

**THE SMALL ENTERPRISES AND HANDICRAFT DEVELOPMENT
AUTHORITY ACT 2005**

Act No. 20 of 2005

I assent

SIR ANEROOD JUGNAUTH

President of the Republic

4th May 2005

Date in Force: not proclaimed

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AN ACT

To make provision for and in connection with the regulation and registration of small enterprises and handicraft enterprises, the establishment of the Small Enterprises and Handicraft Development Authority, the taking over by the Authority of the functions of the National Handicraft and Promotion Agency and the Small and Medium Industries Development Organisation and for matters related to or connected with the foregoing

ENACTED by the Parliament of Mauritius, as follows -

PART I – PRELIMINARY

1. Short title

This Act may be cited as the **Small Enterprises and Handicraft Development Authority Act 2005**.

2. Interpretation

In this Act –

“Authority” means Small Enterprises and Handicraft Development Authority established under section 3;

“authorised officer” means an officer of the Authority designated as such, in writing, by the Managing Director;

“Board” means Small Enterprises and Handicraft Development Authority Board referred to in section 6;

“Chairperson” means the Chairperson of the Board appointed under section 6;

“Comptroller” means the Comptroller of Customs;

“craftwork” means a product made mainly by hand or foot, with or without the use of tools operated directly by the craftsperson;

“employee” means an employee of the Authority appointed under section 12 and includes the Managing Director;

“enterprise”-

- (a) includes every form of trade, commerce or manufacture, craftsmanship, calling, profession, vocation, occupation or support service;
- (b) does not include an office or employment, a religious or charitable institution, or a person engaged in the cultivation of land;

“handicraft enterprise”-

- (a) means an enterprise which –
 - (i) is engaged in the production of craftworks;
 - (ii) employs less than 10 persons; and

(iii) has an annual turnover not exceeding 10 million rupees;

(b) does not include an enterprise which is controlled, directly or indirectly, through ownership by an enterprise other than a handicraft enterprise;

“Managing Director” means the chief executive officer appointed as such under section 10;

“manufacture” means -

(a) the transformation, for commercial purposes, of raw materials or semi-processed materials into finished or semi-finished goods; and

(b) includes the repair, packing and assembly of inputs into finished or semi-finished goods;

“member” means a member of the Board appointed under section 6 and includes Chairperson;

“Minister” means the Minister to whom the responsibility for the subject of small enterprises and handicraft is assigned;

“owner” in relation to a small enterprise or a handicraft enterprise, means the owner of an enterprise registered under this Act;

“production equipment” means machinery or equipment directly used in the process of manufacturing;

“scheduled list” means the list of production equipment and raw materials approved by the Board;

“small enterprise”

- (a) means an enterprise which –
 - (i) is engaged in any activity, other than an activity relating to the information and communication technology or financial services, for gain or profit;
 - (ii) employs less than 10 persons; and
 - (iii) has an annual turnover not exceeding 10 million rupees;
- (b) does not include an enterprise which is controlled, directly or indirectly, through ownership by an enterprise other than a small enterprise;

“support service” means the service specified in the Schedule.

PART II – ESTABLISHMENT AND FUNCTIONS OF THE AUTHORITY

3. Establishment of the Authority

- (1) There is established for the purposes of this Act a Small Enterprises and Handicraft Development Authority.
- (2) The Authority shall be a body corporate.

4. Objects of the Authority

The objects of the Authority shall, in relation to small enterprises and handicraft enterprises, be to -

- (a) promote and sustain their development at national and international level;

- (b) act as a regulatory body for their registration;
- (c) enhance their productivity and competitiveness through research, training and other measures;
- (d) encourage clustering and linkages with other enterprises;
- (e) promote the marketing and sale of their products and services;
- (f) provide an information and documentation service;
- (g) develop an entrepreneurial culture; and
- (h) advise the Minister on matters relating to such enterprises.

5. Functions of the Authority

The functions of the Authority shall, in relation to small enterprises and handicraft enterprises, be to -

- (a) work as a centre of market intelligence and disseminate same through an information network;
- (b) assist the entrepreneurs through business guidance, counselling, documentation and mentoring services;
- (c) provide business counselling and facilitation for start ups and to assist entrepreneurs in obtaining various certificates, clearances, permits and loan facilities;
- (d) promote skills and entrepreneurship development;

- (e) assist in quality improvement and product, process and design development;
- (f) encourage their registration and monitor post registration status;
- (g) develop and empower product specific and sector specific associations in order to enhance their delivery capabilities;
- (h) publish regularly reports on various economic indicators and conduct research studies and market surveys;
- (i) advocate on all matters relating to their development including fiscal, credit and infrastructure support;
- (j) assist in the setting up of industrial estates and business incubators;
- (k) formulate and review policies, programmes and growth targets through appropriate mechanisms; and
- (l) provide common facilities, including extension services, for their development.

PART III – MANAGEMENT OF THE AUTHORITY

6. The Board

- (1) The Authority shall be administered by a Board which shall be known as the Small Enterprises and Handicraft Development Authority Board.
- (2) The Board shall consist of -
 - (a) a Chairperson appointed by the Minister;

- (b) a representative of the Ministry responsible for the subject of small enterprises and handicraft;
 - (c) a representative of the Ministry responsible for the subject of industry and medium enterprises;
 - (d) 2 representatives from associations of small enterprises, appointed by the Minister;
 - (e) a member of an association of craftspersons, appointed by the Minister;
 - (f) a representative of the National Women Entrepreneur Council; and
 - (g) 4 members having wide experience in business, management and enterprise development appointed by the Minister.
- (3) Subject to subsection (5), a member other than an ex officio member shall hold office for not more than 3 years but shall be eligible for reappointment for not more than 2 consecutive terms.
- (4) No person shall be qualified to be a member if he -
- (a) is engaged in any political activity; or
 - (b) is a member of the National Assembly.
- (5) A member shall be removed from office where, after his appointment, he becomes disqualified from holding office under subsection (4).
- (6) For the purposes of subsections (4) and (5), a person who –

(a) is a candidate, agent or official of a candidate at an election; or

(b) is an employee of a political party,

shall be deemed to be engaged in a political activity.

(7) A member who has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered by the Board shall, as soon as practicable after the relevant facts have come to his knowledge, disclose in writing the nature of his interest to the Board, and shall not be present during any deliberation of the Board or take part in any decision of the Board with respect to that matter.

(8) A member shall be paid such fees or allowances as the Minister may determine.

7. Powers of the Minister

(1) The Minister may, in relation to the exercise by the Board of the powers of the Authority, give to it such general directions, not inconsistent with this Act, as he considers to be necessary in the public interest, and the Board shall comply with such directions.

(2) The Minister may require the Board to furnish to him any information or document in relation to the activities of the Authority and the Board shall comply with any such request.

8. Meetings of the Board

(1) The Board shall meet at least once in every month at such time and place as the Chairperson may decide.

(2) 6 members of the Board, of whom at least one shall not be an ex officio member, shall constitute a quorum.

- (3) The Managing Director shall convene a meeting of the Board on request to that effect made by not less than 3 members.
- (4) The Managing Director shall attend every meeting of the Board and may take part in its deliberations, but shall not be entitled to vote on any question before the Board.
- (5) Subject to this section, the Board shall regulate its meetings in such manner as it thinks fit.

9. Technical committees

- (1) The Board may set up such technical committees as may be necessary to examine and report on any application or on any matter referred to them by the Board.
- (2) The members of a technical committee may include -
 - (a) persons who have qualifications and experience in the relevant sector being the subject matter under examination by the technical committee; and
 - (b) such officers of a public sector agency as may be required for the purposes of the subject matter before the technical committee.
- (3) A technical committee -
 - (a) shall meet as often as may be necessary and at such time and place as the Chairperson of the committee thinks fit;
 - (b) shall meet when required to do so by the Board; and
 - (c) shall, regulate its meetings in such manner as it thinks fit.

- (4) A technical committee shall submit its report within such time as may be fixed by the Board and the report shall contain its observations, comments and recommendations on any matter referred to it by the Board.

10. Managing Director

- (1) There shall be chief executive officer of the Authority who shall be –
 - (a) known as the Managing Director; and
 - (b) appointed by the Board, with the approval of the Minister, on such terms and conditions as it thinks fit
- (2) The Managing Director shall –
 - (a) be responsible for the execution of the policy of the Board and for the control and management of the day to day business of the Authority;
 - (b) act in accordance with such directions as he may receive from the Board; and
 - (c) submit to the Board, every 3 months, a report on the activities and finances of the Authority.

11. Delegation

Subject to such instructions or rules of a general nature as it may give or make, the Board may delegate to the Managing Director such of its powers under this Act as may be necessary to assist him in the effective management of the day to day business and activities of the Authority, other than the power –

- (a) to borrow money; or
- (b) to enter into any transaction in respect of capital expenditure which exceeds one 100,000 rupees.

12. Management of assets and funds

The Board shall manage and utilise all the assets and funds vested in the Authority, in such manner and for such purposes as, in its opinion, will best promote the objects of the Authority.

13. Appointment of employees

- (1) The Authority may, subject to the approval of the Minister, appoint, on such terms and conditions as it thinks fit, such employees as it considers necessary for the proper discharge of its functions under this Act.
- (2) Every employee shall be under the administrative control of the Managing Director.

14. Conditions of service of employees

The Authority may make provision to govern the conditions of service of its employees and, in particular, to deal with -

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by any, category of employees;
- (b) the establishment and maintenance of provident and pension fund schemes and the contribution payable to, and the benefits recoverable from, those schemes.

15. Protection of members and officers

- (1) No liability, civil or criminal, shall lie against any member of the Board, the Managing Director or employee or the Authority or in respect of any act done or omitted to be done by the member, employee or the Authority in the execution, in good faith, of his or its functions under this Act or any subsidiary enactment made under it.
- (2) This section shall be in addition to and not in derogation from the Public Officers' Protection Act, and every member or officer of the Authority shall, for the purposes of that Act, be deemed to be a public officer or a person engaged or employed for the performance of a public duty.

PART IV – FINANCIAL PROVISIONS AND ACCOUNTS

16. General Fund

- (1) The Authority shall establish a General Fund –
 - (a) into which shall be paid –
 - (i) all donations, grants and contributions received by the Authority;
 - (ii) any fee as may be prescribed; and
 - (iii) any other sum which may lawfully accrue to the Fund;
 - (b) out of which all payments required to be made by the Board shall be effected.
- (2) The Authority may, in the discharge of its functions, charge to the General Fund all remunerations, allowances, salaries, bonuses, fees, gratuities, pensions, superannuation fund contributions and working expenses or other charges properly arising.

17. Transfer of property and borrowing

The Authority shall not, except with the approval of the Minister –

- (a) sell or exchange any property or make a donation;
- (b) borrow any money it may require for purposes of carrying out its duties.

18. Estimate

- (1) The Authority shall, not less than 3 months before the end of every financial year submit to the Minister an estimate of the revenue and expenditure of the Authority for the next financial year.
- (2) Subject to subsection (3), the Minister shall, before the beginning of the financial year, signify in writing his approval of the estimate.
- (3) Where the Minister signifies his approval under subsection (2), he may -
 - (a) approve only part of the expenditure under any item; or
 - (b) direct the Authority to amend the estimate in respect of any item in such manner as he thinks fit.

19. Fees

The Authority may charge for its services such fees as may be approved by the Board.

20. Execution of documents

(1) Subject to subsection (2), all documents shall be deemed to be executed by or on behalf of the Authority if signed by -

(a) the Chairperson; or

(b) the Managing Director.

(2) A cheque of the Authority shall be signed by –

(a) the Chairperson; and

(b) the Managing Director or such other person as may be appointed for the purpose by the Board.

21. Exemption

No registration fee or duty shall be payable in respect of any document issued or executed by, on behalf of or to the benefit of the Authority.

22. Accounts

(1) The Board shall, on or before 31 October every year, submit to the Minister a report together with an audited statement of accounts on the operations of the Authority in respect of 12 months ending on 30 June of the same year.

(2) The Minister shall lay a copy of the report on the Table of the Assembly.

PART V – REGISTRATION

23. Application for registration certificate

- (1) Any person who intends to carry on a small enterprise or an handicraft enterprise may apply for a registration certificate.
- (2) An application for a registration certificate under subsection (1) shall be made to the Board in such form and in such manner as may be approved by the Board.

24. Grant or refusal of registration

- (1) Subject to subsection (2), the Board may either grant or reject an application made under section 23.
- (2) Before taking a decision under subsection (1), the Board may -
 - (a) refer the application for consideration by a technical committee;
or-
 - (b) require the applicant to give such further information as may be necessary for the determination of the application.

25. Issue of registration certificate

- (1) Where the Board -
 - (a) grants an application, it shall issue to the applicant a registration certificate on such terms and conditions as it thinks fit;
 - (b) rejects an application, it shall, in writing, inform the applicant of the reasons for the rejection.
- (2) Subject to the other provisions of this section, a registration certificate issued pursuant to subsection (1)(a) -

- (a) shall be valid for such period as may be specified in the certificate;
and
 - (b) shall include -
 - (i) the name and address of the applicant;
 - (ii) the nature of the business activity; and
 - (iii) the terms and conditions attached to the certificate.
- (3) The registration certificate shall be in such form, and shall be issued in such manner, as may be approved by the Board.
- (4) Where a person to whom a registration certificate has been issued –
 - (a) changes his name or changes the address specified in his certificate; or
 - (b) intends to change the nature of the business activity specified in his certificate,

he shall immediately make a written application to the Board for an amendment of his certificate, specifying the reasons for the change and giving such further information or particulars as may be required by the Managing Director.
- (5) The application under subsection (4) shall be processed in the same manner as is provided for under sections 23 and 25 and, upon its approval under this section, the person shall be issued with an amended certificate or a fresh certificate.

6. Revocation of registration certificate

Where the Board is satisfied that a holder of a registration certificate –

- (a) is acting or has acted in breach of any terms and conditions of the certificate; or
- (b) has acted in contravention of this Act or any regulations made thereunder;

the Board may, by written notice, require the person to show cause, within 30 days of the date of service of the notice, why the registration certificate should not be revoked, and where the Board is satisfied that, having regard to all the circumstances of the case, it is expedient to do so, it shall revoke the registration certificate.

27. Appeal

Any person aggrieved by a decision of the Board under sections 24 and 26 may make an appeal to the Minister within 21 days of the notification to him of the decision and such appeal shall be considered within 21 days of the date of appeal.

28. Notification of closure

Where the holder of a registration certificate ceases its operations either temporarily or permanently, the holder shall immediately notify the Board and the Comptroller.

PART VI – LEGAL PROCEEDINGS

29. Proceedings against the Authority

- (1) (a) No civil suit shall be commenced against the Authority before the expiry of 2 months after written notice to commence the suit is served on the Authority by or on behalf of the intending plaintiff.
- (b) A notice may be served on the Authority by means of registered letter with advice of delivery.
- (2) A notice issued under subsection (1) shall clearly and explicitly state -
 - (a) the name and address of the intending plaintiff;
 - (b) the full particulars of the claim;
 - (c) the cause of action; and
 - (d) the relief claimed.

30. Service of documents

- (1) A summons, notice or other document, including a notice under section 29, required or authorised to be served on the Authority may, unless there is specific provision to the contrary, be served by delivery to the Managing Director at his office.
- (2) Service of process by or on behalf of the Managing Director shall be equivalent to service by or on behalf of the Authority.

PART VII - TRANSFER OF EMPLOYEES, ASSETS AND LIABILITIES

31. Transfer of employees

- (1) Every person in the employment of the National Handicraft Promotion Agency and the Small and Medium Industries Development Organisation

immediately before the date of the coming into operation of this Act shall be entitled to be transferred to the Authority on terms and conditions which are not less favourable than those obtained by him before that date.

- (2) The period of service with the National Handicraft Promotion Agency or the Small and Medium Industries Development Organisation, as the case may be, of every person exercising his right to be transferred to the Authority under subsection (1) shall be deemed to be an unbroken period of service with the Authority.
- (3) No person in the employment of the National Handicraft Promotion Agency and the Small and Medium Industries Development Organisation shall, on account of his transfer to the Authority, or any resulting change in his job title, be entitled to claim that his contract of service has been terminated or adversely affected in breach of any enactment.
- (4) Any person in the employment of the National Handicraft Promotion Agency and the Small and Medium Industries Development Organisation who fails to accept in writing an offer of transfer to the Authority made to him by the Authority within one month of such offer shall be deemed to have refused such offer, and the person shall be deemed to have retired from the employment with the National Handicraft Promotion Agency or the Small and Medium Industries Development Organisation, as the case may be.
- (5) Any disciplinary inquiry or proceedings, pending or in process against any person in the employment of the National Handicraft Promotion Agency or the Small and Medium Industries Development Organisation may, as from the date of the coming into operation of this Act, be taken up, continued and completed by the Authority and any resulting order or decision shall have the same force and effect as if made by the Authority.

32. Vesting of property in Authority

There shall be vested in the Authority on the coming into operation of this Act the assets and properties of the National Handicraft Promotion Agency and the Small and Medium Industries Development Organisation as may be specified in an instrument drawn up by the Minister.

33. Transfer of rights and liabilities

- (1) Any contract entered into by the National Handicraft Promotion Agency or the Small and Medium Industries Development Organisation, as the case may be, in respect of property which is vested in the Authority under section 32, shall have effect, on the coming into operation of this Act, as if it had been entered into on the same terms and conditions by the Authority.
- (2) All obligations and liabilities subsisting against the National Handicraft Promotion Agency and the Small and Medium Industries Development Organisation, as the case may be, under a contract referred to in subsection (1) shall continue to exist under the same terms and conditions against the Authority.

PART VIII – MISCELLANEOUS

34. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purpose of this Act.
- (2) Any regulations made under this Act may provide for the levying of fees.

35. Offences and penalties

- (1) Any person who –

- (a) contravenes this Act or any regulations made thereunder;
- (b) in any application made under this Act, makes a statement which is false or misleading in any material particular;
- (c) cannot account to the satisfaction of the Comptroller for any deficiency in relation to the quantity of products, scheduled equipment, or scheduled materials; or
- (d) wilfully obstructs or hinders an authorised officer acting in the exercise of his functions, or, without reasonable excuse, fails or refuses to give to an authorised officer any information required of him,

shall commit an offence.

(2) Any person who commits an offence shall, on conviction –

- (a) where the offence involves a shortfall of customs duty, excise duty, or value added tax, be liable to a fine equivalent to 3 times the value of customs duty, excise duty or value added tax or 10,000 rupees, whichever is the higher; and
- (b) in any other case, be liable to a fine not exceeding 10, 000 rupees and to imprisonment for a term not exceeding 2 years.

36. Repeal

The following enactments are repealed –

- (a) the National Handicraft Promotion Agency Act;

- (b) the Small and Medium Industries Development Organisation Act;
and
- (c) Part VIII of the Industrial Expansion Act.

37. Consequential amendments

- (1) The Investment Promotion Act is amended –
 - (a) in section 2, in the definition of “qualifying activity”, by deleting paragraph (b) and replacing it by the following paragraphs –
 - (b) an activity in any industry or services specified in the Second Schedule; but
 - (c) does not include an activity carried out by a small enterprise or an handicraft enterprise under the Small Enterprises and Handicraft Development Authority Act 2005;
 - (b) in the First Schedule, by deleting the words “The Industrial Expansion Act, other than Part VIII” and replacing them by the words “The Industrial Expansion Act”.
- (2) The Statutory Bodies (Accounts and Audit) Act is amended in the Schedule, in Part II, by deleting the items –

National Handicraft Promotion Agency

Small and Medium Industries Development Organisation

and replacing them by the following item in the appropriate alphabetical order –

38. Savings and transitional provisions

- (1) In this section, “repealed Acts” means the National Handicraft Promotion Agency Act and Part VIII of the Industrial Expansion Act repealed by section 37.
- (2) Every enterprise which, upon the coming into operation of this Act, was registered under the repealed Acts, may carry on business for a period of one year from the coming into operation of this Act without being registered under this Act.
- (3) Every enterprise which –
 - (a) upon the coming into operation of this Act, was registered under the repealed Acts; and
 - (b) intends to carry on business under this Act,may apply for a registration certificate under this Act within a period of one year from the coming into operation of this Act.
- (4) Notwithstanding the Statutory Bodies (Accounts and Audit) Act –
 - (a) the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Authority;
 - (b) section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Authority.

39. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different sections may come into operation on different dates.

Passed by the National Assembly on the nineteenth day of April two thousand and five.

Ram Ranjit Dowlutta
Clerk of the National Assembly