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I assent,

CUTHBERT M SEBASTIAN

Governor-General.

26th November, 2009.

SAINT CHRISTOPHER AND NEVIS

No. 24 of 2009

AN ACT to provide for the establishment of a regulatory framework to facilitate the growth and development of small businesses and to provide for related or incidental matters.

[Published 26th November 2009, Official Gazette No. 53 of 2009.]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, by the authority of the same as follows:-

Part I **Preliminary**

1. This Act may be cited as the Small Business Development Act, 2009 and shall come into force on such date as the Minister may by Order, appoint. Short title and commencement.

2. (1) In this Act, unless the context otherwise requires, Interpretation.

“Committee” means the Small Business Development Advisory Committee appointed by the Minister pursuant to section 24;

“Minister” means the Minister responsible for Industry and Commerce;

“Registrar” means the Registrar appointed pursuant to section 19.

Part II **Small Business**

3. (1) For the purposes of this Act, a small business is a business Small Business

(a) in which not more than twenty-five persons are employed;

(b) whose annual turnover does not exceed two million dollars;

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- (c) whose net assets or paid up capital do not exceed one million dollars;
- (d) which is locally owned;
- (e) which is not more than twenty-five percent owned or controlled by a company whose annual turnover and net assets or paid up capital do not exceed the annual turnover and net assets or paid up capital mentioned in paragraphs (b) and (c) respectively or by a subsidiary of that company or by a subsidiary of a larger group of companies;
- (f) the composition of whose board of directors is not controlled by a company whose annual turnover and net assets exceed the annual turnover and net assets mentioned in paragraphs (b) and (c) respectively; and
- (g) has no agreement for the purpose of fees on a continuing basis for managerial or other services to persons who are not nationals of Saint Christopher and Nevis or other states of the Caribbean Community and who are not resident in Saint Christopher and Nevis, where those services do not form part of the normal business operations of the enterprise.

(2) For the purposes of subsection (1)

“Caribbean Community” means the Caribbean Community established by the Revised Treaty of the Chaguaramas Establishing the Caribbean Community including the Caricom Single Market and Economy signed at Nassau Bahamas on July 5, 2001;

“company” has the meaning assigned to it by section 2 of the Companies Act, 1996;

“control of the composition of the board of directors” has the meaning assigned to it by section 3 (2) of the Companies Act, 1996;

“locally owned” means

- (a) a company which is not under alien control within the meaning of section 6 of the Aliens Landholding Regulation Act, Chapter 102; or
- (b) a business of which not more than one third of the assets are under the control of a person who is not a national or who is not licensed to undertake business

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under the Licenses on Businesses and Occupations Act, 1972.

4. (1) A small business may apply to the Minister for a declaration of the business as an approved small business for the purposes of this Act.

Application for
declaration

(2) An application for a declaration as an approved small business shall be in the Form 1 set out in the Third Schedule and shall be accompanied by

- (a) a certificate of incorporation issued pursuant to the Companies Act, 1996 or a business licence issued pursuant to the Licenses on Businesses and Occupations Act, 1972; and
 - (b) a statutory declaration in Form II set out in the Third Schedule verifying the particulars specified in subsection (3).
- (3) The particulars referred to in subsection (2) (b) are
- (a) the name, residential address and occupation of each shareholder and director;
 - (b) the number of shares held or to be held by each shareholder in the company or business to which the application relates;
 - (c) the names of all other companies in which the shareholders and directors referred to in paragraph (a) are also shareholders or directors, and the extent of any shareholding;
 - (d) the type of business and the location;
 - (e) the actual or estimated investment in plant and equipment;
 - (f) the number of persons employed or to be employed in the business;
 - (g) the estimated annual income of the business;
 - (h) the date of commencement of the business or the date on which the business is likely to commence, as the case may be;
 - (i) and such other information as the Minister considers necessary to enable him or her to make a decision pursuant to section 6.

5. (1) Upon receipt of the application by the Minister, he may cause an investigation to be carried out to verify any statement contained in the application.

Investigation by
Minister

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(2) A person who refuses to answer any question for the purposes of an investigation under the Act, or who knowingly gives any information, which is false or inaccurate commits an offence.

Declaration of approved small business.

6. (1) Where an application has been made pursuant to section 4 and the Minister is satisfied that the business

(a) has met all the requirements for a small business as set out in section 3(1), and

(b) is engaged in any of the activities listed in the First Schedule;

the Minister shall within ninety days of the submission of the application declare the business to be an approved small business subject to any conditions which he or she may specify.

(2) A declaration made by the Minister pursuant to subsection (1) shall be published in the *Official Gazette*.

(3) The Registrar shall upon payment of the registration fee specified in the Second Schedule issue a Certificate of Registration to any small business which has been declared an approved small business pursuant to subsection (1).

Incorporation or licensing

7. (1) A declaration pursuant to section 6 may not be made with respect to a small business unless that small business is incorporated in accordance with the Companies Act, 1996 or is licensed pursuant to the Licenses on Businesses and Occupations Act, 1972.

Refusal to declare approved small business.

8. Where the Minister refuses to declare a business as an approved small business pursuant to section 6, he shall notify the business of the decision and the reasons therefor in writing within ninety days of the submission of the application pursuant to section 4.

Appeals.

9. A small business may, within one month of the receipt of a notice pursuant to section 8, or the publication of a revocation Order against his business pursuant to section 13, appeal against the decision of the Minister to a Judge in Chambers.

Monitoring and examination.

10. The Minister shall examine or cause the examination of an approved small business to be carried out whenever he or she considers it necessary for the purpose of determining whether it still qualifies as a small business.

Changes to particulars of small business.

11. Where, after the declaration of approved small business status pursuant to section 6, any change is made or occurs in any of the particulars supplied to the Minister at the time of the application for status, the small business shall, within 21 days after the change or any longer period as the Minister may allow, forward to the Minister, a statement in writing in the Form III set out in the Third Schedule, specifying the nature and date of the change.

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12. Where an approved small business ceases to operate as a small business or ceases to satisfy the requirements of this Act or the regulations, that business shall by notice in writing within 120 days from the date of cessation, inform the Minister of that fact.

Notice of change of status.

13. (1) Where

Revocation of declaration.

- (a) it is discovered at any time that the particulars furnished by an approved small business at the time of making an application pursuant to section 4 were false in any material particular or were likely or calculated to deceive;
- (b) an approved small business interferes with or prevents an inspection or the submission of information required pursuant to section 15(3) or fails or refuses to submit audited statements of its accounts to the Registrar pursuant to section 22;
- (c) it is found that the approved small business has failed to commence operations within twelve months of the issue of a declaration as an approved small business;
- (d) it is found that the approved small business is in breach of any condition upon which the declaration was made; or
- (e) the approved small business has failed, neglected or refused to submit an annual report as required by this Act

the Minister may, by Order published in the *Official Gazette* revoke the declaration of approved small business status.

(2) The Minister shall by Order published in the *Official Gazette* revoke the declaration of approval of an approved small business where

- (a) he or she is satisfied that a small business is no longer a small business as defined in section 3; or
- (b) the Minister is notified pursuant to section 12 that the small business has ceased to operate as a small business.

(3) Where the Minister has revoked the approval in respect of a small business pursuant to subsection (1) or (2), the small business shall pay to

- (a) the Comptroller of Inland Revenue;
- (b) the Comptroller of Customs;

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any sums which but for section 15 would have been payable as income tax or customs duty.

(4) Notwithstanding subsection (3) Cabinet may, where it is satisfied that the payment of any sums due under that subsection would cause undue hardship or that it is expedient to do so, waive the whole or part of those sums payable by the small business.

Part III**Incentives and Technical Assistance**

Incentives.

14. In order to encourage the growth and development of an approved small business, the Minister may, upon application by an approved small business, recommend to Cabinet to grant the approved small business any of the following incentives

- (a) a concession on consumption tax;
- (b) a reduction on income tax for a minimum of the first three and a maximum of the first five years of establishment or reconstruction of the small business;
- (c) relief on income tax by way of an allowable deduction on any monies borrowed from any financial institution including any bank, non-bank or credit union;
- (d) export incentives;
- (e) a rebate on corporate tax;
- (f) an exemption from or reduction in customs duty on inputs imported for use in the small business;
- (g) an exemption from or reduction in customs duty on any plant, machinery, equipment or motor vehicle imported for use in the small business; and
- (h) a reduction of property tax of up to seventy-five percent pursuant to the Property Tax Act, 2006, in respect of any land and any building used in the operation of the approved small business.

Granting of incentives.

15. (1) Notwithstanding the provisions of any other enactment and subject to sections 16 and 17, Cabinet may, subject to any conditions which may be specified, grant any or all of the incentives specified in section 14 to an approved small business where it is satisfied that the approved small business is in a field considered to be a priority area in accordance with subsection (2) and has met at least five of the following criteria:

- (a) it has produced its strategic plan or business plan and financial projections for the next twenty-four months;

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- (b) it has adopted the global industry standards and compliance methods relevant to that industry;
- (c) it has shown equity capital improvements;
- (d) it has in the immediate preceding year made serious efforts to become more efficient, as measured by financial ratio indicators;
- (e) it has achieved significant growth in the last two years of its operation measured by
 - (i) production levels;
 - (ii) revenue performance;
 - (iii) increase in market share; and
 - (iv) other growth performance indicators;
- (f) it has combined or intends to combine with another small business to share relevant services or with respect to the bulk importation of raw materials or other goods;
- (g) it has created additional employment within the small business;
- (h) it has utilized or intends to utilize new skills and technologies;
- (i) it has demonstrated a strong likelihood to generate new investment, products, processes, employment or production capacity.

(2) The priority sectors for the establishment of small businesses are as specified in the First Schedule.

(3) An approved small business that has been granted incentives pursuant to subsection (1) shall permit the Minister or his designated agent to inspect, at all reasonable times, the books, records and accounts of the business.

(4) Any incentives granted to an approved small business under this section shall terminate if the business ceases to qualify as a small business.

16. Where any approved small business is one of a group of companies or is associated or affiliated with or controlled by another body corporate, only one such approved small business shall be eligible to receive any of the incentives specified in section 14

Limitations on granting of incentives

17. (1) An approved small business shall not be entitled to apply for or qualify to receive any incentives pursuant to section 15 if it is in receipt of fiscal incentives pursuant to the Fiscal Incentives Act, 1974.

Disqualification for incentives

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(2) An approved small business shall not be entitled to receive incentives if it is not engaged in environmentally sound operations to the satisfaction of the Minister responsible for the environment.

Technical
assistance.

18. For the purpose of giving effect to the objects of this Act, the Minister may cause technical assistance to be given by a prescribed government department, government agency, statutory corporation or private sector organisation to an approved small business in any of the following areas:

- (a) assistance with management, accounting and production techniques;
- (b) the development of product design;
- (c) the development of package and label design;
- (d) the provision of assistance in the development and maintenance of quality control;
- (e) the provision of marketing and storage assistance for the local and export market;
- (f) the provision of assistance to businesses seeking to participate in overseas trade shows;
- (g) the preparation of business plans to facilitate the initial financing and management of the business; and
- (h) any other area that appears to the Minister to be necessary to start, continue or expand specified operations in the approved small business.

Part IV
Administration

Registrar.

19. The Minister shall designate a person to perform the functions of Registrar of Small Businesses.

Register.

20. The Minister shall cause to be kept, a register to be known as the Small Business Register and in which the following information on approved small businesses shall be entered;

- (1) the date of the application for a declaration pursuant to section 4;
- (2) the name and address of the approved small business;
- (3) the date of the declaration, if any by the Minister;
- (4) the conditions, if any, upon which the declaration was made; and
- (5) such other information as the Minister may require.

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21. (1) The owner, manager, or chief executive officer of an approved small business shall maintain proper books of account and other relevant records and shall submit to the Registrar an annual report in such form as the Registrar may approve.

Reports by approved small business.

22. Each approved small business shall within six months after the end of its financial year submit to the Registrar, audited statements of its accounts which accounts shall be audited by an auditor in accordance with generally accepted international auditing standards.

Submission of audited accounts.

23. (1) The Registrar shall submit to the Minister, an annual consolidated report covering activities and developments within the small business sector together with the comments of the Committee on the Registrar's Report.

Annual report.

(2) The Minister shall submit the report submitted to him, pursuant to subsection (1) to the National Assembly within three months of the date of receipt from the Registrar.

24 (1) With the approval of the Cabinet, the Minister shall appoint a Committee to be called the Small Business Advisory Committee to advise him on matters relating to the small business sector.

Small Business Advisory Committee.

(2) The Committee shall consist of not more than nine persons representing the relevant Ministries and non-governmental agencies and shall include

- (a) representatives of the small business sector; and
- (b) the permanent secretary in the Ministry responsible for Industry and Commerce who shall be an *ex officio* member of the Committee.

(3) The members of the Committee shall be appointed for a period not exceeding two years and shall be eligible for reappointment.

(4) A member of the Committee shall not serve for more than two terms.

(5) The person designated by the Minister to perform the functions of Registrar of Small Businesses shall be the Secretary of the Committee.

(6) The Committee shall regulate its own procedure.

PART V
General

25. (1) Any person who commits an offence under this Act for which no penalty is provided is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term of 12 months or to both such fine and imprisonment.

Offences.

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(2) Where an approved small business commits an offence pursuant to this Act and a director or officer of the business knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer also commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term of 12 months or to both such fine and imprisonment.

(3) Where any statement that is required to be furnished pursuant to this Act contains any matter that is false in any material particular to the knowledge of the person signing it, that person commits an offence and is liable on summary conviction to imprisonment for 12 months or to a fine not exceeding five thousand dollars or to both such fine and imprisonment.

Regulations.

26. The Minister may make Regulations generally for the effective implementation of this Act.

Amendments of Schedules.

27. The Minister may, by Order, amend the Schedules to this Act.

SCHEDULES**First Schedule**

((Section 6(1)(b),
Section 14(2))

Priority Activities

1. Tourism related services (excluding hotels and restaurants)
2. Transport and storage
3. Information, communication and technology activities
4. Agriculture, forestry and related service activities
5. Arts and cultural activities
6. Construction services
7. Entertainment services
8. Fishing and Mariculture (including the operation of fish hatcheries and fish farms and service activities incidental to fishing),
9. Manufacturing
10. Personal care services
11. Repair of personal and household goods and vehicles
12. Sanitation, sewage and refuse disposal services
13. Sporting and recreational services
14. *Financial services (excluding qualified entities providing services to non-residents only, of St. Kitts and Nevis)*

Second Schedule

(Section 6(3))

Registration fee for approved small business status \$100.00.

Third Schedule

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Form I

(Sections 4(2))

APPLICATION FOR APPROVED BUSINESS STATUS

| | | | |
|--|--|--|--|
| 1. Name including the corporate name of business | | 2. Company Incorporation No. or Business Licence No. | |
| 3. Type of Business | | 4. Principal Place of Business | |
| 5. Registered office of company | | | |
| 6. DIRECTORS | | | |
| i. Name (First, Middle and Surname) | | ii. Residential Address | |
| iv. Any former name | | v. Any former Business Occupation (if any) | |
| vii. Nationality of Origin | | viii. Signature | |
| i. Name (First, Middle and Surname) | | ii. Residential Address | |
| iv. Any former name | | v. Any former Business Occupation (if any) | |
| vii. Nationality of Origin | | viii. Signature | |

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| | | |
|-------------------------------------|--|-------------------------|
| i. Name (First, Middle and Surname) | ii. Residential Address | iii. Occupation |
| iv. Any former names | v. Any former Business Occupation (if any) | vi. Present nationality |
| vii. Nationality of Origin | viii. Signature | |
| 7. SHAREHOLDER(S) | | |
| i. Name (First, Middle and Surname) | ii. Residential Address | iii. Occupation |
| iv. Any former names | v. Any former Business Occupation (if any) | vi. Present nationality |
| vii. Nationality of Origin | viii. Signature | |
| i. Name (First, Middle and Surname) | ii. Residential Address | iii. Occupation |
| iv. Any former name | v. Any former Business Occupation (if any) | vi. Present nationality |
| vii. Nationality of Origin | viii. Signature | |
| i. Name (First, Middle and Surname) | ii. Residential Address | iii. Occupation |
| iv. Any former name | v. Any former Business Occupation (if any) | vi. Present nationality |
| vii. Nationality of Origin | viii. Signature | |

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| | |
|---|---|
| 8. Estimated investment in plant and equipment. | 9. Number of persons employed. |
| 10. Estimated annual income of business | 11. Names of all other connected companies referred to in section 4(3)(c) |
| | 12. Date of commencement of business or date on which the business is likely to commence. |
| | 13. Signed Director/Secretary |

Form II

(Sections 4(2))

Statutory Declaration

I, _____ hereby declare on oath that the information contained in the above form is true and correct to the best of my knowledge *information and belief.*

Director/Secretary

Sworn before me

At

On the _____ day of _____ 20..

Justice of the Peace

Form III

(Section 11)

STATEMENT OF CHANGE

To the Minister

In accordance with section ... of the Act, I/We hereby give you notice of the following changes which have been made or have occurred in the particulars or information supplied to you at the time of the application for approved small business status.

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| Nature of Business | | Particulars of Change | |
|--|--|---|--|
| 1. Name of Business | | | |
| 2. Company Incorporation No. | | | |
| 3. Type of Business | | | |
| 4. Principal Place of Business | | | |
| 5. Registered Office of Business | | | |
| 6. DIRECTORS | | | |
| i. Name (First, Middle and Surname) | | ii. Residential Address | |
| | | | |
| iii. Occupation | | | |
| iv. Any former name | | v. Any other Business Occupation (if any) | |
| | | | |
| vi. Present nationality | | | |
| vii. Nationality of Origin | | viii. Signature | |
| | | | |
| 7. SHAREHOLDER(S) | | | |
| i. Name (First, Middle and Surname) | | ii. Residential Address | |
| | | | |
| iii. Occupation | | | |
| iv. Any former name | | v. Any other Business Occupation (if any) | |
| | | | |
| vi. Present nationality | | | |
| vii. Nationality of Origin | | viii. Signature | |
| | | | |
| 8. Names of all other connected companies referred to in section ... of the Act | | Signed | |
| | | | |
| | | Director/Secretary | |

PATRICE NISBETT
Deputy Speaker

Passed by the National Assembly this 21st day of October, 2009.

JOSÉ LLOYD
Clerk of the National Assembly