

SMALL BUSINESS FINANCING AGENCY ACT, 2013

(Act 20 of 2013)

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SMALL BUSINESS FINANCING AGENCY
ACT, 2013

(Act 20 of 2013)

I assent

J. A. Michel
President

31st December, 2013



AN ACT to establish a Small Business Financing Agency to aid and assist small businesses by providing financial assistance through concessionary loans to promote the competitive viability of such businesses in the market and thereby maintain and strengthen the overall economy of the country.

ENACTED by the President and the National Assembly.

PART 1 - PRELIMINARY

1. This Act may be cited as the Small Business Financing Agency Act 2013 and shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Short title and
commencement

Interpretation

2. In this Act, unless the context otherwise requires —

“Agency” means Small Business Financing Agency established under section 3;

“Board” means the governing Board established under section 10;

“Chief Executive Officer” means the Chief Executive Officer appointed under section 15;

“concessionary loan” means a loan bearing a rate of interest that is below the average effective interest rate of commercial banks as published by the Central Bank of Seychelles;

“industry” means any economic activity in relation to or for the purpose of facilitating, promoting or developing —

- (a) natural resources (including but not limited to agriculture, fishing or forestry);
- (b) tourism;
- (c) transport;
- (d) cottage industry;
- (e) vocational trades; and
- (f) processing of raw materials and manufacturing, assembling, overhauling, reconditioning, repairing, cleaning, packaging, transporting or warehousing of goods for the purposes of activities mentioned in paragraph (a) to (e);

“Minister” means the Minister responsible for finance;

“small business” means a business carried on by a person with less than 10 employees and/or the annual turnover of which does not exceed SCR1 million.

PART II - SMALL BUSINESS FINANCING AGENCY

3.(1) There is hereby established an Agency for the purpose of this Act to be known as the Small Business Financing Agency.

Establishment
of Agency

(2) The Agency shall be a body corporate.

4. The principal object of the Agency is to provide financial assistance by way of concessionary loans to small business enterprise for the purpose of promoting the development of the industry undertaken by such small business enterprise and to develop the marketing competitiveness of such enterprises at local and international level.

Object of
Agency

5. The functions of the Agency are to —

Functions
of Agency

- (a) process and approve applications for concessionary loans;
- (b) appraise and evaluate small business projects;
- (c) prepare and enter into loan agreements with small businesses;
- (d) evaluate, grant and monitor loans;
- (e) maintain proper accounting records of all transactions; and
- (f) encourage and facilitate entrepreneurship in small business enterprises.

Power of Agency

6.(1) In the performance of its functions, the Agency shall have the power to —

- (a) grant loans;
- (b) enter into financial arrangements with other banks;
- (c) acquire and dispose of land, premises, plant, machinery and equipment;
- (d) provide services in relation to finance, management, administration or organisation of industry; and
- (e) subject to the approval of the Ministry of Finance, open and maintain an account or accounts with Banks in Seychelles or elsewhere.

(2) When any property is mortgaged as security for a loan under this Act by the Agency, the Agency may manage, hold, sell or otherwise dispose of such property, or carry on business with such property, as it deems fit.

Operating rules

7. The Schedule applies with respect to the performance by the Agency of its functions under this Act.

Appointment of committee

8. The Agency may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or majority of the members of each committee shall be Members of the Board and a member of any such committee who is not a Member shall only have the right to attend the meetings of the committee and take part in the proceedings but shall not have the right to vote.

Ministerial direction

9. The Minister may give directions in writing to the Agency on matters of policy and general administration.

PART III - GOVERNING BOARD

10. There shall be established a Governing Board to manage the affairs of the Agency.

Establishment of Board

11.(1) The Board shall consist of a Chairperson, a Vice-Chairperson and five other Members to be appointed by the President —

Composition and procedure of Board

- (a) in case of Chairperson and Vice-Chairperson, having special knowledge or practical experience in respect of financial matters or administration of small business;
- (b) in case of Members, having special knowledge, practical experience or skills in the field of law, economics, accountancy, business or marketing.

(2) The President shall cause a notice of the names of the Chairperson, Vice-Chairperson and Members of the Board to be published in the *Gazette* and every appointment shall take effect from the date of publication.

(3) The Chairperson, Vice Chairperson and Members shall hold office for a period of 3 years and be eligible for re-appointment at the end of their term of office but shall not be eligible to hold office for more than 2 terms.

(4) The Chairperson, Vice-Chairperson and Members of the Board shall be appointed on such terms and conditions as the President may determine.

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

(6) Where before the expiry of the term of office of a person holding office of Chairperson, Vice Chairperson or

any other Member, a vacancy arises for any reason whatsoever, the person appointed to fill such vacancy shall hold office for the unexpired period of the term for which his or her predecessor would have held office, had such vacancy not arisen.

(7) The Chairperson, Vice Chairperson or any Member of the Board may resign by giving three months notice in writing to the President and on such resignation being accepted, the Chairperson, Vice Chairperson or any Member shall be deemed to have vacated office.

(8) A Member shall be deemed to have vacated office if he or she absents himself from three consecutive meetings of the Board without leave of the Chairperson.

(9) Four Members shall constitute a quorum.

(10) The Chairperson or in the absence of the Chairperson, the Vice-Chairperson or in the absence of both of them a Member elected by the Members present, shall preside at a meeting of the Board.

(11) Matters arising at a meeting of the Board shall be decided by a majority of the votes of the Members present and, in the event of an equality of votes, the Chairperson, Vice chairperson or Member presiding shall have a casting vote.

12.(1) The President shall at any time terminate the appointment of the Chairperson, Vice- Chairperson or a Member who —

- (a) has been found guilty of any misconduct, default or breach of trust in the discharge of any duties;

- (b) is convicted of an offence and sentenced to a term of imprisonment of three months or more; or
- (c) is mentally or physically incapable of carrying out the functions under this Act;

(2) The Chairperson, Vice-Chairperson or a Member who has been removed from office under subsection (1) shall not be eligible for re-appointment.

13.(1) The Board shall meet at such time and place and shall observe such rules and procedures in regard to the transaction of business at its meetings as may be prescribed.

Meetings of Board

(2) There shall be at least six meetings every year and not more than two months shall intervene between meetings.

(3) The Chairperson may by written notice convene a special meeting of the Board for any purpose specified in the notice.

(4) Subject to this Act, the Board shall regulate its own proceedings.

14. The Chairperson, Vice-Chairperson or a Member of the Board who has direct or indirect financial, personal or other interests in any matter which is to be discussed at a meeting of the Board and which entails or may entail a conflict of interest —

Conflict of Interest

- (a) shall disclose the nature of such interest before or at a meeting of the Board; and
- (b) shall not take part in any deliberation or decision in respect of that matter or vote thereon.

PART IV - CHIEF EXECUTIVE OFFICER AND STAFF

Appointment
of Chief
Executive
Officer

15. There shall be a Chief Executive Officer of the Agency who shall be appointed by the President, in consultation with the Minister on such terms and conditions as may be determined by the President.

Tenure of
office of
Chief
Executive
Officer

16. The Chief Executive Officer shall be appointed for a period not exceeding five years, and shall be eligible for re-appointment.

Functions of
Chief
Executive
Officer

17. Subject to the general direction of the Board, the Chief Executive Officer shall manage the day-to-day affairs of the Agency.

Resignation
of Chief
Executive
Officer

18. The Chief Executive Officer may resign his or her office by giving 3 months notice in writing to the President.

Termination
of Chief
Executive
Officer

19. The President may terminate the appointment of the Chief Executive Officer, if the Chief Executive Officer is —

- (a) bankrupt or makes an arrangement with his or her creditors;
- (b) convicted of an offence which carries a penalty of imprisonment for more than 3 months;
- (c) absent from duty, except on leave granted by the Board, for fourteen consecutive days or for twenty-eight days in any twelve months or for 30 consecutive days without the permission of the Minister; or
- (d) mentally or physically incapable of carrying out his or her functions under this Act.

PART V - FUNDS AND FINANCIAL MATTERS

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

Funds of
Agency

- (a) monies voted by the National Assembly for the use of the Agency;
- (b) monies received by the Agency by way of loans, donations, gifts or grants;
- (c) monies appropriated by Appropriation Act and paid to the Agency; and
- (d) authorised share capital.

(2) The funds of the Agency shall be applied for the—

- (a) payment or discharge of debts, expenses and other obligations of the Agency;
- (b) payment of emoluments, fees and allowances payable to the Chairperson, Vice-Chairperson, Members of the Board and officers and other staff of the agency in line with government policy; and
- (c) any other expenses as may be approved by the Board.

21.(1) The Agency shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed by regulations.

Accounts,
audit and
annual report

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

(3) Where the accounts and statement of accounts of the Agency in respect of any financial year have been audited, as per subsection (2), the Agency shall furnish the Minister a copy of the audit statement together with a copy of any report by the Auditor General on the statement of accounts or on the accounts no less than 3 months after the end of the financial year.

(4) The Agency shall prepare an annual report once every calendar year, giving full account of its activities during the previous year and submit to the Minister copies together with the statement of account audited under subsection (3) no later than 3 months after the end of the calendar year and the Minister shall cause the same to be tabled before the National Assembly.

(5) The Agency shall prepare and submit to the Minister the estimates of income and expenditure of the Agency in respect of each financial year.

(6) The Minister shall submit the report to the National Assembly within one month of the receipt of the report from the Agency.

(7) The financial year of the Agency shall be the period of 12 months ending on 31st December.

(8) The financial matters of the Agency subject to any law shall be in accordance with the operating principles prescribed by regulations.

PART VI - MISCELLANEOUS

Staff of
Agency

22. The Agency may employ such officers and other staff as are necessary for the Agency to perform its functions, on such terms and conditions as may be determined by the Board, and according to the procedures applicable to such employees of public bodies.

23. Any suit or other legal proceedings shall not lie against the Agency, Chairperson, Vice chairperson, Members, other staff of the Agency for anything done or intended to be done in good faith in pursuance of this Act, rule or regulations made under this Act.

Protection of
action taken
in good faith

24. The Chief Executive Officer, Chairperson, Vice-Chairperson, Members, officers and employees of the Agency shall be deemed to be public servants within the meaning of section 91 to 96 of the Penal Code.

Application
of provision
of the Penal
Code

25.(1) The Minister may make regulations for carrying and giving into effect to the principles and provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), regulation may be made for—

- (a) amending the schedules;
- (b) any matter for which regulations are required to be made under this Act;
- (c) the proper and efficient administration of this Act;
- (d) forms, manner and other matters required under this Act; and
- (e) all matters which by this Act are required to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

SCHEDULE*Section 7***OPERATING RULES**

1. The Agency shall be guided by accepted financial principles in its operations and shall finance only economically sound and technically feasible projects.

2. The Agency shall endeavour to maintain a reasonable diversification in its investments.

3. In granting a loan, the Agency shall ensure that the rate of interest and other charges, and the schedule for repayment of principal, are appropriate for the loan.

4. The Agency shall charge a suitable fee or commission for its risk in guaranteeing an obligation.

5. In the case of a direct loan granted by the Agency, the Agency shall permit the borrower to draw the loan funds only to meet payment in connection with projects as they fall due.

6. The Agency shall endeavour to ensure that the proceeds of a loan granted or guaranteed by the Agency are applied only for the purposes of the loan with due attention to considerations of economy and efficiency.

7. The Agency shall ensure that every loan agreement entered into by it shall enable the Agency to exercise all necessary powers of entry, inspection and supervision of operations in connection with projects and shall further enable the Agency to require the borrower to provide information and to allow inspection of its books and records during such time as any part of the loan remains outstanding.

8. The Agency shall not grant a loan to a member of the Board or otherwise transact business with an enterprise in which a member of the Board is a member, director or shareholder, or is in any way directly or indirectly interested, except where the loan or transaction is approved of by all the other members of the Board.

9.(1) The original authorised share capital of the Agency is SCR25 million.

(2) The authorised share capital of the Agency may, with the approval of the Minister, be increased from time to time by the Agency.

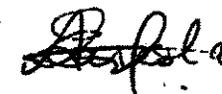
10.(1) The Minister, may out of public moneys, make advances to the Agency such amounts and on such terms as the Minister determines.

(2) The Agency shall make to the Government, at such times and in such manner as the President may direct, payments of such amounts as may be so directed in or towards the repayment of advances made pursuant to subparagraph (1) or of any sums at the rate directed by the President who is hereby authorised to direct the payment of the same on different rates of interest on different advances or sums or in respect of interest for different periods.

11.(1) The Agency shall set aside in a reserve fund in each financial year out of the net income of the Agency (as determined by the Agency) for that year the prescribed amount to meet contingencies and for such other purposes as the Agency thinks fit.

(2) In subparagraph (1), "prescribed amount" means such percentage, being not less than 20 per centum of the net income for a financial year approved by the Minister.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 18th December, 2013.



Azarel Ernesta
Clerk to the National Assembly