

ENTERPRISE SEYCHELLES AGENCY ACT, 2018

(Act 3 of 2018)

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ENTERPRISE SEYCHELLES AGENCY ACT, 2018

(Act 3 of 2018)

AN ACT to provide for the establishment of the Enterprise Seychelles Agency, to provide for its composition, functions and mandates and provisions for the development and promotion of enterprises and for matters connected therewith or incidental hereto.

ENACTED by the President and the National Assembly.

PART 1 - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Enterprise Seychelles Agency Act, 2019 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act –

“Agency” means the Enterprise Seychelles Agency established by section 3;

“Board” means the Board of the Agency referred to in section 6;

“Business Development Services” means services to improve the performance of the enterprise, its access to markets and its ability to compete;

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

“enterprises” means any form of trade or manufacture, construction, assembly, repair, maintenance, craftwork, cultivation of fruits, vegetables or flowers, livestock breeding, or processing or a service related to any micro, small and medium industry or activity approved as such by the Agency;

“manufacture” refers to physical or chemical transformation of resources into new products;

“Medium Enterprise” means an enterprise which has an annual sales turnover above 10 million Seychelles Rupees, but not exceeding 25 million Seychelles Rupees and not exceeding 50 employees;

“member” means a member of the Board and includes the Chairperson and the Vice-Chairperson;

“Minister” means the Minister responsible for Industries;

“Micro Enterprise” means an enterprise which has an annual sales turnover not more than 2 million Seychelles Rupees and not more than 5 employees;

“service” refers to all services including hotels, restaurants, any profession, Internet Communication Technology, private education, private health, entertainment and business development related services which shall include research, counselling, training, technology transfer, marketing and business promotion, logistics, warehousing and engineering;

“MSME” means micro, small and medium enterprises;

“Small Enterprise” means an enterprise which has an annual sales turnover above 2 million Seychelles Rupees, but not more than 10 million Seychelles Rupees and not more than 15 employees; and

“start-up enterprise” means any entrepreneurship venture up to one year from its inception.

PART II – ENTERPRISE SEYCHELLES AGENCY

Establishment of the Agency

3. There is hereby established an Agency to be known as the Enterprise Seychelles Agency which shall be a body corporate.

Objects of the Agency

4. The objects of the Agency are to implement the policies and the strategies of Government relating to the micro, small and medium enterprises and to provide the micro, small and medium enterprises with the necessary services and support.

Functions of the Agency

5. The functions of the Agency are –
 - (a) To manage immovable property belonging to the Agency;
 - (b) To manage and lease out sales outlets on such terms and conditions as may be determined by the Agency;
 - (c) To advise the Minister on pertinent issues affecting MSME;
 - (d) To operate a registration scheme for all MSME;
 - (e) To provide general and specialized Business Development Services to MSME, in order to –
 - (i) Identify challenges to the sustainable development of MSME and to propose solutions;
 - (ii) Provide start-up services to include needs analysis, business and legal advice, and aftercare for continuous improvement;

- (iii) Assist entrepreneurs to plan their business for financial viability;
 - (iv) Encourage locally made products for domestic and export markets;
 - (v) Facilitate programmes and schemes for enterprises;
 - (vi) Facilitate the use of technology and innovation to expedite and accelerate production;
 - (vii) Advocate the benefits of inter-enterprise cooperation through cluster networks and busies linkages;
 - (viii) Promote the importance of intellectual property rights amongst MSME;
 - (ix) Encourage the transition from micro to small to medium-to-high technology based enterprises; and
 - (x) Promote and develop value addition and semi-industrialization;
- (f) To provide training, promotion and marketing services to MSME, in order to –
- (i) Empower specific and sector-wide MSME to enhance their product output and to assist them with the marketing of their business and products;
 - (ii) Support and build on the skills and opportunities that will facilitate the start-up of enterprises;
 - (iii) Encourage enterprise sector interest groups, associations or non-governmental organizations to develop MSME capacity to better assist their target group and ensure the further development of their associations; and
 - (iv) Identify and facilitate relevant trade fairs and exhibitions for enterprises and encourage and facilitate their involvement; and
- (g) To consult in collaboration with other Governmental bodies in order to –
- (i) Strengthen the partnership of service providers to support entrepreneurship;
 - (ii) Facilitate access by entrepreneurs to raw materials, technology and other products;
 - (iii) Source training opportunities from international partners and organizations and organizations for the capacity building of MSME;

- (iv) Facilitate international market access for products and business services; and
- (v) Promote a gender balanced entrepreneurship culture at all levels of the national education system.

Establishment of the Board of Agency

6. There shall be a Board of the Agency which shall be responsible for the management and administration of the operations of the Agency.

Composition of Board of Agency

7. (1) The President shall appoint the members of the Board on such terms and conditions as the President may determine.

(2) The members of the Board shall consist of the following –

- (a) A representative from the Ministry responsible for Industries;
- (b) A representative of the Entrepreneurship Centre of the Guy Morel Institute;
- (c) A representative from the Seychelles Bureau of Standards;
- (d) Two representatives from the private sector and one of them representing Praslin and Inner Islands;
- (e) A representative of the association representing the artisans; and
- (f) A representative of the Seychelles Chamber of Commerce and Industry.

(3) The President may appoint a person having sector-specific qualifications and experience in the field of entrepreneurship and business to be the member of the Board under subsection (2) (d).

(4) The President shall appoint a Chairperson and a Vice-Chairperson from among the members of the Board.

(5) The Minister shall cause a notice of the names of the Chairperson, Vice-Chairperson and members of the Board to be published in the Gazette.

(6) The Vice-Chairperson shall, in the absence of the Chairperson perform all the functions and duties of the Chairperson.

Disqualifications for appointment to Board

8. (1) A person shall not be appointed as a member of the Board if he or she –

- (a) Is not ordinarily resident in Seychelles;
- (b) Has been adjudged or declared insolvent or bankrupt and has not been discharged; or
- (c) Has been convicted in Seychelles within the period of five years immediately preceding the date of his or her proposed appointment in respect of an offence to a term of imprisonment without the option of a fine, whether or not, any portion has been suspended, or the person has received a free pardon.

Term of Office of Board members

9. (1) A member of the Board shall hold office for a period not exceeding 3 years, as the President may determine, and the member shall be eligible for re-appointment.
- (2) On the expiry of the term of office, a member shall continue to hold office until his or her successor assumes office.
- (3) The Chairperson, Vice-Chairperson and other members of the Board shall be paid such allowances as the President may determine.

Vacation of Office by Board members

10. The Office of a member shall be deemed to be vacant –
- (a) On the expiry of 30 days after he or she gives notice in writing to the President, through the Minister, of his or her intention to resign, or after such other period of notice as he or she and the Minister may agree;
 - (b) On the date he or she is convicted to a term of imprisonment imposed in or outside Seychelles;
 - (c) If he or she becomes disqualified in terms of section 8 to hold office as a member of the Board; or
 - (d) If he or she is removed under section 11.

Removal and suspension of member of Board

- 11.(1) The President may remove a member of the Board from his or her office if the member –
- (a) Has been guilty of improper conduct as a member of the Board or guilty of conduct that is prejudicial to the interest or reputation of the Agency;
 - (b) Has failed to comply with any condition of his or her appointment;

- (c) Is mentally or physically incapable of efficiently discharging his or her functions as a member of the Board; or
- (d) Fails to disclose his or her interest specified under section 16.

(2) The President, on the recommendation of the Board, may remove a member of the Board if the President is satisfied that the member has been absent without the permission of the Board from three consecutive meetings of the Board, of which the member was given not less than seven days' notice, and there was no justification for the member's absence.

(3) the President may suspend from office a member of the Board against whom criminal proceedings have been instituted in respect of an offence punishable with imprisonment only.

Filling of vacancies in Board

12.(1) Where the office of a member becomes vacant under section 10 or 11, the President may, subject to this part, appoint a person to fill that vacancy for the unexpected period of the term of that member.

(2) The President shall appoint a person to fill the vacancy within 3 months after being notified of such vacancy by the Chairperson of the Board.

Meetings and procedure of the Board

13.(1) The Board shall meet at least 4 times in each year at such place and time as may be fixed by the Chairperson.

(2) The Board may regulate its own procedure.

(3) The Chairperson -

- (a) May convene a special meeting of the Board at any time; and
- (b) Shall, on the written request of the Minister or not less than 4 members of the Board, convene a special meeting on a date not sooner than 7 days and not later than 30 days after the receipt of the request.

(4) The Board shall not transact any business at a special meeting under subsection(3) other than -

- (a) The business as may be determined by the Chairperson, where the meeting has been convened under subsection (3)(a); or
- (b) The business specified in the request for the meeting, where the meeting has been convened under subsection (3)(b).

(5) The Chairperson or, in his or her absence, the Vice-Chairperson shall preside at meetings of the Board.

(6) In the absence of both the Chairperson and Vice-Chairperson at a meeting of the Board, the members present may elect among themselves one of the members present to preside at that meeting.

(7) The Chairperson and 4 other members of the Board shall constitute a quorum for any meeting of the Board.

(8) Any question arising at a meeting of the Board shall be decided by a majority of votes of the members, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote.

(9) The Chairperson may, with the approval of the Board, invite any person to attend a meeting of the Board, where the Chairperson considers that the person has special knowledge or experience in any matter to be considered by the Board at that meeting.

(10) A person invited to attend a meeting of the Board under subsection (9) may take part in the proceedings of the Board, in so far as they relate to the matter for which he or she was invited, but shall not have a vote on any question before the Board.

Establishment of Committees

14.(1) The Board may, for the efficient performance of its functions, establish committees as it considers necessary and may vest in the committees such functions as it considers appropriate.

(2) The vesting of any function in a committee under subsection (1) shall not divest the Board of that function and the Board may amend or rescind any decision of the committee in the exercise of that function.

(3) On the establishment of a committee under subsection (1), the Board –

(a) Shall appoint on the committee at least one member of the Board, who shall be the Chairperson of the committee; and

(b) May appoint as members of the committee, on such terms and conditions as the Board may determine, persons who are not members of the Board.

(4) Section 11 shall apply, mutatis mutandis, to a member of a committee established under subsection (1).

Meetings of the Committees

15.(1) The meetings of the committee of the Board may be convened at any time and at any place by the Chairperson of the Board or by the Chairperson of the committee concerned.

(2) Subject to section 16, the procedure of the committees of the Board shall be determined by the Board.

(3) The Board shall cause minutes of proceedings of, and decisions taken at, the meetings of the Board and its committees to be entered in books kept for that purpose.

(4) Any minutes referred to in subsection (3) which purport to be signed by the Chairperson of the meeting to which the minutes relate or by the Chairperson, of the next following meeting at the Board or the committee, as the case may be, shall be accepted for all purposes as prima facie evidence of the proceedings of and decisions taken, at that meeting.

Disclosure of interest

16.(1) A member of the Board who has any interest in any contract, application or other transaction for consideration by the Board shall disclose in writing the nature of that interest and shall not participate in any deliberation of the Board in that matter.

(2) A member who fails to comply with subsection (1) may be removed under section 11.

PART III – CHIEF EXECUTIVE OFFICER AND STAFF OF AGENCY

Chief Executive Officer of the Agency

17.(1) The President, may appoint a Chief Executive Officer of the Agency on the recommendation of the Board.

(2) A person may not be, appointed as the Chief Executive Officer or hold office as such, if he or she would be disqualified to be appointed as a member of the Board under section 8, or required to vacate office as a member of the Board under section 11, had those sections applied to him or her.

(3) The term of office, salary and allowances of the Chief Executive Officer shall be such as may be determined by the President.

(4) the Chief Executive Officer shall be an ex officio member of the Board.

(5) Subject to the control of the Board, the Chief Executive Officer shall –

- (a) Be responsible for the implementation of the decisions of the Board and for the management of the affairs, funds and property of the Agency;
- (b) Exercise general authority over the conduct and discipline of the staff of the Agency; and
- (c) Perform such other functions of the Agency as the Board may assign to him or her.

(6) The Chief Executive Officer may delegate any of his or her functions to the Deputy Chief Executive Officer.

(7) The Chief Executive Officer shall submit to the Board reports in regards to the operations, undertakings and activities of the Agency.

Deputy Chief Executive Officer of the Agency

18.(1) The President may appoint a Deputy Chief Executive Officer of the Agency on the recommendation of the Board.

(2) The term of office, salary and allowances of the Deputy Chief Executive Officer shall be such as may be determined by the President.

(3) The Deputy Chief Executive Officer may discharge the functions of the Chief Executive Officer –

- (a) During a vacancy in the office of the Chief Executive Officer;
- (b) During any period in which the Chief Executive Officer is absent from duty for any reason or is unable to perform the functions of that office; and
- (c) Perform such other functions as the Chief Executive Officer may delegate to him or her.

Other staff

19.(1) The Chief Executive Officer may employ such a number of persons, with the approval of the Board, as he or she considers necessary to carry out the functions of the Agency.

(2) Subject to the approval of the Board, the Chief Executive Officer may determine the terms and conditions of service of a person employed under subsection (1).

PART IV – FINANCIAL PROVISIONS

Funds of the Agency

20.(1) The funds of the Agency shall consist of –

- (a) The moneys appropriated by the National Assembly for the purposes of this Act;
- (b) The moneys accruing to the Agency from its operations including fees and charges received by the Agency;
- (c) The moneys, from time to time, received by the Agency with the approval of the Minister by way of donations and grants;
- (d) Such money that may be raised with the approval of the Minister and the Minister responsible for Finance; and

- (e) Any other moneys that may vest in or accrue to the Agency, whether in the course of its operations or otherwise.
- (2) The funds of the Agency shall be applied for -
- (a) The payment or discharge of expenses of the Agency;
 - (b) The payment of remuneration to members of the Board and officers and other staff of the Agency; and
 - (c) Any other expenses as may be approved by the Board.

Accounts of Agency and audit

21.(1) The financial year of the Agency shall be the calendar year.

(2) The Agency shall maintain proper accounts and other records and prepare a statement of accounts in the form and manner approved by the Auditor-General.

(3) The Board shall, within 3 months from the end of each financial year, prepare and submit to the Minister a statement of accounts and its activities in respect of that financial year or in respect of such other period as the Minister may direct.

(4) The accounts of the Agency shall be audited by the Auditor-General in accordance with Article 158 of the Constitution.

(5) Where the accounts and statement of accounts of the Agency in respect of a financial year have been audited, the Agency shall furnish, not later than 3 months after the end of the financial year, to the Minister and the Minister responsible for finance, a copy of the statement together with a copy of any report by the Auditor-General on the statement of accounts or on the accounts of the Agency.

Annual report

22.(1) The Agency shall, as soon as possible after the expiration of each Financial year and in any event not later than the 31st March in any year, submit to the Minister, and the Minister responsible for Finance, an annual report dealing generally with the administration and its activities during the preceding financial year and the Minister shall cause the report to be laid before the National Assembly.

PART V – MISCELLANEOUS

Power of Minister to give directions to Board

23. The Minister may give directions of policy to the Agency in regard to the discharge of its functions and the Agency shall comply with such directions.

Members and employees to be public servants

24.(1) The Members of the Board and the officers and employees of the Agency shall be deemed to be employed in the public service and sections 91 to 95 of the Penal Code shall apply to them.

(2) Any suit or other legal proceedings shall not lie against the Agency, any member of the Board, officers or employees of the Agency in respect of an act done or intended to be done in good faith in the discharge of any function pursuant to this Act.

Privacy

25. Any person who discloses any information acquired by him or her in the performance of any functions under this Act, commits an offence and shall upon conviction be liable to a fine not exceeding SCR20,000.

Regulations

26. The Minister may make regulations to provide for all matters which, by or under this Act are required or permitted to be prescribed or necessary to be provided to carry out or to give effect to the provisions of this Act.

Repeal

27. The Small Enterprise Promotion Agency Act (Cap 324) is hereby repealed.

Savings and transitional

28.(1) Upon the commencement of this Act all movable property, assets, rights, interest and privileged vested in the Small Enterprise Promotion Agency under the repealed Act shall stand transferred to and vested in the Agency.

(2) All liabilities and obligations incurred by the Small Enterprise Promotion Agency prior to the commencement of this Act, shall be deemed to have been incurred by the Agency.

(3) All Regulations made, directions issued and notifications made under the repealed Act shall continue to be in effect until they are repealed or amended under the provisions of this Act.

(4) All officers and other employees of the Small Enterprise Promotion Agency employed prior to the commencement of the Act shall be deemed to be officers and employees of the Agency on employment conditions no less favourable than those subsisting immediately prior to the commencement of this Act.

(Any contract or agreement executed by the Small Enterprise Promotion Agency prior to the commencement of this Act shall continue to have effect in accordance with its terms as if it was originally made by the Agency under this Act.