementation of the re-launched of the Investor Roadmap in 2012 is slowly progressing. The Swaziland Investment Promotion Authority (SIPA) advocates for foreign investors and facilitates regulatory approval, but lacks the political clout necessary to prevent unsolicited government and royal family interference in private business affairs. Recent positive developments include allowing for company registration online and amending the immigration laws to make it easier for foreign workers to remain in the country. In addition, the Swaziland government has prioritized the renewable energy sector and is working on a Grid Code and Independent Power Producer (IPP) Policy to create a transparent regulatory regime in this industry.

The GOS has prioritized the energy sector and is currently crafting policies to attract private investment. Swaziland imports 80 percent of its power from South Africa and Mozambique. With both South Africa and Mozambique experiencing electricity shortages, Swaziland is working on producing its own energy using renewable energy. A developed renewable energy sector in Swaziland would make the energy supply more reliable and create domestic employment. In the long term, renewable energy would also have environmental benefits and provide energy self-sufficiency for the country. Information, Communications and Technology (ICT) is also an emerging sector. Swaziland has embarked on a number of initiatives to spur the growth of this key sector such as e-governance and the construction of the Royal Science and Technology Park. The digital migration program of the Southern African Development Community (SADC) presents ICT opportunities in the country

Incentives to invest in Swaziland include repatriation of profits, fully-serviced industrial sites, provision of purpose-built factory shells at competitive rates, and exemption from duty on raw materials for manufacture goods to be exported outside the Southern African Customs Union (SACU). Financial incentives for all investors also include tax allowances and deductions for new enterprises, including a 10-year exemption from withholding tax on dividends and a low corporate tax of 10 percent for approved investment projects. New investors also enjoy duty-free import of machinery and equipment.

SOEs and the royal family’s private trust are invested in many industries and distort the economy through their influence. Virtually all large-scale investments in Swaziland involve, either by law or by custom, the participation of the government and the royal family as a partner. Public sector and royal family involvement in the economy discourages private investment and encourages monopolistic behavior driving up prices and reducing competitiveness of the country. In

addition, Swaziland's land tenure system, where the majority of usable land remains the property of the King "in trust for the Swazi nation," discourages long-term investment in commercial real estate and agriculture.

Swaziland's poor human rights and labor rights record has jeopardized its access to export markets and to donor support. In 2015, Swaziland lost its duty free access to the U.S. market under the African Growth and Opportunity Act (AGOA) due to continued infringements on internationally recognized workers' rights. Swaziland also remains ineligible for Millennium Challenge Corporation (MCC) support due to its poor rankings on political and civil liberties by international non-governmental organizations.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The GOS regards foreign direct investment as a means to drive the country's economic growth, obtain access to foreign markets for its exports, and improve international competitiveness. However, the government and the royal family also exercise considerable influence in the private sector through state owned enterprises (SOEs) that compete with private companies and through government and the royal family's substantial shareholding in private corporations. All business sectors are open to foreign investment although government approval is needed. The Swaziland Investment Promotion Authority (SIPA) is charged with designing and implementing strategies for attracting desired foreign investors. SIPA is currently functional and helpful but it is not yet a one-stop-shop for foreign investors. The Swaziland Government continues its attempts to facilitate the ease of doing business in the country, but the pace of improvement has failed to keep up with other countries in the region. Foreign investors are confused by Swaziland's dual system of governance where approval is often required by traditional authorities as well as the various government ministries.

In general, there are no laws that discriminate against foreign investors. However, in practice most successful foreign investments require local partners - often the government or the royal family - to navigate the complex bureaucracy of the country. In addition, the majority of the land is owned by the king in trust for the Swazi nation and cannot be purchased by foreign investors. Foreign investors that require significant land for the enterprise therefore must engage the king directly in business negotiations. The mining sector mandates this practice by statute. The Mining and Minerals Act of 2011 stipulates that the king will acquire 25 percent of shareholding without any monetary consideration and another 25 percent shareholding in any mining enterprise will be allocated to the government. Mining companies are also expected to pay rent for the area where company mining is going on to the head of state. The Swaziland Government recognizes the significant potential of gold, iron ore, diamonds and coal and is placing renewed emphasis on the sector and is seeking foreign investors.

Other Investment Policy Reviews

Swaziland has been a World Trade Organization (WTO) member since 1995. There has been no investment policy review conducted by UNCTAD, WTO, or OECD. The GOS is continuing to work with the United States Agency for International Development (USAID) Southern African

Trade Hub in reviewing and implementing the recommendations of the Swaziland Investor Roadmap, which can be found at pdf.usaid.gov/pdf_docs/Pnadw920.pdf

Laws/Regulations of Foreign Direct Investment

Swaziland's legal and regulatory environment is underdeveloped, opaque, or unpredictable. But there are no efforts to restrict foreign investment by industry standards-setting organizations. The Competition Law of 2007 stipulates anti-competitive trade practices, requirements for mergers and acquisitions and protecting consumer welfare, and provides for an institutional mechanism for implementing these objectives. The Competition Commission monitors, regulates, controls and prevents acts or behaviors, which are likely to adversely affect the climate for competition within the country.

The country's Economic Recovery Strategy identifies the need to promote strategies and reforms in order to facilitate investment. The executive regularly interferes in court administration, case allocations, and judicial decisions. In cases involving the government or royal family, investors are unlikely to receive a fair hearing. However, the courts independently rule on purely private business disputes.

The Swaziland Investment Promotion Authority (SIPA) helps navigate the laws, rules, procedures and registration requirements for foreign investors. SIPA’s website is:

www.sipa.org.sz/

Investors can access registration forms for their companies on this website.

Industrial Promotion

Other than the facilitation assistance provided by SIPA, there are no official government programs to attract investment.

Energy and Mining and Information Communications and Technology are two areas that the GOS is currently promoting.

Limits on Foreign Control

The only industries that have limits on foreign control are mining and real estate. According to the Mines and Minerals Act of 2011, in any mining company the king acquires 25 percent of shareholding without any monetary consideration and another 25 percent shareholding is allocated to the government. Foreigners cannot own the majority of the countries land as it remains in trust for the Swazi nation and the King and chiefs have control over its use allocation.

Privatization Program

The International Monetary Fund (IMF) has advised the Swaziland government to privatize state owned businesses, particularly the telecommunications sector and the electricity sector. In response, the Swaziland Government passed several laws, but privatization efforts remain slow.

The Swaziland Communications Commission Act and the Electronic Communications Act came into effect on July 31, 2013. The Swaziland Communications Act establishes a Commission to regulate and supervise the operation of electronic communications networks and the provision of electronic communications services in the country, including the regulation of data protection in electronic communications. The SOE, the Swaziland Posts and Telecommunications Corporation (SPTC), besides being the provider of the service, was also the regulator. The Act now transfers the regulatory powers from SPTC to the Commission.

The Swaziland government is also working on producing its own electricity using renewable energy. Swaziland imports the bulk of its electricity from South Africa (80 percent) and approximately 10 percent from Mozambique. With both countries experiencing electricity shortages, Swaziland is working on producing its own energy using renewable energy. The government is currently developing a Renewable Energy and Independent Power Producers Policy with the help of the Southern African Trade Hub with the hope of incentivizing investors in this sector.

The Swaziland Energy Regulatory Authority regulates the sector, screening investors interested in establishing power generation facilities.

Screening of FDI

Any company wishing to invest in Swaziland must adopt articles of incorporation governed by the laws Swaziland. Investors are screened for credit worthiness, business ethics, and criminal records. Foreign direct investment in manufacturing may need an environmental impact assessment. Investors complain about the amount of time the screening process takes and the cost involved.

U.S. companies have complained about the approval process with the Central Bank of Swaziland for capital transfers. While the law allows repatriation of profits, there have been instances where the regulatory approval process took a significant amount of time and effort.

With the implementation of the Swaziland Investor Roadmap 2005 that was re-launched in 2012, the Swaziland Investment Promotion Authority coordinates the screening of foreign investors. The Ministry of Commerce screens trading licenses, the office of the registrar of companies does registration; and entry permits of investors and immigration and the labor office coordinate employees. The Central Bank of Swaziland reviews applications for offshore investment by companies registered in Swaziland. The reviewing authorities are generally found to be transparent. However, the various government ministries are not always responsive to investor inquiries.

The general purpose of the screening is for the government to manage risk associated with unknown foreign investors and to encourage domestic employment. According to the Companies Act of 2009, any person, company or other corporate body, aggrieved by any decision, ruling or order of the Registrar of Companies may bring the matter under review by the High Court.

At minimum, a foreign investor must supply the following documents for screening:
Certified copies of the Directors' passports or ID documents;
Residential address from the country of origin of the applicant;
Bank account details;
Police Clearance - An original copy has to be obtained from the country of origin and it must be less than six months old;
Two color passport sized photos;
Certificate of Incorporation and Memorandum and Articles of Association.
Lease Agreement.

The requirement of a lease agreement can be problematic if a lease has not been signed pending the registration of the company. Companies have avoided this by having a condition subjecting its enforceability to the company registration.

Competition Law

The Swaziland Competition Commission reviews investment and its effect on specific industries, the effect on employment, and the ability of small businesses to be competitive. All mergers and acquisitions are subject to screening and approval of the Swaziland Competition Commission.

Investment Trends

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	69 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	110 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	127 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 2,990	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) or USD 4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

There are no limitations on the inflow or outflow of funds for remittances. Dividends derived from current trading profits are freely transferable on submission of documentation (including latest annual financial statements of the company concerned) to the Central Bank of Swaziland, subject to provision for the non-resident shareholders tax of 15 percent. Local credit facilities may not be utilized for paying dividends.

All capital transfers into Swaziland outside the Common Monetary Area (CMA) require prior approval of the Central Bank of Swaziland to avoid problems in the subsequent repatriation of interest, dividends, profits and other income accrued. Otherwise there are no restrictions placed on the transfers.

Other than the Rand which the Swaziland Lilangeni is pegged to, Swaziland mainly deals with three international currencies; the U.S Dollar, the Euro and the Pound Sterling. There is a straightforward process of obtaining foreign currency. A resident requiring currency other than Swaziland Emalangeni (E) or South African Rand (which are accepted as legal tender with the exchange rate on a par with Emalangeni) for permissible purposes must apply through an authorized dealer and a resident who acquires foreign currency must sell it to an authorized dealer for the local currency within ninety day. No person is permitted to hold or deal in foreign currency other than an authorized dealer. Authorized dealers in Swaziland are the First National Bank of Swaziland (FNB), Nedbank, Standard Bank, and Swazi Bank.

The Lilangeni is pegged at par with the South African Rand and exchange rates are thus determined according to the Rand and the monetary policy of South Africa.

Remittance Policies

The average delay period in remitting investments is dependent on the mode of remitting funds. SWIFT transfers average a week, while other electronic transfers typically take less than a week. If all required documents are submitted remittances in Swaziland do not exceed 60 days. The Swaziland Government does not issue dollar-denominated bonds. Otherwise there are no limitations on the inflow and outflow of funds for remittances of profits or revenue. Swaziland currency is linked to the South African Rand so has little ability to manipulate currency.

Swaziland is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), the assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) measures in Swaziland was conducted by ESAAMLG.

3. Expropriation and Compensation

Law prohibits expropriation and nationalization. There have been no known cases of foreign owned business being expropriated. Swaziland land tenure system can be confusing for foreign investors. Approximately sixty percent of land is Swazi Nation Land (SNL), is held by the monarchy in trust for the people of Swaziland. Control of SNL is delegated to local chiefs.

Settlement of disputes regarding traditionally held land could take years. There are reported cases of land disputes between foreign businesses operating on Swazi Nation Land and traditional authorities. However, since the right of ownership on SNL remains with the King, any rights are temporary and thus their involuntary relinquishment is not technically expropriation.

In 2010, there was a dispute on a 99-year lease on Swazi Nation Land with a company developing a tourist business in the southern part of Swaziland bordering South Africa. The disputed facility was a lodge and was supposed to be a trans-frontier park between Swaziland and South Africa housing wildlife. In 2010, the King tried to revoke the 99-year lease agreement with the foreign investor. The owners of the facility applied to the High Court, but a settlement was never reached because the King has constitutional immunity from lawsuits. The investors complained of their multi-million dollar investment loss.

Similarly, in 2014 a dispute emerged involving a foreign investor in the iron ore mining business. The foreign investor complained he was driven out of the country by the King's advisors and accused the government and king of destroying the business to avoid repaying a loan the company had provided the king. The mining operation closed after only three years in operation and the company complained that they lost tens of millions of USD in investment and lost earnings.

The GOS has shown no pattern of discrimination against U.S. persons.

The mining sector and natural resources sector are a high risk due to the political regulations surrounding this type of sector.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Swaziland has a dual legal system consisting of a set of courts that follow Roman-Dutch law and a set of national courts that follow Swazi law and customs. This parallel system can be confusing ad has presented problems for foreign-owned businesses. Swaziland western-style courts do enforce property rights. The legal system has a western-style court system to enforce contracts and the industrial court hears industrial relations matters.

The country has various laws governing commercial or contractual laws. The Industrial Relations Act of 2000 created the Conciliation, Mediation and Arbitration Commission (CMAC) to resolve employer-employee disputes. The Company Act of 2009, which outlines commercial law; the Competition Act of 2007, which screens and approves mergers and acquisitions; and the Standards Act of 2003, which promotes quality principles and facilitates the use of standards to reduce technical barriers to trade and investment.

Intellectual property law is currently inadequate under Swaziland law. Copyright protection is addressed under four statutes dated 1912, 1918, 1933 and 1936. Swaziland inherited its intellectual property rights regime from the colonial era, under which copyrights, patents, and trademarks were somewhat protected under various acts promulgated by colonial authority.

In August 2014 a Copyright and Neighboring Bill repealing the Copyright Act of 1912 was circulated and in February 2015, the government circulated two more bills, one for the establishment of an intellectual property tribunal and the Trademarks Amendment bill amending the Trademarks Act of 1981. All these bills are still to be debated in Parliament.

The majority of investor disputes are employee-related and resolved in arbitration or the courts.

Bankruptcy

The Insolvency Act of 1955 is the law that governs bankruptcy in Swaziland. The insolvent debtor or his agent petitions the court for the acceptance of the surrender of the debtor's estate for the benefit of his creditors. Creditors need to petition with the court and provide documents supporting their claim.

Bankruptcy is only criminalized if the debtor, trustee or sole owner does not comply with the requirements of the Master or the creditor, for example if he/she fails to submit documents, declare assets; or obstructs, hinders a liquidator appointed under the Act in the performance of his functions, is guilty of an offence.

In the World Bank's, 2015 Doing Business Report", Swaziland's ranking in the category of Ease of Resolving Insolvency dropped to 80 from 77 the previous year out of 189 economies, a -3 change..

Investment Disputes

Investment disputes are not common in Swaziland. The GOS accepts international arbitration of investment disputes between foreign investors and the state. Any agreement with international investors/companies can include an enforceable clause stating where arbitration will take place and which laws will apply. Swaziland does not have a domestic arbitration body for investment disputes between companies. Swaziland is a member state to the International Centre for the Settlement of Investment Disputes (ICSID Convention) and the Multilateral Investment Guarantee Agency (MIGA).

There have been at least two major investment disputes involving foreign investors in the past ten years but none involving U.S. citizens.

The few disputes that have arisen involve a pattern of companies that are partly owned by the king and Swaziland government investing in natural resources. The pattern is that after a few years of operation or development, the foreign investors are required to relinquish their claims to ownership of the resources under non-transparent threats against them. Domestic civil society has been virtually silent with a few exceptions.

International Arbitration

The GOS accepts international arbitration.

Swaziland, as a member of the Southern African Customs Union (SACU), in 2008 SACU signed a Trade, Investment and Development Cooperative Agreement (TIDCA). There are no claims under this agreement.

Swaziland has a dual legal system consisting of Roman-Dutch law and Swazi law and customs. In addition to Western-style court system, Swazi traditional courts run parallel, which can be confusing for foreign-owned businesses. These traditional courts, in which the king is supreme authority, are available for dispute settlement. Such disputes, however, can be transferred to the formal court system at the option of the foreign investor.

The Conciliation, Mediation and Arbitration Commission (CMAC), which is governed by the Industrial Relations, Act 2000 resolves employer-employee disputes.

ICSID Convention and New York Convention

Swaziland is a member state to the International Centre for the Settlement of Investment Disputes (ICSID Convention).

The Swaziland Government accepts binding international arbitration of investment disputes between foreign investors and the state. Any agreement with international investors/parties includes a clause stating where arbitration will take place and which laws will apply.

Swaziland is not a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).

Duration of Dispute Resolution

Due to the dual legal system in Swaziland, it is difficult to approximate the duration of dispute resolutions in Swaziland. If the traditional structures are involved, as they would be in the case of natural resources or land investments, the dispute may take several years to be resolved.

General contract disputes may take up to one year to resolve in the Industrial Court, depending on the level of complexity. Anti-trust cases are relatively new but have taken several years to reach resolution. Due to the existence of the Conciliation, Mediation, and Arbitration Commission for labor disputes, employer-employee disputes are generally resolved within a few months.

Political interference is the most significant problem in local courts. Parties attempt to extend the King's constitutional immunity to all lawsuits in which his companies are an investor. The local legal profession lacks sufficient ethical standards.

In general the Swazi legal system has effectively enforced court decisions and international arbitration awards. Judgments of foreign courts are accepted and enforced. Swaziland is not a signatory of the New York Convention but ICSD membership binds the country to enforce international arbitration awards generated in that venue.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

The GOS does not maintain any measures that are alleged to violate the WTO's Trade Related Investment Measures requirements.

Investment Incentives

Swaziland has a human resources training rebate - a rebate of 150 percent of the cost is written again tax for training. At the discretion of the Minister of Finance, the Swazi government applies a reduced tax rate of 10 percent for the first ten-year period of operation, available for businesses that qualify under the Development Approval Order. Capital goods imported into the country for productive investments are exempt from import duties. Raw materials imported into the country to manufacture products to be exported outside the SACU area are also exempt from import duties. The law allows for repatriation of profits and dividends including salaries for expatriate staff and capital repayments. The Central Bank of Swaziland guarantees loans raised by investors for the export markets. There is also provision of loss cover which company can carry over in case it incurs a loss in the year of assessment.

Research and Development

The law is silent on research and development programs.

Performance Requirements

The Ministry of Labor and Social Security requires the hiring of qualified Swazi workers where possible, even at executive positions. Foreign investors are required to apply for residence and work permits. Although they are generally awarded business people complain that the process is cumbersome. SIPA is now supervising the application of these permits for incoming foreign businesses as part of the implementation of the Investor Roadmap.

There are no government-imposed conditions on permission to invest, including tariff and non-tariff barriers. In the manufacturing sector if a company plans to label a product to export as made in Swaziland, the government requires that the local content of such export be at least 25 percent. These requirements are applied systematically.

Data Storage

The government does not follow a forced localization policy. There are no requirements for foreign IT providers to turn over source code and/or provide access to surveillance (backdoors into hardware and software or turn over keys for encryption. The technology industry in Swaziland is still at its infancy.

6. Right to Private Ownership and Establishment

Foreign investors own the majority of Swaziland's largest businesses, either fully or with minority participation by Swazi institutions. There are no legal restrictions on foreign ownership that are discriminatory against foreign investors, but the government and the royal family's direct investment in industry is a practical limitation to foreign investment requiring a Swazi investor or joint venture. Both foreign and domestic private entities have a right to establish businesses and acquire and dispose of interest in business enterprises.

7. Protection of Property Rights

Real Property

For titled property the Swaziland Government recognizes and enforces secured interest in property. For titled property there is a recognized and reliable system of recording security interests. Most land is the country is referred to as Swazi Nation Land and is governed by the traditional structures overseen by the king. Swazi Nation land rests with the king who appoints chiefs to oversee the use of it. The Constitution of the country protects the right to own property, but most Swazis reside on Swazi Nation Land that is not covered by this constitutional protection. The law allows for eminent domain but requires compensation. The compensation is not forthcoming in all cases.

60 percent of land does not have clear title. The chiefs as people in charge keep their own records of who owns what land.

The World's Bank ease of registering property refers to property in urban areas where there are titles for land. Swazi nation land is not titled and even lending institutions are reluctant to use it as collateral. Lending institutions can only give a loan for development on non-titled land if the borrower has titled land as collateral.

Intellectual Property Rights

Protection for patents, trademarks and copyrights is currently inadequate under Swazi law. Patents are currently protected under a 1936 act that automatically extends patent protection, upon proper application, to products that have been patented in either South Arica or Great Britain. Trademark protection is addressed in the 1981 Trademarks Act. Copyright protections are addressed under four statues, dated 1912, 1918, 1933 and 1936.

There are bills that are pending that amend the Copyright Act of 1912, and the Trademarks Act of 1981. The Copyright and Neighboring Rights Bill of 2014 will change Swaziland's intellectual property law. The Act will protect literary, musical, artistic, audio-visual, sound recordings, broadcasts and published editions. It also criminalizes illicit recording and false representation of someone else's work. The Act also gives the duration of copyright among other things. The Swaziland Intellectual Property Tribunal Bill 2015 will establish the Intellectual Property Tribunal, which will be responsible for hearing over all matters and disputes involving intellectual property in Swaziland.

The Trademarks (Amendment) Bill of 2015 is to amend the Trademarks of 1981 and bring it into compliance with provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the Madrid Agreement concerning International Registration of Marks and the Banjul Protocol on Trademarks.

None of these proposed amendments are law yet.

Swaziland does not track and report on seizures of counterfeit goods.

Swaziland is not listed in USTR's Special 301 report.

Swaziland is not listed in the notorious market report.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/ Swaziland joined WIPO in 1988. Until the bills on Intellectual Property go through parliament the current information is up to date.

Resources for Rights Holders

-NAME of IP Attaché or Economic Officer: Christian Olsen
Political Economic Officer
+268 2404 6441
olsencr@state.gov

A list of local lawyers is at: http://swaziland.usembassy.gov/attorneys.html

8. Transparency of the Regulatory System

In general, the laws of the country are transparent. However, the application of the laws is inconsistent. The Competition Act came into force in 2007 and the Competition Commission Regulations came into effect in 2010. All of the regulations are publicly available.

There are no regulatory processes managed by nongovernmental organizations. Foreign investors coming into the country can join the Federation of Swaziland Employers/Chamber of Commerce on an equal basis with nationals of the country. This association is the link between the private sector and government.

Proposed laws and regulations are published in the government Gazette for public comment thirty days prior to a bill's presentation to parliament. Ministries sometimes consult with selected members of the public and private sector.

International accounting firms have branches in the country e.g. KPMG, PricewaterhouseCooper (PwC). But the legal and regulatory environment is underdeveloped, opaque and unpredictable. For instance Swaziland does not have an approved trade policy, investment policy, or industrial policy.

Proposed law and regulations are published in the government Gazette for public comment thirty days prior to a bill's presentation to parliament. Ministries at draft stage sometimes consult with selected members of the public and the private sector. There are no informal regulatory processes managed by nongovernmental organizations or private sector associations.

9. Efficient Capital Markets and Portfolio Investment

Swaziland's capital markets are closely tied to those of South Africa and operate under conditions generally similar to the conditions in that market. The government in 2010 enacted the Securities Act to strengthen the regulation of the portfolio investment. The Act was primarily to facilitate and develop an orderly, fair and efficient capital market in the country.

Swaziland has a small stock exchange with only six companies currently trading. In 2010 the Financial Services Regulatory Authority was established. This institution governs non-bank financial institutions including capital markets, insurance, retirement fund, building societies, micro-finance institutions and savings and credit cooperatives. The royal wealth fund and national pension fund invest in the private equity market, but there are otherwise few professional investors.

Existing policies neither inhibit nor facilitate the free flow of financial resources. The demand is simply not present. The Central Bank respects International Monetary Fund (IMF) Article VIII.

Credit is allocated on market terms. The Central Bank of Swaziland guarantees loans for the export market and for small businesses.

Money and Banking System, Hostile Takeovers

Swaziland’s banks are primarily subsidiaries of South African banks. Standard Bank is the largest bank by capital assets and employs about 400 workers. Swaziland has a central bank system. The Central Bank's prior approval is necessary for all capital transfers into Swaziland from outside the Common Monetary Area (CMA) to avoid problems in the subsequent repatriation of interest; dividends, profits and other income accrued. Hostile takeovers are uncommon.

10. Competition from State-Owned Enterprises

SOEs are active in Information and Communication Technology, Energy and Mining, and Environmental Technologies. Under the Ministry of Finance, the Public Enterprise Unit (http://www.gov.sz/) there is a list of SOEs. The Swaziland Government defines SOEs as private enterprises. They are separated in categories. Category A are those SOEs that are wholly owned by Government. Category B are those SOEs in which government has a minority interest or which monitors other financial institutions or a local government authority. These categories are further broken down to profit making SOEs but with a social responsibility; those that are profit making and developmental; those that are regulatory and those that are regulatory but developmental. SOEs are normally monopolies. For example, the power utility is an SOE and is a monopoly. The private sector (non-SOE) is the main contributor to research and developments. SOEs purchase and supply goods and services to and from the private sector and foreign firms.

SOEs in Swaziland are usually monopolies and therefor the private sector cannot compete. SOEs where government is a major shareholder and has a controlling position are not subjected to the same tax burden. But the ones where government has a minority shareholder are subject to the same tax burden and tax rebate policies as the private sector. SOEs have preferential access to Swazi nation land. The Public Enterprise Act governs SOEs. The Boards review the budget before tabling it to the line ministry, which, in turn, tables it in parliament where it is scrutinized by the public accounts committee.

OECD Guidelines on Corporate Governance of SOEs

SOEs' senior managers report to the board and in turn the board reports to a line minister. The minister then works with the Standing Committee on Public Enterprise (SCOPE), which is composed of cabinet ministers. SOEs are governed by the Public Enterprises Act, which requires audits of the SOEs and public annual reports. SOEs generally practice the OECD Guidelines and Corporate Governance of SOEs in Swaziland. Government is not involved in the day-to-day management of SOEs. Boards of SOEs exercise their independence and responsibility. The Public Enterprise Unit provides regular monitoring of SOEs. SOEs submit yearly reports and financial statements to parliament. Senior SOE management reports to an independent board of directors who then report to a line minister. The line minister of the SOE appoints the board. In some cases, the allocation is politically motivated. In some cases, the king appoints his own representative as well. Generally, court processes are nondiscriminatory in relation to SOEs.

Sovereign Wealth Funds

In 1968 the late King Sobhuza II created a Royal Charter this governs the only Sovereign Wealth Fund, Tibiyo Taka Ngwane. This fund is not subject to government or parliamentary oversight and need not provide public information on assets or financial performance. The SWF known as Tibiyo Taka Ngwane publishes its annual report, but it is not required by law to do so. Similarly the SWF obtains independent audits at its own discretion.

Tibiyo Taka Ngwane in its objectives says it supports the government in fostering economic independence and self-sufficiency. The SWF widely invests in the economy and holds shares in most major industries e.g. Sugar, commercial real estate, beverages, dairy, hotel industry and transportation. For their social responsibility they pay bursaries for pupils. They do not have any legal obligations other than the vague language of investing in assets in trust for the Swazi nation. It is run as a private equity investment fund for the benefit of the King and the royal family. The Sovereign Wealth Fund and the government co-invest to exercise majority control in many instances.

Government Departments do not engage in commercial activity that has an adverse commercial impact on U.S. firms. The SWF who owns its assets is an entity managed by a board of directors, which is appointed by the king. Tibiyo Taka Ngwane invests entirely in the local economy and local subsidiaries of foreign companies. Tibiyo has shares in a number of private companies. Sometimes foreign companies can form relationships with Tibiyo especially if the foreign company wants to raise capital and if experienced can manage the project.

The government does not have jurisdiction over the SWF, which is subject only to the King's approval. The SWF usually plays a passive role. In some companies the Chief Executive Officer of the SWF sits on the board of the private company.

11. Corporate Social Responsibility

Multinational enterprises in the country have robust corporate social responsibility programs, and consumers often recognize their efforts. However, smaller domestic companies are less likely to have CSR programs. The Development Approval Order which is part of the Income Tax law allows a company to apply to the minister of finance if the company plans to make significant CSR investments to be charged a reduced tax rate up to 10 percent. The Swaziland Government enforcement is sporadic but generally does not vary based on whether a company is domestic or foreign. Requirements are not waived to attract foreign investment. The government does not have corporate governance, accounting, and executive compensation standards to protect shareholders. There are not independent NGOs monitoring CSR.

OECD Guidelines for Multinational Enterprises

The Swaziland Government encourages foreign and local enterprises to follow generally accepted CSR principles.

12. Political Violence

There are few incidents of political violence against the government or private businesses but police regularly harass arrest and imprison critics of the government. Police routinely prevent meetings planned by labor unions and other organizations focused on political or socio-economic issues. There are no examples, over the past ten years, of damage to projects and/or installations.

Government critics are under increased pressure in the form of police harassment, criminal charges for sedition and related crimes, and informal harassment of family members. In addition, the low economic growth rate and lack of social protection has begun to politicize the otherwise apolitical rural majority.

13. Corruption

Swaziland passed the Prevention of Corruption Act in 2007 which established the Anti-Corruption Commission. The Swaziland Public Procurement Act became law in 2010. The Swaziland Public Procurement Agency (SPPRA) was established in 2012. The SPPRA will oversee public purchasing and set up a code of conduct for public sector procurement officers to track all public funds not only for procurement but any other contractual agreement for goods, works or services. Civil society organizations accuse Swaziland's Anti-Corruption Commission of engaging in politically motivated investigations and failing to tackle genuine issues of corruption. The act disqualifies public sector workers and politicians from supplying the government.

SPPRA conducted capacity building exercise nationwide to increase knowledge and adoption of universally practiced purchasing systems with private companies. And according to section 27 of the Public Procurement Regulations suppliers are prohibited to offer gifts or hospitality, directly or indirectly to staff of a procuring entity, members of the tender board and members of the SPPRA.

Only the large multi-national companies in the country have internal controls and compliance programs. Swaziland is a signatory of the UN Anti-corruption Convention, African Union Convention on Preventing and Combating Corruption and Related Offences, and the SADC Protocol against Corruption. But Swaziland has not domesticated the UN Anti-Corruption Convention. Only the Anti-Corruption Commission that is legally allowed to investigate corruption.

Corruption is particularly prevalent in government procurement. As mentioned above the Swazi government set up the Swaziland Public Procurement Regulatory Agency (SPPRA) to provide regulation and control practice in respect of public procurement. Giving or receiving a bribe is illegal. A convicted person faces a maximum of a 100,000 emalangeni (USD 10,000.00) fine or ten years imprisonment. A convicted law enforcement officer or public prosecutor faces a maximum fine of 200,000 emalangeni (USD 20,000).

Foreign and domestic businesses have indicated that corruption and bribery requests impact profits, contracts and investment decisions for their companies.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Swaziland is not a signatory of the OECD Convention for Combating Bribery nor the UN Anticorruption Convention.

Resources to Report Corruption

Contact at government agency or agencies are responsible for combating corruption:
Thanda Mngwengwe
Commissioner
Swaziland Anti-Corruption Commission
3rd Floor, Mbandzeni House, Mbabane
+268 2404 3179/0761
anticorruption@realnet.co.sz

14. Bilateral Investment Agreements

Swaziland does not have a bilateral investment treaty with the U.S.

Swaziland has investment agreements with the United Kingdom, Germany, and the European Union (EU). The EU concluded negotiations on an Economic Partnership Agreement (EPA) on 15 July with the Southern African Development Community (SADC) group comprising of Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland. The SADC EPA countries are also members of the WTO.

Swaziland also has bilateral investment protection agreements with Egypt, Taiwan, and Mauritius.

Bilateral Taxation Treaties

Swaziland does not have a bilateral taxation treaty with the U.S.

15. OPIC and Other Investment Insurance Programs

There is potential for an Overseas Private Investment Corporation (OPIC) program in Swaziland, particularly in the renewable energy industry. Here the GOS has demonstrated a commitment towards encouraging private sector investment, particularly by U.S. companies. However, OPIC has not yet signed in agreement with Swaziland.

16. Labor

According to the Swaziland Central Statistics office the Unemployment Rate Relaxed stands at 40.6 percent whilst the Strict Definition stands at 28.5 percent. Literacy rate in 2013 was at 89 percent but there is a shortage of technically skilled labor and the country relies heavily on expatriate technicians, accountants and engineers. The youth unemployment rate is 42.3 percent. The urban areas were the hard hit as one out of five young people was unemployed and the rate stood at 44.8 percent.

Swaziland has a shortage of technically skilled labor. The engineering, accountancy, and technical sectors are a priority for the government. The Ministry of Education has listed these fields as the ones the government will sponsor. The law requires that companies to employ Swazi nationals unless they cannot find a qualified national.

The Employment Act says if the employer contemplates adjusting employment, the employer will give not less than one-month notice to the Labor Commissioner and the trade union. The employer must state the number of employees to be affected, their occupation and remuneration; the reasons for the adjustment; the effective date; financial statements and audited accounts, and opinions that have been looked into to avert the situation.

Section 34 of the Employment Act says if the services of an employee are terminated other than being fired, a severance allowance amounting to ten working days' wages for each completed year in excess of one year that he has been continuously employed by that employer.

Swaziland does not have free trade zones but supports four industrial areas. The largest is in Matsapha, located between the primary cities of Mbabane and Manzini. It has direct rail and road links. The Matsapha Industrial Estates dry port maximizes time and cost savings for importers and exporters using the ports of Durban and Richard's Bay in South Africa and Maputo in Mozambique.

Swaziland has ratified all the ILO eight core conventions; however, gaps continue to remain salient both in law and practice. The laws provide that workers, except for those in essential services, have the right to form and join independent unions, conduct legal strikes, and bargain collectively. Provisions of other laws restricting freedom of assembly and association, however, often abrogate these rights. The laws provide for the registration of unions and federations, but grant far-reaching powers to the labor commissioner with respect to determining eligibility for registration. Unions must represent at least 50 percent of employees in a work place to be automatically recognized. The law also gives employers discretion as to whether or not to recognize a labor organization as a collective employee representative if less than 50 percent of the employees are members of the organization, and allows employers to set conditions for such recognition. Collective agreements must be registered with the Industrial Court.

Labor unions are independent of the government. However, the government has refused to recognize a number of labor unions in the country, and only recently registered the primary labor federation --Trade Union Congress of Swaziland (TUCOSWA) and the two employer federations it delisted in 2012, following three years of consistent engagement by the U.S. Government, ILO, and domestic labor organizations calling for this action in support of workers' rights.

Labor unions practice collective bargaining, but there are few industry associations and bargaining is conducted largely with individual employers in the private sector.

According to the Industrial Relations Act of 2000, as amended, employees who are not engaged in "essential services" have the right to undertake peaceful protest actions to "promote or defend socio-economic interests" of workers, i.e. not to include matters of a purely political nature. Despite its legal recognition, the right to strike is strictly regulated. Strikes and lockouts are prohibited in essential services. The current list of these essential services provides for broad prohibition of strikes in nonessential sectors, including posts, telephone, telegraph, radio, and teaching, in consistent with the ILO's standard. Additionally, the minister has the power to modify this list as deemed appropriate. The law details the steps to be followed when disputes arise and provides penalties for employers who conduct unauthorized lockouts. The law also provides for the establishment of a conciliation, mediation, and arbitration commission for dispute resolution but confers on the commissioner of labor the power to "intervene" in labor disputes before they are reported to the commission, if there is reason to believe that a dispute could have serious consequences for the employers, workers, or the economy if not resolved promptly. The Conciliation, Mediation and Arbitration Commission (CMAC) is the organization that resolves labor disputes. Cases generally start at CMAC with mediation and arbitration. Either party can refuse arbitration and bring the case to the Industrial Court, which can also order arbitration. According to the Industrial Relations Act workers can engage in a strike action if there is an unresolved dispute. The party that intends to go on strike needs to give notice to the employer, the labor commissioner and (CMAC). CMAC should arrange and supervise a secret ballot to determine whether the majority of employees are in favor of the strike action. When disputes arose with civil servant unions, the government often intervened to reduce the chances of a protest action, which may not be called legally until all avenues of negotiation have been exhausted and a secret ballot of union members has been conducted.

Approximately 12 percent of children in Swaziland are engaged in child labor, primarily in agriculture and livestock herding.

The labor office has inspectors who inspect if companies adhere to the labor regulations, health, safety standards, and wage laws. Swaziland has been in ILO's special paragraph for failing to allow freedom of association of workers. The Minister of Labor and Social is empowered by the law to set minimum wages. In 2014, Swaziland deregistered federations in the country citing that the old industrial relations act did not provide for the registration of federations. Three federations were deregistered. This put the country in a difficult situation as registration of federations was a requirement of the ILO. In November 2014 the Industrial Relations Act was passed. The law provided for the registration of federations. The federations that were deregistered were the employers' federation, the labor federation and an indigenous business people federation. Despite the amendment to the law, none of the federations have been subsequently registered.

Labor laws are not waived in order to attract or retain investments.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

There are no duty-free import zones in Swaziland.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	3,791	2014	3,791	www.worldbank.org/en/country

Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country ($M USD, stock positions)	N/A		2013	N/A	http://bea.gov/international/factsheet/factsheet.cfm?Area=442
Host country's FDI in the United States ($M USD, stock positions)	N/A		2013	2	http://bea.gov/international/factsheet/factsheet.cfm?Area=442
Total inbound stock of FDI as % host GDP	N/A		N/A		

*Central Bank of Swaziland
http://www.centralbank.org.sz

Table 3: Sources and Destination of FDI

Foreign direct investment position data are not available for Swaziland.

Table 4: Sources of Portfolio Investment

Portfolio investment data are not available for Swaziland.

19. Contact for More Information

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