

THE NATIONAL ARTS AND CULTURE COUNCIL BILL, 2012

(BILL NO. 2012)

(To be presented by the Minister of Sport, Culture and Youth Affairs)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this bill are to –

1. To provide for a feasible efficient administration of Arts and Culture Industry through the National Arts and Culture Council; and
2. Provide for incidental matters.

J.M. DLAMINI

ATTORNEY GENERAL

A BILL

ENTITLED

An Act to establish the National Arts and Culture Council which shall be responsible for the administration of arts and culture in Swaziland.

Enacted by the King and the Parliament of Swaziland.

Arrangements of sections

1. Short title
2. Interpretation
3. Establishment of the Council

Short title and commencement

1. (1) This Act may be cited as the National Arts and Culture Council Bill, 2012.

(2) This Bill shall come into force on the date of publication in the gazette.

Interpretation

2. In this Act, unless the context otherwise requires – m

“artistic work” means

- (a) any visual, graphic, photograph, written or performed creative work irrespective of its artistic quality;
- (b) any architectural, sculpture or collage work; or
- (c) any work of artistic craftsman which is not described in paragraph (a) or (b);

“arts and culture and organization” means any group of persons associated together for the purpose of promoting the arts and culture, and this includes societies, organizations, corporate bodies, Trusts, Partnerships, groups or any other voluntary associations duly registered under the laws of Swaziland for such a purpose;

“arts and culture industry” means the process of producing, promoting distributing, broadcasting and consuming

- (a) literary works;
- (b) dramatic works;
- (c) musical works;
- (d) audio – visual works;

- (e) sound recordings;
- (f) broadcasts;
- (g) published works;
- (h) sculptural works; or
- (i) artistic works;

“Board” means the National Arts and Culture Council Board established in section;

“Council” means the National Arts and Culture Council established in terms of section;

“levy” means a levy prescribed in terms of this Act;

“Minister” means the Minister responsible for arts and culture;

“Chief Executive officer” means the Chief Executive Officer appointed in terms of section 9;

“region” means the administrative regions of Swaziland;

“ticket” means the value of admitting a person into a show.

Establishment of the National Arts and Culture Council

3. (1) There is established a Council to be known as the National Arts and Culture Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal and is capable of –

- (a) Acquiring, holding and disposing of real and personal property;
- (b) Suing and be sued in its own name;
- (c) Doing and suffering all things and acts as a body corporate may lawfully do and suffer.

Establishment of the National Arts and Culture Council Board

4. There is established a Board which shall be responsible for the control and management of the Council.

Composition of the Board

5. (1) The Board shall be composed by the following people appointed by the Minister –

- (a) chairperson, who shall have a broad understanding of Arts and Culture;
- (b) one person representing traditional leaders;
- (c) one person representing municipal councils;
- (d) one person representing the tourism industry;
- (e) principal secretary ministry of Finance; and
- (f) two members nominated by practitioners in the arts and culture industry.

(2) The Board members shall hold office for a period not exceeding three years and a Board member may be re – appointed for another term of office.

(3) A Board member shall not be eligible for re – appointment after serving three consecutive terms in office.

(4) If at any meeting of the Board the chairman is absent the members present shall elect one of their member to be chairman of that meeting.

(5) The chairman or any other member presiding at any meeting shall have a deliberative and as well as a casting vote.

(6) The quorum of the Board shall be constituted by five members present.

(7) The decision of the majority of members present at a meeting shall be the decision of the Board.

Disqualification for membership in the Board

6. A person shall not qualify for appointment as a member of the Board, if that person –
- (a) Is not a Swazi citizen or does not reside in Swaziland ;
 - (b) Is an un - rehabilitated insolvent;
 - (c) Has been convicted in respect of an offence involving dishonesty during the last five years;
 - (d) Has been sentenced to imprisonment without the option of a fine; and
 - (e) Resigns from the Board in writing.

Vacation of office of a Board member

7. A member shall vacate his office and his office shall become vacant –
- (a) thirty days after the date upon which the member has given written notice or such other period which the member and the Minister may agree;
 - (b) where the Minister revokes the appointment due to the members unbecoming behavior and does not uphold the interest of the Board.

Filling of vacancies

8. Where a member of the Council ceases to be a member before the expiration of term of office, the member may be replaced by another person to hold for unexpired term of the predecessor.

Appointment of Chief Executive Officer

9. (1) The Chief Executive shall be appointed by the Minister after consultation with the Board.
- (2) The Minister shall appoint a person in the position of the Chief Executive officer who is a Swazi citizen.

Functions of the Chief Executive Officer

10. The Chief Executive Officer shall perform the following duties –
- (a) supervise and manage the Council's staff, activities, funds and property;
 - (b) register and deregister Arts and Culture Organizations; and
 - (c) Any other duties as directed by the Board.

Execution of contracts or instruments by Council

11. An agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Council by any person generally or specifically authorized by the Board for that purpose.

Functions of the Council

12. The Council shall perform the following functions –
- (a) foster, develop and improve the knowledge, understanding;
 - (b) practice of the arts and culture in Eswatini by encouraging the teaching and practice of the arts and culture and its presentation, performance, execution and exhibition to the public;
 - (c) to advice and co-operate with government, local authorities, registered arts and culture organizations or any other society, organization, private company, trust, firm, partnership, association, group or individuals who are directly or indirectly concerned with arts and culture;
 - (d) to provide and encourage the provision of opportunities for people to practice arts and culture;

- (e) to promote the appreciation, understanding and enjoyment of arts and culture;
- (f) to promote the general application of arts and culture in the community;
- (g) to foster the expression of a national identity and consciousness by means of arts and culture;
- (h) to uphold and promote the right of any person to freedom in the practice of arts and culture;
- (i) to give the disadvantaged such additional help and resources as are required to give them greater access to arts and culture;
- (j) to address imbalances in the provision of infrastructure for the promotion of arts and culture;
- (k) to promote and facilitate national and international liaison between individuals and institutions in respect of arts and culture; and
- (l) to regulate the arts and culture industries in Swaziland.

Duties of the Council

13. The duty of the Council shall be to –

- (a) employ, suspend, discipline and dismiss staff employed by the Council;
- (b) provide collateral security, including guarantees, to a financial institution in respect of a loan granted to any employee of the Authority by any financial institution to enable that employee to acquire, improve or enlarge immovable property for the purpose of residential occupation by that employee;
- (c) establish and manage or cause to be established and managed pension fund schemes, medical aid schemes or bursary schemes for the employees or the dependants of those employees;
- (d) to borrow or otherwise raise money for carrying out the functions of the Council in such manner and upon such terms and conditions as the Board may think fit, in particular, by the issue of debentures, debenture stock or stock certificates, perpetual or otherwise;
- (e) to purchase or otherwise acquire any property movable or immovable, and to take, accept and hold any such property which may become vested in it by virtue of any such purchase or by any exchange, hire, donation, gift, grant, lease, testamentary disposition or otherwise;
- (f) to enter into contracts in connection with the exercise of its function of the performance of its duties and modify or rescind such contracts;
- (g) to sell, exchange, lease, donate, dispose of turn to account or otherwise deal with any of its assets in such a manner as it deems fit;
- (h) to make grants – in aid or provide any other form of assistance which it considers appropriate to any registered arts and culture organization

- engaged in or concerned with the practise or teaching of the arts or their presentation, performance, execution and exhibition to the public.
- (i) to invest any funds of the Council not immediately required for any purpose at that time;
 - (j) to render support, including but not limited to, in financial matters, by giving advice and information to any person, organisation or institution;
 - (k) to conduct research into any field of arts and culture;
 - (l) to compile and maintain database, including, but not limited to, persons, organisations, institutions, equipment and facilities connected with arts and culture;
 - (m) to liaise with the responsible members in order to promote arts and culture more effectively throughout the country and to ensure co-ordination in the distribution of funds at national and regional level;
 - (n) to make bursaries available to students for local and overseas studies in arts and culture; and
 - (o) to do all such things as may be necessary, conducive or incidental to the performance of the functions imposed on the Council by or under the provisions of this Act.

Register for arts and culture organisations

14. (1) The Chief Executive Officer shall keep a register of all arts and culture organizations registered in terms of this Act.

(2) The Council shall have an administrative office in each of the administrative regions of Swaziland.

(3) The administrative offices shall serve as registration offices for arts and culture organizations.

Registration requirements

15. (1) A person intending to register an arts and culture organization shall

–

(a) complete an application form in the prescribed form;

(b) submit a constitution which shall outline the form, objects and members of the organization and its Board of Directors;

(c) show proof that the person is a Swazi citizen;

(d) exist in all four regions and have registered members from at least eight Tinkhundla.

(2) The Regional Officer shall receive applications and shall within one month of receipt send these applications to the Chief Executive Officer for consideration.

(3) The Chief Executive Officer shall, if the application meet the requirements as set out by the Act, register the organization and issue the organisation with a certificate of registration.

Subscription fee

16. The Board shall set an annual subscription to be paid by all registered arts and culture organizations.

Cancellation of registration

17. (1) The Chief Executive Officer may cancel the registration of an organization if –

- (a) the organization is improperly constituted or has ceased to operate in terms of its own objects;
- (b) the organization fails to adhere to the provisions of its own constitution;
- (c) the organization has materially changed its objects such that its existence is no longer consistent with this Act and the objects of the Council;
- (d) the organization fails to pay its annual subscription three months after it is due;
- (e) there is misappropriation of funds.

(2) The Chief Executive Officer may not de – register an organization unless –

- (a) the organisation has been given thirty working days to show cause why it should not be de – registered;
- (b) the organization has been given a fair hearing.

(3) An organisations which has been de – registered may after complying with the necessary requirement, re – apply to the Chief Executive Officer to be registered.

Appeals

18. (1) An organization which is aggrieved by the decision of the Chief Executive Officer may, within twenty one days, appeal to the Board.

(2) An organization which is aggrieved by the decision of the Board may, within twenty one days, appeal to the Minister.

(3) The party being appealed to in terms of this Act may, after hearing both sides, confirm, vary or rescind the decision appealed against.

Funds of the Council

19. The funds of the Council shall include –

- (a) money appropriated by Parliament;
- (b) levies, royalties and other payments made under this Act;
- (c) grants, donations or bequests received and accepted by the Council;
- (d) loans raised with the approval of the Minister;
- (e) income accruing from any investment of the funds of the Council;
- (f) commission that the Council may charge for services rendered;
- (g) any other money received by the Council from any legitimate source.

Use of the Council funds

20. (1) Funds of the Council may only be used for costs of running the Council after the approval of the Board.

(2) Notwithstanding subsection (1) the Board may authorize the use of Council funds for –

- (a) advancing loans to artists for purposes of financing projects;
- (b) providing grants to artists;
- (c) financing research, training or promotion in connection with production and marketing of products of the arts and culture industry;

- (d) the development of approved ideas from artists into material forms capable of being communicated to an audience;
- (e) investment.

Books of accounts

21. (1) The Council shall keep and maintain proper books of accounts.
- (2) The Council shall appoint a qualified accountant to assist in the keeping of proper books of accounts.
- (3) The accountant shall be responsible for –
- (a) all income and expenditure of the Council; and
 - (b) all assets and discharge of all liabilities.
- (4) The Council shall produce and audited financial statement by registered auditors before the end of the month of March in each year.

Annual reports

22. The Council shall, as soon as possible after the end of each financial year submit a report to the Minister in respect of the discharge of its functions during the past year and the Minister shall lay the report before the House of Assembly and the Senate.

Levies and licences

23. (1) The Board in consultation with the Minister may make regulations prescribing levies, license fees to be paid by consumers, promoters, broadcasters and distributors of various products of the arts and culture industry.

- (2) The regulations shall determine –
 - (a) the person responsible for the payment, collection and remittal of the levy or licensing fees;
 - (b) the manner in which and times at which the levy or fee shall be paid, collected and remitted;
 - (c) the basis on which the levy or fee shall be calculated.
- (3) Any levy on a ticket sold shall be as determined by the Regulations.

Regulations

24. (1) The Minister may make regulations for the better carrying out of functions of the Council.

(2) Without derogating from sub section (1) the Minister may make the following regulations –

- (a) the investment and disbursement of monies of the Council;
- (b) the requirements to be compiled with by artists who intend to apply for grants or loans from the Council;
- (c) the licencing of all Eswatini promoters of public performances of all arts and culture industry products, the regulation of their business, the fixing of levies and licencing fees to operation;
- (d) the issuing of clearance certificates for all foreign products of arts and culture industry seeking;
- (e) records and accounts to be kept by persons who remit levy the levy to the Council;
- (f) designate an Authority to collect the levy;
- (g) the exemption of certain organisations from paying levy; and
- (h) the creation of a fund which shall enhance the development of arts and culture.

Offences and penalties

25. A person who –

- (a) who fails to or refuses to pay any levy or collect or remit any levy;
- (b) obstructs any person empowered by the Act to perform any duties;
- (c) knowingly provides false information;
- (d) unnecessarily fails to provide information required by the Council or its agent

commits an offence and shall on conviction be liable to a fine not exceeding five thousand Emalangeni or to a term of imprisonment not exceeding three years.

Failure to transmit levy to the Council

26. Upon conviction of a person who has contravened section 25(a) the prosecutor may in addition to any other penalty imposed by the court, apply that the outstanding levies be paid to the Council before any fine is paid by the accused.

Organizations to keep proper accounts

27. (1) A registered arts and culture organization shall keep proper records of accounts of the organization and shall, within the prescribed period, furnish the Chief Executive Officer with these records.

(2) An organization shall produce an audited financial statement by registered auditors before the end of the month of March in each year.

Protection of members

28. A member of the Board or committee member under this Act shall have such and protection and privilege in the case of any action or suit brought against that member for any act done or omitted to be done in the honest execution of the duties of that member as is by law given to acts done or words spoken by a judge of the High Court in the exercise of the judicial office.