

# SMALL BUSINESS ACT, 2003

No. 7



of 2004

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**An Act to establish the Local Enterprise Authority, the Small Business Council and to provide for their functions and matters incidental thereto.**

*Date of Assent:* 23rd January, 2004.

*Date of Commencement:* 13th February, 2004.

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title

1. This Act may be cited as the Small Business Act, 2003.

Interpretation

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

“Authority” means the Local Enterprise Authority established under section 3;

“Board” means the Board of the Local Enterprise Authority established under section 6;

“Chairperson” means the chairperson of the Board appointed under section 8(3);

“Council” means the Small Business Council established under section 20;

“medium enterprise” means a business entity with such annual turnover and staff complement as the Minister may, by Order published in the Gazette, prescribe;

“member” means a member of the Board or the Council, as the case may be;

“micro enterprise” means a business entity with such annual turnover and staff complement as the Minister may, by Order published in the Gazette, prescribe;

“small enterprise” means a business entity with such annual turnover and staff complement as the Minister may, by Order published in the Gazette, prescribe; and

“SMME” means small, micro or medium enterprise.

PART II — *Local Enterprise Authority*

Establishment  
of Local  
Enterprise  
authority

3. There is hereby established an authority to be known as the Local Enterprise Authority (hereinafter referred to as “the Authority”), which shall be a body corporate with a common seal, capable of suing and being sued and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform.

- 4. The functions of the Authority shall be to —**
- (a) provide assistance to SMMEs in the preparation of business plans, feasibility studies and market surveys;**
  - (b) improve the business skills and competence of SMME entrepreneurs through the provision of training and advisory services in entrepreneurship development, technology, marketing and through appropriate mentoring services;**
  - (c) create growth opportunities for SMMEs through securing greater access to Government procurement contracts for goods and services, in consultation with Government Ministries, local authorities and parastatal organisations;**
  - (d) identify SMME firms with export potential and assist them to enhance their productivity and competitiveness for export markets;**
  - (e) promote business linkages between SMMEs and big industries, including the purchasing of locally produced goods and services by larger firms;**
  - (f) facilitate access to information on support services and sourcing of raw materials by SMMEs through publicity, outreach and information technology;**
  - (g) work with relevant institutions to develop and implement appropriate product and service standards, and to enhance both quality awareness and improvement of SMME products and services through training and advisory services that lead to certification of these products and services;**
  - (h) monitor and evaluate the impact of functions set out under paragraphs (a) to (h) and provide mentoring services in order to achieve long term sustainability of SMMEs;**
  - (i) work with SMME entrepreneurs and technology institutions to facilitate innovation, acquisition, adaptation and diffusion of appropriate technology for effective use by SMMEs;**
  - (j) facilitate access to funding for enterprise development as well as expanding existing enterprises through regular consultation with financial institutions;**
  - (k) make recommendations to the Minister on ways to simplify regulations which impose a burden on SMMEs in terms of compliance, time, effort and money;**
  - (l) ensure that SMME trainers, training institutions, training programmes and materials are accredited in accordance with the Botswana Training Authority standards or the standards of such other authority as the Minister may approve; and**
  - (m) facilitate and coordinate the provision of infrastructure and facilities such as factory shells and working space, including serviced land and utility services for SMMEs, in conjunction with local authorities, parastatal organisations, the private sector and the Government.**

Appointment  
of officers and  
employees

5. (1) The Authority shall have a Chief Executive Officer who shall be appointed by the Minister on the recommendation of the Board, and upon such terms and conditions as the Board may determine.

(2) No person shall be appointed as the Chief Executive Officer of the Authority unless he or she possesses such experience and qualifications as the Minister may prescribe or approve.

(3) The Chief Executive Officer shall, subject to such directions as may be given by the Board, be charged with the management and control, administration and organization of the Authority, and the control of the employees of the Authority.

(4) The Chief Executive Officer shall prepare a five year performance plan and an annual performance plan of the Authority and submit the plans to the Board for approval.

(5) The Chief Executive Officer shall be assisted in his or her duties by such other officers as may be appointed by the Board.

(6) The Chief Executive Officer may, subject to the provisions of this Act, delegate to any senior officer of the Authority, the exercise of any of his or her powers under this Act.

(7) The Chief Executive Officer may resign from office by giving three months' notice in writing to the Minister.

(8) In this section, "senior officer" means any officer responsible for heading a department of the Authority.

### PART III — *Board of Local Enterprise Authority*

Establishment  
of Board

6. (1) There is hereby established a board of the Authority (hereinafter referred to as "the Board").

(2) Subject to the provisions of this Act, the Board shall be responsible for the direction of the affairs and operations of the Authority.

(3) Notwithstanding the generality of the provisions of subsection (2), the Board shall, where it is satisfied with a five year performance plan or an annual performance plan of the Authority submitted to it in accordance with section 5 (4), approve the plan and forward it to the Minister.

(4) Where the Board is not satisfied with a plan submitted to it under subsection (3), it shall send back the plan, with the necessary comments, to the Chief Executive Officer.

(5) The Chief Executive Officer shall, within such period as the Board may determine, resubmit the plan to the Board with the necessary amendments.

Appointments  
to Board

7. The Minister shall appoint members of the Board from amongst persons he or she considers qualified —

(a) by reason of their experience in —

- (i) trade,
- (ii) industry,

- (iii) finance,
- (iv) economics, or
- (v) matters related to the problems experienced by small businesses; or

(b) by reason of them being small business operators.

**8.** (1) The Board shall consist of —

- (a) the Chairperson;
- (b) the Vice Chairperson; and
- (c) not more than 15 other members.

(2) The Minister shall appoint the majority of the members from the private sector and SMME community.

(3) The Chairperson of the Board shall be appointed by the Minister from amongst members representing the private sector.

(4) The Vice Chairperson shall be elected by the members from amongst themselves.

(5) The Minister shall cause appointments to the Board to be published by notice in the Gazette.

**9.** A member shall hold office for a period of three years and shall be eligible for re-appointment.

**10.** A person shall not be appointed as a member or be qualified to continue to hold office who has —

- (a) in terms of any law in force in any country —
  - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
  - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
- (b) within a period of five years immediately preceding the date of his or her appointment, been convicted —
  - (i) of a criminal offence within Botswana, or
  - (ii) of any criminal offence for which he or she has not received a free pardon and notwithstanding that the sentence has been suspended, which, if committed within Botswana, would have resulted in a criminal offence having been committed,

the penalty for which would be at least six months' imprisonment without the option of a fine.

**11.** (1) The Minister may, in writing, remove a member from the Board, if that member —

- (a) is absent without reasonable cause from three consecutive ordinary meetings of the Board of which the member has had notice;
- (b) is inefficient;

Composition of Board

Tenure of office

Disqualification

Removal of member from Board

- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and the member's medical doctor has issued a certificate to that effect;
- (d) contravenes the provisions of this Act, misconducts himself or herself or otherwise acts in a manner which is detrimental to the objectives of the Board; or
- (e) has failed to comply with the provisions of section 17.

(2) In this section, "misconduct" means any act done without reasonable excuse by a member, which amounts to a failure to perform in a proper manner, any duty imposed upon him as such, or which contravenes the provisions of this Act, or which is otherwise prejudicial to the effective conduct of the affairs of the Board.

Resignation

**12.** A member may resign from office by giving 30 days notice in writing to the Minister.

Vacation of office

**13.** The office of a member shall become vacant —

- (a) if the member ceases to be qualified by virtue of the provisions of section 10;
- (b) when a period of 30 days has elapsed from the date the member gave notice in writing to the Minister in accordance with section 12;
- (c) if the member is removed by the Minister under section 11;
- (d) after a period of 30 days from the date a ruling, against the member is made on all appeals made in respect of a conviction referred to in section 10 (b); or
- (e) where a member does not appeal against a conviction for an offence under section 10 (b), 30 days from the date the member was convicted of the offence.

Filling of vacancy

**14.** Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint another person to be a member in the place of the member whose office has become vacant, and the person so appointed shall hold office for the unexpired portion of the term of office of the member in whose place he or she is appointed.

Remuneration

**15.** A member shall be paid out of the funds of the Board such remuneration and allowances as the Minister may determine.

Meetings and proceedings of the Board

**16.** (1) Subject to the provisions of this Act, the Board shall regulate its own proceedings.

(2) The Board shall meet at least four times a year for the transaction of its business.

(3) The Chairperson may at any time, and shall at the request in writing of not less than one half of the members, call a special meeting of the Board.

(4) The notice of a special meeting of the Board shall specify the objectives of that meeting and no other business may be discussed at that meeting.

(5) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; and

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present at the meeting may elect from amongst themselves.

(6) A decision of the Board on any matter shall be determined by the majority of the members present and voting, and in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's original vote.

(7) An act or decision or proceeding of the Board shall not be invalid on account of any vacancy in the membership of the Board, or on account of the appointment of any member of the Board being defective, if the act was done or authorised or the decision was made or the proceedings took place by or in accordance with a majority vote of the persons who were at the time entitled to act as members.

(8) At any meeting of the Board, a quorum shall be constituted by not less than one half of the members of the Board.

(9) The Chairperson shall cause proper minutes of all meetings of the Board to be taken and recorded.

17. (1) If a member is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, the member shall forthwith after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion of, or vote on, any question concerning that matter.

Declaration of  
interest

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member who contravenes the provisions of subsection (1) commits an offence and is liable to a fine of P5 000 or to imprisonment for a term not exceeding six months, or both.

18. (1) The Board may, for the purpose of performing the functions of the Authority, appoint committees consisting of such number of members as it considers appropriate, chosen from amongst members of the Board or other suitably qualified persons, to deal with —

Committees  
Functions of  
Authority

(a) the review of —

(i) support programmes that impact upon SMME services,

(ii) the financing and management of SMME projects,

(iii) marketing, procurement and export development, and

(iv) the regulatory environment of SMME support;

(b) the acquisition, adaptation and diffusion of technology.

(2) Persons appointed to any committee established under subsection (1) shall hold office for such period as the Board may determine.

(3) Subject to the specific or general directions of the Board, a committee may regulate its own procedure.

(4) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

(5) Each committee shall keep minutes of its meetings and shall keep the Board informed of its activities, and shall conduct its proceedings in such manner as the Board may direct.

(6) A member of a committee shall be paid, out of the funds of the Authority, such allowances as the Minister may determine.

Signification  
of document

19. All signification of documents made by, and all decisions of, the Board, shall be signified under the hand of the Chairperson of the Board or any member, or senior officer of the Authority generally or specially authorized in that behalf.

#### PART IV — *Small Business Council*

Small Business  
Council

20. (1) There is hereby established a Council to be known as the Small Business Council, consisting of such number of members as the Minister considers appropriate for the purposes of this Act.

(2) The Council shall be responsible for —

- (a) advising the Minister on all matters pertaining to the formulation of policies and programs as well as the promulgation of legislation to regulate the operations of SMMEs, to ensure that the interests of this sector are adequately provided for;
- (b) reviewing the impact of Government policies and regulations upon SMMEs, and making recommendations as to policy and regulatory changes in order to promote SMME development; and
- (c) monitoring the growth of the SMME sector and playing an advocacy role in addressing the problems and needs of the sector.

Appointments

21. (1) The Minister shall appoint members to the Council from —

- (a) government ministries, parastatal bodies and such other institutions as have a particular responsibility for SMME development;
- (b) non-governmental organisations and business associations; and
- (c) private sector SMME support agencies.

(2) The Minister shall appoint the majority of the members to the Council from the private sector and SMME community.

(3) The Minister shall appoint such number of officers as he or she considers necessary from the Ministry of Trade and Industry to perform secretarial duties for the Council.

Proceedings  
of the Council

22. The provisions of sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19 shall apply *mutatis mutandis* to the proceedings of the Council.

#### PART V — *Financial provisions*

Funds

23. (1) The funds of the Authority shall consist of —

(a) moneys appropriated by Parliament for the purposes of the Authority;

(b) grants and donations that the Authority may receive; and

(c) income that the Authority may receive from investments.

(2) The Authority shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall, with the approval of the Minister, use any surplus accrued for such purposes as it may determine.

24. The financial year of the Authority shall be a period of twelve months ending on the 31st of March each year.

Financial year

25. (1) The Authority shall maintain proper books of accounts and other records of accounts in respect of each financial year relating to the expenditure of the Authority, and shall in each financial year prepare a statement of such accounts.

Accounts and audit

(2) The Authority shall submit its books of accounts and statement of accounts to an auditor appointed by the Board, who shall audit the accounts no later than three months after the end of the financial year.

(3) The auditor of the Authority shall submit a report in respect of the accounts for each financial year and in respect of any other matter on which the auditor deems it pertinent to comment on, to the Board.

26. (1) The Board shall, within three months of the receipt of the audited accounts, submit, to the Minister, a comprehensive report on the activities of the Board during the preceding year, together with the audited accounts and auditors report submitted in accordance with section 25(3).

Annual Report

(2) The Minister shall lay a copy of the annual report submitted under subsection (1) before the National Assembly not later than three months of the date of its submission.

(3) A report submitted under subsection (1) shall include a review of the extent to which progress has been made in achieving —

(a) the promotion of citizen entrepreneurship;

(b) the further diversification of the economy;

(c) the promotion of exports;

(d) the development of a competitive SMME community;

(e) the creation of sustainable employment opportunities;

(f) the promotion of the development of vertical integration and horizontal linkages between SMMEs and primary industries in agriculture, mining and tourism;

(g) improved efficiency in the delivery of services to business; and

(h) the promotion of business linkages between small and large enterprises.

#### PART VI— *General*

27. The Minister may, in consultation with the Board, make regulations for the better carrying out of the objects and purposes of this Act.

Regulations

PASSED by the National Assembly this 11th day of December, 2003.

A. MATLHAKU,  
*Clerk of the National Assembly.*