

THE OFFICIAL GAZETTE 31ST MARCH, 2004
LEGAL SUPPLEMENT — A

GUYANA

ACT No. 2 of 2004

SMALL BUSINESS ACT 2004

I assent,

Bharrat Jagdeo,
President,
31st March, 2004.

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AN ACT to provide for an incentive regime and support programme for small business; the establishment of the Small Business Council, the Small Business Bureau, the Small Business Development Fund and for matters connected therewith and incidental thereto.

PART I - PRELIMINARY

1. This Act may be cited as the Small Business Act 2004 and shall come into operation on such date as the Minister may by order appoint.

Short title and commencement.

2. (1) In this Act -

Interpretation.

“the Council” means the Small Business Council established by section 3;

“the Bureau” means the Small Business Bureau established by section 6;

“Minister” means the Minister assigned responsibility for small business;

“small business” means any person or persons, including a body corporate or unincorporate, carrying on business in Guyana for gain or profit and satisfying the criteria listed hereunder, but does not include any business having as its principal object the furtherance of a charitable or political purpose -

(a) is incorporated or registered under the Companies Act 1991 or the Business Names (Registration) Act; or

No. 29 of 1991
Cap. 90:05

(b) is a partnership under the Partnership Act; or

Cap. 89:02

(c) is owned by a person or persons trading not under the Companies Act nor in partnership;

Cap. 88:01

(d) is a registered cooperative society under the Co-operative Societies Act;

(e) is owned and controlled by those persons who hold the majority shareholding or controlling interests in the business, and is not a subsidiary or affiliate of another company; and

- (f) satisfies at least two of the following conditions -
- (i) employs not more than twenty-five persons;
 - (ii) has gross annual revenues of not more than sixty million dollars;
 - (iii) has total business assets of not more than twenty million dollars:

Provided that the Minister may, after consultation with the Council, by order, which shall be subject to an affirmative resolution of the National Assembly, alter all or any of criteria specified in this paragraph or specify other criteria in lieu thereof.

No. 29 of
1991
Cap. 90:05
Cap. 89:02
Cap. 88:01

(2) A small business desirous of becoming an approved small business, under this Act, may make an application therefor to the Small Business Council by providing the following: a certificate of incorporation under the Companies Act 1991, or registration under the Business names (Registration) Act, or Certificate of Partnership under the Partnership Act, or its registration as a cooperative under the Cooperative Societies Act, or a declaration that the individual or group of individuals are engaged in a small business, and -

- (a) a declaration verifying the particulars specified in subsection (1) (f);
- (b) a certificate of tax clearance for the previous year; and
- (c) a certificate of compliance from the National Insurance Scheme.

(3) Based on a recommendation from the Council, a declaration by the Minister, that a business is an “approved small business” for purposes of this Act, shall be required in order to obtain any eligible benefits specific to the small business sector.

PART II - ADMINISTRATION

3.(1) There is hereby established the Small Business Council, which shall be a body corporate, comprising not more than eleven members appointed by the President in the following manner -

Establishment
of the Small
Business
Council.

- (a) a Chairperson, on the recommendation of the Minister;
- (b) a representative of the Ministry responsible for Small Business.
- (c) a representative of the Ministry responsible for Finance;
- (d) four persons, being members of legally constituted and functioning bodies or organizations designated by the Minister as representing small businesses in Guyana;
- (e) one person representing a financial institution, other than a company licensed to carry on banking business under the Financial Institutions Act 1995, designated by the Minister as a financial institution providing significant financial assistance to small businesses;
- (f) one person nominated from the organization representing bankers;
- (g) two other persons from other business disciplines or specific geographical areas;
- (h) the Chief Executive Officer of the Small Business Bureau who shall serve as Secretary of the Council and who shall not have voting rights.

No. 1 of 1995

(2) The Council shall elect, by majority, from among its members a Vice Chairperson.

(3) The organizations referred to in subsections (1) (d) and (e) designated to represent small business on the Council shall have predominantly small business as their members or beneficiaries.

(4) The persons referred to in subsection (1) (d) selected to serve as members of the Council shall be owners of viable small businesses.

(5) The term of office of members of the Council shall be one year.

(6) The names of the members of the Council as first constituted and every change in the membership thereof shall be published in the Gazette.

(7) The Minister may terminate the appointment of a member for any good and sufficient cause, and in particular, if the member -

- (a) becomes of unsound mind or is otherwise incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with his creditors;
- (c) is convicted on a charge in respect of a criminal offence;
- (d) fails to attend three consecutive monthly meetings of the Council;
- (e) fails to discharge the functions conferred or imposed on him by or under this Act:

Provided that the appointment of a member may not be terminated, under this section, unless he has given a reasonable opportunity of being heard.

(8) A vacancy in the membership of the Council may be filled for the remainder of the term of office of the predecessor in office in the same manner as the predecessor was appointed.

(9) A member may at anytime resign his office by giving notice in writing to the Minister.

(10) The Minister may grant to a member leave of absence where the member applies for such leave, provided the work of the Council is not adversely affected.

(11) Members of the Council shall be paid such travelling and subsistence allowances (if any), as may be determined by the Minister, after consultation with the Minister responsible for finance, for the purpose of facilitating their attendance at meetings of the Council.

(12) Expenses of the Council shall be defrayed out of monies provided by Parliament and other resources made available to the Council and the Small Business Bureau.

4. (1) The functions of the Council are -

Functions of
the Council.

- (a) to review draft legislation proposed by the Government relating to small business or to matters of the private sector and economic development in which small business may become involved and submit comments thereon to the Minister;
- (b) to prepare and submit annually to the Minister, a Small Business Policy and Administrative Reform Agenda, including recommendations for the addressing of developmental issues, the granting of incentives to small business and the facilitation of measures affecting them;
- (c) to prepare the Annual Report on Small Business in Guyana for submission to the Minister, not later than ninety days after the end of each financial year; the report shall contain information on -
 - (i) progress made in addressing developmental issues and streamlining administrative procedures relating to small businesses;
 - (ii) initiatives by the Government to facilitate access to financing by small businesses;
 - (iii) the status of procurement by the Government from small businesses;
 - (iv) the recommending of fiscal incentives to small businesses;
 - (v) statistics relating to the small business sector;
- (d) to maintain a register of approved small businesses under this Act;

- (e) to supervise, manage and give directions to the Small Business Bureau;
- (f) to establish contact and linkages with other organizations, both local and overseas, with similar goals and objectives;
- (g) to pursue all legal and lawful courses in furtherance of the goals and fulfillment of this Act.

(2) The Minister may give to the Council directions of a general nature reflecting Government policies for the achievement of the objects of this Act.

(3) The first Small Business Policy and Administrative Reform Agenda shall be prepared and submitted by the Council to the Minister within ninety days after the coming into operation of this Act and within ninety days of the end of each calendar year, thereafter.

(4) The Small Business Policy and Administrative Reform Agenda shall be laid in the National Assembly not later than sixty days after it has been received by the Minister from the Small Business Council.

(5) The Annual Report on Small Business shall be laid in the National Assembly within sixty days after it has been received by the Minister from the Council.

Meetings of
the Council.

5. (1) The Council shall meet at least once monthly.

(2) Five members of the Council, including the chairperson or vice-chairperson, and four other members shall constitute the quorum of the Council.

(3) The decisions of the Council shall be made by a majority of votes; the chairperson shall have, in addition to an original vote in any case in which the voting is equal, a casting vote.

(4) Minutes in proper form of each meeting of the Council shall be kept by the Secretary to the Council and shall be confirmed by the chairperson or any other member performing the functions of chairperson as soon as practicable thereafter at a subsequent meeting on an affirmative motion by the members present.

Establishment
and Functions
of the Small
Business
Bureau.

6. (1) The Small Business Bureau shall be established and shall be under the supervision of the Council.

(2) The Bureau shall be the secretariat of the Council and its responsibilities shall include the achievement of the goals and fulfillment of the functions of the Council including -

- (a) promoting developmental issues relating to or affecting small business at the governmental level;
- (b) co-ordinating programmes for small business development with funding provided by the Government and other agencies;
- (c) monitoring the implementation of this Act;
- (d) reporting quarterly to the Small Business Council;
- (e) preparing for the approval of the Council the draft of the Annual Report on Small Business in Guyana, which shall include -
 - (i) initiatives by the Government to facilitate access to financing by small businesses;
 - (ii) the level of procurement by the Government from small businesses;
 - (iii) the recommending of fiscal incentives to small businesses;
 - (iv) statistics relating to the small business sector.

(3) With the approval of the Minister, the Council may appoint on such terms and conditions as it thinks fit, a Chief Executive Officer and other such officers and employees of the Bureau as may be necessary for the discharge of its functions. The Chief Executive Officer shall not be removed from office, or disciplinary action taken against him, without the approval of the Minister.

(4) The Small Business Bureau shall be headed by a Chief Executive Officer who shall be responsible to the Council for the proper administration of the Bureau in accordance with this Act and the policy of the Council.

(5) The Chief Executive Officer shall have general control of the officers and employees of the Bureau and shall be responsible to the Council for their discipline.

PART III - FINANCIAL PROVISIONS

Establishment and management of the Small Business.

7. (1) There shall be established by the Minister a fund to be called the Small Business Development Fund to provide for -

- (a) support and access to financing for small businesses;
- (b) non-financial services and assistance to help small businesses improve their productivity and competitiveness;
- (c) institutional support for organizations representing, promoting, supporting and strengthening small business;
- (d) funding the expenses of the Council and the Bureau.

(2) The resources of the Small Business Development Fund shall consist of -

- (a) monies appropriated by Parliament for the benefit of the small business sector in furtherance of the objectives of this Act;
- (b) monies made available by the Government out of loans raised by the Government;
- (c) grants made to the Fund;
- (d) monies accruing to the Fund out of investments made by the Fund;
- (e) revenues raised by the Small Business Council for services rendered.

Policies, borrowing accounts and records of the Council.

8. (1) The Minister, after consultation with the Council and the Minister responsible for finance shall determine the policies to be carried out by the Fund, and the procedures to be established or instituted for effectively managing the resources of the Fund shall be determined by the Minister or, if so required, shall be authorised by law.

(2) The Council may with the approval of the Minister responsible for finance, borrow money from time to time from any source approved by the Minister of Finance for the purpose of meeting or discharging any of its obligations under this Act.

(3) The Council may with the approval of the Minister of Finance, give security over the whole or any part of its obligation for the repayment of amounts borrowed under this Act and the payment of interest charges on the amount borrowed.

(4) The Council shall cause the Bureau to keep proper accounts and records of the transactions and affairs of the Council, Bureau and Small Business Development Fund and shall do all things necessary to ensure that all monies received are properly brought to account, all payments out of its monies are correctly made and properly authorised and that adequate control is maintained over its property and over incurring of liabilities.

(5) The Council shall not, without the prior approval in writing of the Minister responsible for finance -

- (a) dispose of its capital assets; or
- (b) apply the proceeds of a disposal to which paragraph (a) refers, to any undertaking.

9. (1) The financial year of the Council shall commence on 1st January in each year and expire on 31st December in the same year.

Financial year,
estimates,
expenditures
and accounts
of the Council.

(2) The Council shall, not later than 1st August in each year, in such form as the Minister directs, submit to the Minister for approval, estimates of the revenue and expenditure of the Council for the following financial year.

(3) The Minister may approve the estimates, approve them in an amended form or return them to the Council for resubmission in an amended form with a reasoned statement of his objections.

(4) In respect of any item of expenditure of the Council, which is not authorized by the estimates or by the Minister, each member shall be personally, jointly and severally liable for it, provided that a member shall not be liable for such expenditure incurred by reason of a decision.

(5) Not later than 1st July in each year, the Council shall prepare an account in such form and containing such information in respect of the immediate preceding financial year as the Minister may require.

Audit.
Cap. 73:01

10. (1) The Auditor General shall examine and audit the annual accounts of the Council in accordance with the provisions of the Financial Administration and Audit Act.

(2) The Council shall as soon as possible after the end of each year and in any event, not later than five months from the end of any year, submit to the Minister a report containing -

- (a) an account of the performance of the activities of the Council, the Bureau and the Small Business Development Fund during the preceding year;
- (b) an assessment of any programme undertaken; and
- (c) a statement of the audited accounts of the Small Business Development Fund.

(3) The Minister shall lay before the National Assembly a copy of the report referred to in subsection (1) as soon as practicable after receiving that report from the Council.

Procurement
by the
Government
from Small
Business.

11. (1) The Government shall use its best endeavours to ensure that at least twenty percent of the procurement of goods and services required annually by the Government is obtained from small businesses and for this purpose, the Council shall prepare annually a Small Business Procurement Programme.

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(2) Procurement shall be at competitive prices and in accordance with the provisions of the Procurement Act 2003 and the regulations in force.

(3) For the purpose of giving effect to subsection (1), the Council shall prepare annually for submission to the Minister an annual report on the progress made in implementing the Small Business Procurement Programme, forming part of the Annual Report on Small Business.

12. A small business shall be eligible for every applicable fiscal incentive under the law.”.

“Fiscal
Incentives
for Small
Business.

PART IV - POWER TO MAKE REGULATIONS

13. (1) The Minister, after consultation with the Council, may make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made by the Minister pursuant to subsection (1) shall be subject to negative resolution of the National Assembly.

Power to
make
regulations.

Passed by the National Assembly on 15th March, 2004.

S. E. Isaacs,
Clerk of the National Assembly.

(BILL No. 18/2003)