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**ESWATINI**



## SECTION 1: COUNTRY OVERVIEW

### 1.1 GENERAL INFORMATION

Capital:	<a href="#">Mbabane</a>
Population:	1.2 million (World Bank 2022)
Currency of government (official) fees:	South African rand (ZAR) and Swazi Lilangeni (SZL)
Language for filing IP applications:	English
GDP per capita:	USD 3 986 (World Bank 2022)
Human Development Index:	0.59 (Human Development Report 2021-2022)
Main exports:	soft drink concentrates, sugar, wood pulp, cotton yarn, refrigerators, citrus and canned fruit
Main imports:	motor vehicles, machinery, transport equipment, foodstuffs, petroleum products, chemicals.

### 1.2. INTERNATIONAL IP AGREEMENTS AND CONVENTIONS

Eswatini is a contracting state to the following international legal instruments:

- Paris Convention;
- Berne Convention;
- Patent Cooperation Treaty (PCT);
- Madrid Agreement;
- WIPO () Convention;
- TRIPS () Agreement.

### 1.3. REGIONAL AGREEMENTS

- AfCFTA Agreement (African Continental Free Trade Area);
- ARIPO () Agreements: Lusaka Agreement, Banjul Protocol on Marks and Harare Protocol on Patents and Industrial Designs;
- COMESA ();
- SADC ().

### 1.4. OVERVIEW OF REGIONAL AGREEMENTS

Eswatini is a member of the following regional agreements:

- **AfCFTA** Agreement

Eswatini has ratified the Agreement, which is available here: <https://au-afcfta.org/wp-content/uploads/2022/06/AfCFTA-Agreement-Legally-scrubbed-signed-16-May-2018.pdf>. It contains a Protocol on Intellectual Property (IP) rights, which aims at the effective protection and promotion of IP rights in Africa and may, therefore, have legal implications for Eswatini.

- **ARIPO** Agreements

Eswatini is a signatory to the Lusaka Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO). It is also a contracting party to the Banjul and Harare Protocols, which are administered by ARIPO.

- **COMESA** (Common Market for Eastern and Southern Africa)

COMESA has a Policy on IP rights. The purpose of the Policy is to promote the use of IP rights by COMESA member states so that they can shift from resource-based economies to knowledge-based and innovation-driven economies. COMESA has no regional IP agreements, protocols or registration systems in place.

- **SADC** (the Southern African Development Community)

The SADC has no regional IP agreements, protocols or registration systems in place. It has the SADC Industrialisation Strategy and Roadmap (2015-2063), which includes a focus on promoting the use and enforcement of IP rights to encourage research and development and innovation amongst SADC countries.

### 1.4. IP LEGAL FRAMEWORK OF AVAILABLE IP PROTECTION

The following IP protection is available in Eswatini:

- **Trade marks** : national, regional (ARIPO) and international (Madrid System);
- **Patents**: national and regional (ARIPO);
- **Utility models**: national and regional (ARIPO);
- **Industrial designs**: national and regional (ARIPO);
- **Copyright** and related rights: national.

### 1.5 IP PROTECTION NOT AVAILABLE IN ESWATINI

IP protection is not available for:

- geographical indications;

- layout designs of integrated circuits;
- plant variety protection;
- traditional knowledge and handicrafts.

## 1.6. IP REGISTRATION ROUTES

IP protection in Eswatini is available through three routes: national, regional and international.

### 1.6.1. National

The five types of IP mentioned above can be protected directly in Eswatini through the Ministry of Commerce, Industry and Trade - Intellectual Property Office.

### 1.6.2. Regional



The ARIPO regional route can be used in Eswatini for:

- 1) the registration of trade marks under the Banjul Protocol on Marks;
- 2) the grant of patents and the registration of utility models and industrial designs under the Harare Protocol on Patents and Industrial Designs.

### Trade marks

Eswatini is a signatory to the Banjul Protocol, which means it can be designated for the purpose of registering trade marks using the ARIPO trade mark system.

Member states carry out substantive examination of applications after which ARIPO registers trade marks on behalf of its member states and subsequently administers the registrations in accordance with the Banjul Protocol. [ARIPO member states](#) are free to join any of ARIPO's protocols. Not all ARIPO member states are members of the Banjul Protocol. Consequently, non-members cannot be designated in an ARIPO trade mark application or in a subsequent designation application. A list of current states that have joined the Banjul Protocol can be seen [here](#). Filing requirements, the registration process, and payable fees, can be seen on the [ARIPO website](#).

Once registered, an ARIPO IP registration becomes a 'bundle of national rights' that have the same legal effect as directly registered national rights and which the rights holder will need to enforce according to the national laws of each designated state. ARIPO IP rights therefore co-exist with,

rather than displace, the national IP systems.

### Advantages of the ARIPO trade mark system

The ARIPO system allows an applicant to file a single application that designates one or more Banjul Protocol member states for the registration of trade mark rights that will be enforceable in multiple states that are members of the system. In this regard, the ARIPO trade mark system is similar to [the Madrid System for the international registration](#) of marks except that the ARIPO system covers a limited geographical area in Africa, and a few other differences.

When it is used to facilitate multiple state designations, the ARIPO trade mark system aims to reduce costs and to simplify the process of trade mark registration on a regional basis through ARIPO, thus encouraging investment in IP rights.

When only one member state is designated, the ARIPO trade mark system has a complementary role to the national trade mark registration system and provides brand holders with an alternative registration system for the registration of trade marks.

Another advantage of the ARIPO trade mark system is that, if a trade mark is rejected by one or more of its member states, it can still proceed to registration in the remaining states that were originally designated in the application. In this regard, the ARIPO system differs from the Madrid system. The 'central attack' feature of the Madrid system means that an international registration may be defeated for all the countries in which it is protected, by means of a single invalidation or revocation action against the basic registration. This feature does not exist in the ARIPO trade mark system.

A further advantage of the ARIPO trade mark system is that a trade mark application or registration can be extended to other Banjul Protocol contracting states, although not to the other ARIPO member states that have not joined the Protocol. For an extension, the rights holder must file an application using Form M3 – which can be downloaded from [ARIPO's e-service platform](#) – to designate additional state(s).

The application is processed in the same way as any other ARIPO trade mark application, namely, ARIPO receives the application, examines it for compliance with formal requirements and, if there are no objections, transmits the application to the state(s) in relation to which the subsequent designation applies, for them to carry out substantive examination of the application within 9 months from the transmittal date. The period of protection under the subsequent designation expires on the same date as the earlier registration.

### Disadvantages of the ARIPO trade mark system

Despite its advantages, brand holders may still have concerns about the ARIPO trade mark system. These concerns may include:

- **a poor opposition procedure**, which derives from the fact that oppositions are dealt with in a decentralised manner in individual states with different and non-harmonised national laws. This makes it expensive for brand holders and undermines the efficiencies of a centralised system for trade mark registration through a single application.

ARIPO has attempted to lessen the impact of this weakness by providing a centralised system for the filing and transmittal of opposition documents. Opponents can now file them directly instead of having to file them in each state to which the opposition relates, as was previously the case. ARIPO currently does not charge a fee for its filing and transmittal services so as to facilitate the administration for the users of the ARIPO trade mark system.

- **the limited number of contracting parties.** The admission of The Gambia as the 13th and latest Banjul Protocol state, with effect from 3 August 2021, was a positive step for the ARIPO trade mark system. However, a system that has only 13 out of 22 of ARIPO's current member states may be of concern to brand owners who want the convenience of designating a large and diverse number of countries in one trade mark application. Considering that the majority of users of the ARIPO trade mark systems are from Europe and non-African countries, the system suffers heavily from the competition of the Madrid System. Statistics for 2014-2022 can be found in the ARIPO Annual Reports.
- Concern about the less-than-optimal level of integration of the Banjul Protocol by member states into their national laws applies equally to the extent of integration of the Madrid Protocol in most low-income countries (LICs) a significant number of which are in Africa. This factor is therefore unlikely to be a key distinguishing feature of the ARIPO and Madrid systems for brand holders.

#### Tips for effective use of the ARIPO trade mark system

- **Compare costs** with other registration systems (national and Madrid), if available for the states where you would like to register. The ARIPO system tends to be cheaper than national routes if you intend to designate several countries. It will also be a cheaper option in comparison to countries that operate a single-class registration system. For example, an ARIPO application designating one state in 10 classes will have an application fee of USD 220, as follows:

Basis	Amount (USD)
Application and 1st designated class fee	80
Designation fees – one single class state	50
Additional class fees @USD 10 per class x 9 (of the 10 classes included in the application), assuming the application does not attract surcharges for additional words of the specifications, payable at USD 5 per word from the 51st word.	90
<b>Total application fees payable</b>	<b>220</b>

These costs may be lower than the fees that you would pay under a national registration system which, apart from being more expensive, would not offer the advantage of extending trade mark rights to other Banjul Protocol states to give your brand wider protection in the ARIPO region.

- **Reduce the list of goods/services.** ARIPO's surcharge of USD 5 per word can mean a significant cost for long specifications. Aim to designate only the goods/services that you genuinely need.
- **Be strategic with your state designations.** The ARIPO trade mark system is flexible enough to allow you to be strategic. You do not have to designate all the Banjul Protocol states in an application. You can leave out some or you can create your own 'sub-designations' to suit your business needs. For example, if you need to focus on Southern African Banjul Protocol states but you are not sure about others, you can categorise the designations as you wish and then file the applications in stages. Also, if you think that your trade mark will be opposed in many states, you can file one 'test' application and then apply for subsequent designations to avoid having to deal with multiple oppositions at once, which will probably be the case if you designate all the states in one application. Develop the strategy by establishing which states operate a 'first to file' and a 'first to use' system so that you do not jeopardise your rights. You can also 'mix and match' system use approaches, for instance by carrying out **national IP office searches** in the states that you wish to designate in your **ARIPO application**. These searches will help to avoid objections during the substantive examination phase of your ARIPO application, which is carried out by the designated states under their national laws. ARIPO examines for formalities only and transmits the application to designated member states for substantive examination.
- **Invest in quality legal expertise.** The ARIPO trade mark system has its faults, but it also offers significant advantages to brand holders. You will need an experienced professional to advise you on how to use the ARIPO system to your brand's best advantage.

#### Patents, utility models and industrial designs

Eswatini is a signatory to the Harare Protocol under which ARIPO grants patents and registers utility models and industrial designs on behalf of those of its member states that are contracting parties to the Harare Protocol. More information about ARIPO's processes and applicable fees is available here for patents, utility models and industrial designs. A list of current ARIPO member states that have joined the Harare Protocol is available here.

Compared to the trade mark system, the Harare Protocol system works even better and is the most heavily utilised of ARIPO's IP registration protocols; the statistics can be seen in ARIPO Annual Reports. You can also obtain statistics and other related information about searches conducted through [ARIPO's e-service platform](#) or from the [Regional IP database](#).

#### Information that you may need about the relevance of the ARIPO system to your IP protection strategy in Eswatini



### Patent filings

- ARIPO is a member of the Patent Cooperation Treaty (PCT); over 75 % of its applications are PCT-based.
- **Eswatini** receives most of its patent applications through its designation under the ARIPO region in PCT applications. In 2019, the Eswatini national IP office received 0 patent applications compared to 474 ARIPO PCT-based applications and, in 2018, 2 patent applications compared to 428 ARIPO PCT-based applications. The pattern is similar for most ARIPO member states. See ARIPO Statistics at: <https://www.aripo.org/publications/ip-statistics>

### Substantive examination of patents and utility models

- ARIPO offers technical support to its member states, including Eswatini, to carry out the substantive examination of patents and utility models.

### Searches

- You can carry out free online simple and advanced searches for trade marks, patents, utility models and industrial designs from the [ARIPO e-service platform](#), even if you are not registered for e-services.
- Go to the ARIPO homepage, then to the e-service platform and select the IP Digital Library. From the ARIPO homepage, select Regional IP Database and choose the IP title. You can then choose from patents, trade marks and designs and the country in which you want to search. This will then take you to the landing page for searches.
- You can also access the Regional IP Database through this [link](#).

### 1.8.3. International



- The WIPO international route can be used for Eswatini for two IP rights:
  - 1) Registering trade marks under the **Madrid System**;
  - 2) Processing patents in accordance with the **Patent Cooperation Treaty (PCT)**.

### Trade marks: Madrid System

- Eswatini is a signatory to the Madrid Protocol, which means it can be designated for the purpose of registering trade marks under the Madrid trade mark system.
- The Madrid system makes it possible for a brand owner to designate a country in an international application to secure trade mark protection in that country. Brand owners can also extend their trade mark protection to other countries that are members of the Madrid Protocol.
- A brand owner can file one application and pay a single fee to obtain the registration of a trade mark in many other countries that are members of the Madrid System. Information about the Madrid trade mark system is available through these links: [General information](#) and [How to file](#).

### Patents: PCT

- The PCT makes it possible to seek patent protection for an invention simultaneously in many countries by filing a single international patent application instead of filing several separate national or regional patent applications. More information about the PCT is available through this [link](#).
- Eswatini is a contracting party to the PCT and is also a member state of ARIPO which, as a region, is also a contracting party to the PCT. As a result, Eswatini can be designated in a PCT application as a country or under the designation of ARIPO as a regional block.

## SECTION 2: OVERVIEW OF NATIONAL IP ENFORCEMENT

Eswatini is a signatory to the WTO's TRIPS Agreement, and its laws are substantially TRIPS-compliant in terms of providing a legal framework for the protection and enforcement of IP rights.

Eswatini's national IP office is mandated by the Industrial Property Act and the Copyright and Neighboring Rights Act to enforce compliance and bring IP infringers to justice. The Copyright and Neighbouring Rights Act provides that people who are guilty of infringement may be fined or imprisoned.

The national IP office engages constantly with other stakeholders who have a role to play in combating IP infringements. These include Interpol, border officials, customs officials, the legal profession, retailers and the general public.

Despite the national IP office and State efforts to curb IP infringement, rights holders must play a significant role in policing the use of their IP in Eswatini. They must constantly check the industrial and commercial markets in which they sell their goods or services to take appropriate action

against the infringement of their IP rights by competitors, retailers or street vendors. Eswatini law entitles rights holders to take civil action against infringers to recover their lost revenue and/or to have the infringing products destroyed.

## SECTION 3: TYPES OF AVAILABLE IP PROTECTION

### 3.1 TRADE MARKS

#### WHAT YOU SHOULD KNOW ABOUT ESWATINI TRADE MARKS

- Foreigners need to appoint a local agent;
- Multi-class filing system;
- Member state of Madrid Protocol;
- 'First to file' jurisdiction – pre-filing rights clearance searches are advisable;
- Recognises the Nice Classification;
- Cancellation for non-use period is 3 years;
- Appointment and recordal of licensees at the IP office is advisable;
- Opposition period is 3 months;
- Convention priority may be claimed.

#### 1. Who can register a trade mark?

A natural person, a company or any other entity can apply to register a trade mark. However, a person who does not have their place of business in Eswatini needs a professional representative.

#### 2. Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Eswatini) or if you are applying on behalf of a company that has its principal place of business outside Eswatini.
- Representation is optional for local applicants.
- You can find a local agent for Eswatini [here](#).

#### 3. What qualifies for registration?

A trade mark is any word, phrase, symbol, design, shape, group of letters or numbers, or combination of these, used by an undertaking as its brand or logo. Consumers can rely on trade marks to help them distinguish between different goods/services in the marketplace and to help them identify brands they are loyal to. An organisation's logo and slogan, a T-shirt brand, a family symbol, the name of an event or festival, are some of the things that can be registered as trade marks.

- What cannot be registered?

A trade mark cannot be registered if it:

- contains false indications, is deceptive or is likely to deceive or mislead the public or cause confusion;
- contains a likeness to a specific armorial bearing, flag emblem;
- constitutes a name or likeness of individuals without the authorisation of such individuals;
- is likely to cause confusion with an earlier registered trade mark or pending application;
- is contrary to law, public order or morality; and
- consists of a mark, sign or indication which has become customary in the current language or in the bona fide and established practices of the trade in respect of the goods or services for which registration is sought.

#### 4. Where can I file an application?

- Ministry of Commerce, Industry and Trade, Intellectual Property Office of Eswatini;
- ARIPO, for regional marks;
- country designation through the International Bureau (WIPO).

#### 5. How do I register?

The national registration process involves the following stages: application, publication and registration/sealing.

#### 6. How much does it cost?

##### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Eswatini South African rand, Swazi lilangeni). Application forms and information on fees are available through this link: [Eswatini Government](#) or [local agent](#) for this country.

##### Professional fees

Professional fees vary, so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>

### Regional, ARIPO Route

ARIPO's current trade mark fees are calculated as follows.

- Application fees are currently USD 80 per application, which can designate one, some, or all Banjul Protocol member states.
- In addition to the application fees, a state designation fee of USD 50 is payable for each designated state.
- In addition to the application fees and designation fees, an additional class fee of USD 10 per class is payable for the second and any additional classes that are included in the application.
- A surcharge of USD 5 per word is applied for each word when a specification of goods or services exceeds 50 words, excluding punctuation marks.
- The latest fees are available through this link:  
<https://www.aripo.org/resources/fee-schedules>

### 8. How long does registration take?

The trade mark registration process takes 18 months from the filing date to complete, assuming that there are no unusual delays and no oppositions. This includes an opposition period of 3 months.

Regional ARIPO trade marks take 12-15 months to register, including a substantive examination period of 9 months and an opposition period of 3 months.

### 9. What is the duration of protection?

10 years from the filing date, renewable.

### 10. When are renewal fees paid and how much are they?

- Trade marks are renewed on the 10th anniversary of the filing date, or priority date, if priority is claimed.
- The latest renewal fee rates are available from the Eswatini [national office](#) or from a [local agent](#).

## 3.2 PATENTS

### WHAT YOU NEED TO KNOW ABOUT PATENTS IN ESWATINI

- A granted UK patent automatically extends to Eswatini without the need for local registration.
- A patent may also be obtained by registering a granted South African patent in Eswatini.

### 1. Who can register a patent?

An inventor (or successor in title) can apply to register a patent.

### 2. Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Eswatini) or if you are applying on behalf of a company that has its principal place of business outside Eswatini.
- Representation is optional for local applicants.
- You can find a local agent for Eswatini [here](#).

### 3. What qualifies for registration?

A patent must meet the following requirements:

- **novelty** which must be absolute novelty in that the invention must be a new solution which is not known in the body of existing knowledge in its technical field. It must not be anticipated by prior art;
- **inventive** step which means that, having regard to prior art, the invention is not obvious to a person skilled in the art;
- **susceptible of industrial applicability** in that it can be used in any kind of industry, including handicraft, agriculture, and fishery and other services.

### 4. What cannot be registered?

The following cannot be patented:

- A discovery of a plant, animal, microorganism or substance as found in nature, including the human body;
- A scientific theory or mathematical method;
- A literary, drama, musical or artistic work or other aesthetic creation;
- A scheme, rule or method for doing business, performing mental acts or playing a game;
- Methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods practised in relation to them, except products for use in any such methods;
- An invention whose commercial exploitation is necessary to protect public order or morality, including the protection of human or animal health, plant life or to avoid prejudice to the environment;
- Plants and animals other than microorganisms;
- Essentially biological processes for the production of plants or animals.

## 5. Where can I file an application?

**National** applications, non-Convention, Convention and PCT national phase applications must be filed [Ministry of Commerce, Industry and Trade, Intellectual Property Office of Eswatini](#).

**Regional** applications can be filed at national IP offices or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier, or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

### Regional (ARIPO) patents

See here: <https://www.aripo.org/ip-services/patents> for ARIPO's patent application filing procedure.

## 6. How do I register?

The patent registration system involves the following stages: application, examination and grant of patent.

## 7. How much does it cost?

### National fees

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Eswatini South African rand, Swazi lilangeni). Application forms and information on fees are available through this link: [Eswatini Government](#) or [local agent](#) for this country

### Professional fees

Professional fees vary, so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>

### ARIPO-route patent registration fees

Fees must be paid through ARIPO if an applicant chooses to register a patent for Eswatini using the ARIPO route. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/resources/fee-schedules>.

## Application fees consist of three components, as follows:

Type of Fee	ARIPO Fee (USD)	Total Fees (USD)
Application fee, regardless of the number of states designated in the application	290 (paper filing) 232 (e-filing)	932
State designation fee	85 (Multiplied by the number of designated states)	Depends on the number of designated states
Mandatory annuity fee: for PCT-based applications, the first ARIPO annuity fee will usually be due and must be paid with the application fee	50 (1st year) (multiplied by the number of designated states)	<u>Depends on the number of designated states</u>
<b>Total fees, assuming only Eswatini is designated</b> and payment of first annuity fee	317	1 037
<b>Total fees, assuming all Harare Protocol states, including Eswatini, are designated</b> and payment of first annuity fee	2 662	1 037

### Note on professional fees

Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

- **How long does registration take?**

Basic national applications take approximately 18-24 months to complete the registration process.

Regional-route Eswatini applications are substantively examined by ARIPO and take 3-4 months on average to complete registration, assuming that there are no objections.



- **What is the duration of protection?**

- Protection lasts 20 years from the filing date, subject to the payment of annual maintenance fees.
- A patent based on a South African or UK patent remains in force for as long as the South African or UK patent remains in force.

- **When are renewal fees paid?**

#### National patents

- Renewal fees are paid from the first anniversary of the filing date up to the 20th year. Late payment is possible, with a corresponding surcharge, within a grace period of 6 months after the due date.
- UK patent: no separate renewal fees are payable.
- South African patent registered in Eswatini: renewal fees fall due annually on the same date as the South African renewal fees fall due.

#### ARIPO-route Eswatini patents

Renewal fees are payable up to the 20th year. Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/resources/fee-schedules>.

ARIPO fees are payable **per designated state**.

### 3.3 UTILITY MODELS

#### 1. Who can register?

- An inventor (or successor in title) can apply to register a utility model.

#### 2. Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Eswatini) or if you are applying on behalf of a company that has its principal place of business outside Eswatini.
- Representation is optional for local applicants.
- You can find a local agent for Eswatini [here](#).

#### 3. What can be registered?

A registrable utility model must meet the following requirements:

- novelty: the invention must be new at the national level and must not be anticipated by the prior art;
- industrial applicability: the invention must be useful in any kind of industry.

#### 4. What cannot be registered?

The following cannot be registered as utility models in Eswatini:

- utility models related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not registrable. This is to avoid undue restriction to access to medical care and medicines by people or animals in need.
- inventions whose commercial exploitation would be contrary to public policy or morality, public health and safety, and principles of humanity and environmental conservation;
- a discovery of a plant, animal, microorganism or substance as found in nature, including the human body;
- a scientific theory or mathematical method;
- methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods practised on them (as opposed to medical products);
- a literary, dramatic, musical or artistic work or other aesthetic creation;
- a scheme, rule or method for doing business, performing mental acts or playing a game;
- presentations of information;
- software.

#### 5. Where can I file an application?

- **National** applications for utility models must be filed with [the Eswatini Ministry of Commerce, Industry and Trade, Intellectual Property Office](#).
- **Regional** applications in which Eswatini is designated as a Harare Protocol contracting state are registered by ARIPO, see: [Procedure for the filing and granting a patent or utility model at the ARIPO office](#)

#### 6. What do I need to register?

A utility model application must contain the following:

- a request for registration;
- full details of the applicant, including name(s), nationality and physical address;
- where the applicant is a company, full details of the company;
- utility model title, abstract, description, claims and drawings;
- signed power of attorney if the applicant is represented; notarisation is not required;
- the Deed of Assignment, if the applicant is not the inventor but an assignee;
- the prescribed application fee;

### 7. How do I register?

There are three stages: application, examination and grant of patent.

### 8. How much does it cost?

#### National fees

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

#### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Eswatini South African rand, Swazi lilangeni). Application forms and information on fees are available through this link: [Eswatini Government](#) or [local agent](#) for this country.

#### ARIPO-route utility model registration fees

Fees must be paid through ARIPO if an applicant chooses to register a utility model in Eswatini using the ARIPO route. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/resources/fee-schedules>.

#### Note on professional fees

Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited

professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### 9. How long does registration take?

**National** utility model applications are examined substantively. The average time frame is 9-15 months. It is advisable to check applicable processing time frames before starting the registration process.

**Regional** route filed applications are substantively examined by ARIPO and take longer than national utility model applications to reach registration. These applications can take 24-36 months to complete registration, assuming that only minimal official actions are needed and there are no objections.

### 10. What is the duration of protection?

- In Eswatini, the duration of utility models is 7 years from the filing date. It is not renewable.
- ARIPO registered utility models have a duration of 10 years from the filing date and are not renewable.

### 11. When are renewal fees paid?

#### National utility models:

Renewal fees must be paid each year, starting one year after the filing date of the application or the grant of the utility model. The latest fee rates are available from the [Eswatini national](#) office or from a [local agent](#).

#### ARIPO route filed Eswatini utility models:

Renewal fees are payable up to the 10th year. Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/resources/fee-schedules>.

## 3.4 INDUSTRIAL DESIGNS

### Eswatini Industrial Design Registrations

#### 1. Who can register?

A creator (or successor in title) can apply to register a design in Eswatini.

It is possible for two or more persons or companies to jointly own and apply for the registration of an industrial design.

## 2. Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Eswatini) or if you are applying on behalf of a company that has its principal place of business outside Eswatini.
- Representation is optional for local applicants.
- You can find a local agent for Eswatini [here](#).

## 3. What qualifies for registration?

- An industrial design is registrable if it is new (i.e. if it has not been disclosed to the public anywhere in the world, by publication in tangible form or by use, or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration).

## 4. What cannot be registered?

- Designs that are contrary to the law, public policy or morality cannot be registered in Eswatini.

## 5. Where can I file an application?

National-route design applications must be filed at Eswatini Ministry of Commerce, Industry and Trade, Intellectual Property Office.

Regional-route design applications can be filed at the national IP office or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO for Eswatini designs can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

- A design application must contain the following documents:
  - a formal application on the prescribed form;
  - drawings depicting different elevations of the design, usually three-dimensional views;
  - a power of attorney, simply signed if the application is filed through an agent; the Deed of Assignment, if the creator is not the applicant but an assignee;
  - a priority document (original or certified copy), if priority is claimed;
  - the prescribed application fees;
  - proof of registration either in the Republic of South Africa or the United Kingdom, where applicable.

## 6. How do I register?

### National design

The registration process consists of the following:

### Examination, registration

- The Registrar accords, as the filing date, the date of receipt of the application, provided that, at the time of receipt, the application fee is paid, and the required documents have been submitted.
- After according a filing date, the Registrar examines whether the requirements have been met.
- If the Registrar finds that the application did not, at the time of receipt, fulfil the application requirements, they will invite the applicant to make the required corrections and will accord as the filing date the date of receipt of the required correction. If the correction is not made, the application will be treated as if it had not been filed.
- If the Registrar finds that the application requirements have been fulfilled, they will register the industrial design, publish a reference to the registration and issue the applicant with a certificate of registration of the industrial design.

### Regional (ARIPO) design

- Although an application can be filed at the national IP office for transmission to ARIPO, the common practice is to file the application online and register directly with ARIPO. More information about how to register an ARIPO industrial design is available [here](#).

## 7. How long does registration take?

- **National** route applications usually take 12-18 months to complete registration.
- **Regional**-route applications usually take 8-12 months to complete registration. This includes a period of 6 months for states to examine and decide if a design will have legal effect in their territories after ARIPO has issued them with a notice of intention to register a design.

## 8. What is the duration of protection?

- The national industrial design has an initial duration of 5 years from the filing date, with the possibility of two five-year terms, a total of 15 years.

- ARIPO-route design registrations are valid for 15 years from the filing date, except for designated states with a shorter term of protection.

#### 9. When are renewal fees paid?

- For a South African granted design, annuity fees are payable after 5 years from the filing date of the South African design; it is possible to renew the protection for a further five-year period.
- A UK-based design does not require annuity fees.
- ARIPO-registered designs require annual renewal fees to be paid.

#### ARIPO-registered design renewal fees

Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/resources/fee-schedules>.

#### Professional services renewal fees

These are usually payable as a flat-rate fee per annuity payment, regardless of the number of designated states. They range between USD 150 to USD 250 per renewal. It is advisable to compare the fees of different IP agents.

## SECTION 4: COPYRIGHT AND NEIGHBOURING RIGHTS

### About Copyright and Neighbouring Eswatini

Eswatini has a dedicated law for the protection of copyright and neighbouring rights, currently the Copyright and Neighbouring Rights Act No 4 of 2018.

#### 1. Can I register?

Yes. Although Copyright law confers protection upon the creation of an original work, registration is useful in Eswatini, in particular to ensure that there is an official record of the existence and priority of your copyright.

Eswatini is a member of the African Regional Intellectual Property Organization (ARIPO), which adopted the Kampala Protocol on Voluntary Registration of Copyright and Related Rights (the Kampala Protocol) in August 2021 for the creation of a voluntary copyright registration system for its Member States. The Protocol, which is yet to enter into force once five Member States deposit their instruments of ratification or accession, provides for the establishment of a regional

copyright database and offers presumption as to authorship and ownership. Implementing Regulations were adopted in November 2022 and the e-copyright system is under development to facilitate the voluntary registration of copyright and related rights.

#### 2. Do I need a local representative?

- You must be represented by an agent if you are a foreign national (i.e. not a citizen of Eswatini) or if you are applying on behalf of a company that has its principal place of business outside Eswatini.
- Representation is optional for local applicants.
- You can find a local agent for Eswatini [here](#).

#### 3. What qualifies for protection?

Any original work in the categories listed below qualifies for protection:

- literary works;
- musical works;
- artistic works;
- audiovisual works;
- sound recordings;
- broadcasts;
- programme carrying signals;
- published editions.

#### 4. What cannot be protected?

Any work whose subject matter does not qualify for legal protection, in particular:

- ideas, discoveries, even if they are explained and embodied in a work;
- news of the day that are mere press information items;
- speeches of a political nature/delivered in the course of legal proceedings;
- some public documents (incl. official texts of enactments/bills/ treaties and conventions).

#### 5. What are examples of acts permitted in relation to copyright works?

Permitted acts that do not infringe copyright include:

- fair use: copyright in a work is not infringed by any fair dealing for the purposes of research or private study by the person using the work. Fair dealing does not apply if the person who reproduces the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time.
- fair use for purposes of criticism, review, or news reporting;



- educational use;
- copies made to replace or conserve library or archival copies of works;
- use of anonymous or pseudonymous works, subject to conditions;
- use of work for parliamentary or judicial proceedings or inquiries;
- quotations from copyright works;
- public readings and recitations.

**6. What acts are not permitted in relation to copyright works?**

Unpermitted/restricted acts include:

- reproducing the work;
- publishing the work;
- importing/exporting the work;
- including the work in audiovisual work or broadcasts;
- making an adaptation of the work.

**7. What is the duration of protection?**

- The general duration of the protection of the works is the lifetime of the author plus 50 years afterwards. For some works the period is counted as from publication (e.g. sound recordings; a published edition), first broadcast (broadcasts), etc.

**8. Can I renew copyright after its term of protection expires?**

- Copyright cannot be renewed once its term has expired. The work enters the public domain at the end of the term of protection.

