

MONTSERRAT

MICRO AND SMALL BUSINESS ACT 2013

No. 2 of 2013

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I ASSENT

Adrian Davis (Sgd.)
Governor

DATE: 11.4.13

M O N T S E R R A T

No. 2 of 2013

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A REGULATORY FRAMEWORK TO FACILITATE THE GROWTH OF THE SMALL BUSINESS SECTOR IN MONTSERRAT.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows:—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the Micro and Small Business Act, 2013.

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2 Interpretation

In this Act—

“**applicable fee**” means a fee payable under section 23 and set out in Schedule 2;

“**Committee**” means the Micro and Small Business Committee appointed by the Governor acting on the advice of Cabinet under section 3;

“**financial institution**” has the meaning assigned in the Banking Act;

“**micro business**” means a business registered as a micro business under section 8;

“**Minister**” means the Minister responsible for trade;

“**prescribed**” means prescribed by regulations made under this Act;

“**Register**” means the Register of Micro and Small Business under section 9;

“**registered business**” means a Micro or Small Business registered under this Act;

“**registered business file**” means the file established by the Registrar under section 8;

“**Registrar**” means the Registrar of Micro Business and Small Business under section 5;

“**small business**” means a business registered as a small business under section 8; and

“**socio-economic benefit**” includes a benefit involving or likely to lead, in Montserrat, to—

- (a) the generation of new investment or the development of product or processes;
- (b) an increase in employment or production capacity through market research, technical invention or innovation; or
- (c) the enhancement of export potential or foreign exchange earnings or savings.

PART 2—ADMINISTRATION

3 Micro and Small Business Committee

- (1) The Governor acting on the advice of Cabinet may appoint a committee to be called the Micro and Small Business Committee.
- (2) The Committee must comprise 5 persons as follows—
 - (a) from the public sector—one person from each of the following departments of Government—
 - (i) commerce or trade;
 - (ii) agriculture; and
 - (ii) customs or revenue;
 - (b) from the private sector—two persons.
- (3) The members of the Committee are to be appointed for a period not exceeding 3 years.
- (4) The Committee may determine its own procedure and must appoint a Chairman and Deputy Chairman from its members.
- (5) The quorum is 3 members and includes the Chairman or the Deputy Chairman and a representative from the private sector.
- (6) The Committee may co-opt a person to assist it in dealing with a matter, if it is satisfied that the person's qualifications or experience is likely to assist the Committee, and a person so co-opted is entitled to take part in the deliberations of the Committee regarding that matter, but may not vote and must take no part in any other proceedings of the Committee.

4 Functions of the Committee

- (1) The functions of the Committee are to—
 - (a) advise the Minister on matters relating to micro and small business;

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- (b)* consider and report to the Minister on all applications for incentives from micro or small business; and
 - (c)* recommend policy improvements to government with regard to micro or small business.
- (2) In carrying out its functions, the Committee must have regard to the need to encourage—
 - (a)* self employment;
 - (b)* income generation;
 - (c)* import substitution;
 - (d)* exports; and
 - (e)* foreign exchange earnings and savings.

5 Registrar

- (1) The Registrar of Companies is hereby designated the Registrar of Micro and Small Business.
- (2) The Registrar must perform the functions assigned under this Act or any other law.

**PART 3—REGISTRATION OF A
MICRO BUSINESS OR SMALL BUSINESS**

6 Qualifications for registration

A business may be registered as—

- (a)* a micro business—if its annual sales do not exceed \$100,000 and net assets do not exceed \$75,000; and
- (b)* a small business—if its annual sales exceed \$100,000 but do not exceed \$1,000,000 or net assets exceed \$75,000 but do not exceed \$500,000.

7 Application

An application to be registered must be made to the Registrar, must be in Form 1 set out in Schedule 1 and must be accompanied by—

- (a) the name in which the business is carried on;
- (b) the certificate of incorporation or the certificate of registration of the business name—if the business is not carried on in the name of an individual;
- (c) the prescribed fee; and
- (d) any other information required by the Registrar.

8 Registration

If the Registrar is satisfied that a business qualifies to be registered under section 6, the Registrar must register the business by entering on the register the information required to be entered under section 9 and establishing a file for the business containing the documents submitted under section 7.

9 Register

The Registrar must keep a Register of Micro Business or Small Business in which he or she must enter—

- (a) the name and registered address of the business;
- (b) the names, occupation and address of the persons with proprietary interest in the business; and
- (c) any other information of the business that the Registrar considers relevant.

10 Validity and renewal

- (1) Registration under this Act is valid for 15 months, unless renewed, on or before the expiration date, or an extended time approved by the Committee.
- (2) An application for renewal must be in the Form 2 set out in Schedule 1, and be accompanied by the prescribed fee and any other information, required by the Registrar.

- (3) The Registrar must issue a certificate of renewal in Form 3 set out in Schedule 1 to a business renewed its registration under this section.

11 Certificate of Registration

- (1) The Registrar must issue a Certificate of Registration in Form 4 set out in Schedule 1 to a business registered under this Act.
- (2) The Registrar may charge a fee for the issue of a Certificate of Registration to replace a lost or damaged certificate or a certificate issued after an amendment made under section 13.

12 Publicity

- (1) The Registrar must publish in the *Gazette* notice of a registration made under this Act.
- (2) On payment of the fee set out in column 2 of Schedule 2 a person may—
- (a) inspect a document in the registered business file; or
 - (b) require from the Registrar a copy of a certificate of registration under this Act.

13 Changes to the Register

- (1) A registered business must notify the Registrar, in Form 5 set out in Schedule 1, of any change in the particulars in section 9, within 21 days after the change or a longer period as the Registrar may allow.
- (2) The Registrar must, upon receipt of the notification and the fee set out in column 2 in Schedule 2, file the form in the Register.

PART 4—TAX CONCESSIONS

14 Tax exemption

- (1) Subject to section 15, a registered business may be exempted from—

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- (a) import duty and consumption tax under the Customs Duties and Consumption Tax Act, on the following items imported into, or purchased in, Montserrat, for use in the construction or operation of the registered business—

 - (i) building materials;
 - (ii) furniture and furnishings;
 - (iii) appliances, tools, plant, machinery and equipment; and
 - (iv) a vehicle;
 - (b) income tax under the Income and Corporation Tax Act, on the income of the business during a period of 5 years, unless a longer period is approved by Cabinet.
 - (c) stamp duty payable under the Stamp Act.
- (2) An application for an exemption must be made to the Committee in Form 6 set out in Schedule 1 and must be accompanied by the certificate of registration under this Act of the registered business.
 - (3) The Committee shall consider the application and make a recommendation to the Minister.
 - (4) The Governor acting on the advice of Cabinet may, by Order, grant a registered business one or more of the concessions specified in subsection (1) if satisfied that the business will be of significant or substantial socio-economic benefit.

15 Qualification for exemption

- (1) An exemption can only be granted if the registered business—

 - (a) is not disqualified under section 16; and
 - (b) presents to the authority responsible for the collection of the duty or tax, on or before the due date for the duty or tax, the Order granted by the

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Governor acting on the advice of Cabinet certifying that—

- (i) in the case of the exemption from customs duty or consumption tax—the item being imported or purchased qualifies under section 14 for the exemption; and
 - (ii) in the case of the exemption from income tax—the registered business qualifies for the exemption for the income year in respect of which income tax is due;
 - (iii) in the case of the exemption from stamp duty—the registered business qualifies for the exemption; and
 - (iv) in the case of any of the exempted taxes—the registration of the business has not expired and the business is in compliance with the provisions of the Companies Act or the Registration of Business Names Act, that are applicable to it.
- (2) In exercise of the duties under subsections (1)(b)(i), (ii) and (iii), the respective authority must act in accordance with the advice of the Committee.

16 Disqualification

A registered business is not eligible for a concession if—

- (a) it has income tax outstanding that is not certified by the Comptroller of Inland Revenue as exempt;
- (b) it has property tax outstanding; or
- (c) its contributions under the Social Security Act are outstanding or it is in any other way in breach of the Social Security Act.

17 Record keeping and inspections

- (1) A registered business that is granted a tax exemption must permit the Committee or a person authorised by it to inspect the operation of the business during normal

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business hours to ensure its compliance with the provisions of this Act.

- (2) A registered business that has been granted a concession must—
- (a) keep a record of the articles imported; and
 - (b) permit the Comptroller of Customs or a person authorised by him, to inspect, at any reasonable time the records and access to premises under the owner's control for the purposes of verifying the accuracy of the particulars contained in the record.
- (3) For the purposes of subsection (1), a registered business must, no later than 3 months after the end of each financial year, or a longer period that the Registrar allows, submit to the Registrar a copy of its financial statements and records.

PART 5—TECHNICAL ASSISTANCE

18 Technical assistance

The Minister may carry out technical assistance programmes with registered businesses in any area that the Minister believes will assist with the commencement, strengthening or expansion of registered businesses, which programmes may include assistance with—

- (a) product design and packaging;
- (b) finance and accounting;
- (c) quality control;
- (d) participation in overseas trade shows;
- (e) marketing in the local and export market;
- (f) business plans; and
- (g) information on feasibility of various businesses or products.

PART 6—MONITORING AND ENFORCEMENT

19 Confidentiality

A person must preserve confidentiality with respect to all matters that come to the person's knowledge in the course of employment or duties under this Act and must not communicate any information as to matters of that kind to any person, except as may be required in connection with—

- (a) the administration of this Act; or
- (b) proceedings under this Act or the Penal Code.

20 Revocation

(1) The Registrar may, on the recommendation of the Committee, cancel a registration made under section 8 if—

- (a) the particulars furnished by the applicant at the time of applying under section 7 are found either to be false in a material particular or likely or calculated to deceive; or
- (b) the registered business—
 - (i) does not submit information in accordance with section 13 and section 19(2);
 - (ii) obstructs or prevents an inspection under sections 17 and 19(1);
 - (iii) has failed to submit income tax returns as required under the Income Tax and Corporation Act or pay social security contributions, as required under the Social Security Act;
 - (iv) has not commenced operation within 6 months of having been registered under this Act;
 - (v) has ceased to operate; or
 - (vi) is no longer a business to which this Act applies.

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- (2) The Minister of Finance may require a registered business to be struck off the Register to repay the amount of duty, tax or stamp duty that was granted as a concession under Part 4.
- (3) Despite subsection (2), the Minister responsible for finance may, where he or she is satisfied that the payment of the sum due under that subsection would cause undue hardship, or that it is expedient to do so, waive the whole or part of those sums.
- (4) When registration is cancelled the Registrar must—
 - (a) publish a notice of revocation; and
 - (b) submit a copy of the notice of revocation to—
 - (i) the Committee; and
 - (ii) the owner of the registered business.

21 Appeal

The owner of a registered business may, within a month of the receipt of a notice under section 20 or the publication of a notice against his business, appeal to the Minister against the decision of the Registrar.

22 Civil proceedings

All sums due and payable under section 20 may be recovered as a debt due to the Crown in civil proceedings.

PART 7—MISCELLANEOUS

23 Fees

The fees set out in column 2 of Schedule 2 are to be paid in respect of the matters set out in column 1 of that Schedule.

24 Amendment of Schedules

The Governor acting on the advice of Cabinet may by Order amend the Schedules.

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25 Penalty

A person who contravenes a provision of this Act commits an offence and is liable on summary conviction to a fine of \$5,000.

26 Regulations

The Governor acting on the advice of Cabinet may make regulations for the effective implementation of this Act.

27 Repeal

The Small Enterprises Development Act (Cap. 15.05) is hereby repealed.

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SCHEDULE 1

FORM 1

(Section 7)

MONTSERRAT

A.D. 20..

MICRO AND SMALL BUSINESS ACT 2013

APPLICATION FOR REGISTRATION

1. Name (including the trading name of business):

2. Business Incorporation or Certificate of Registration No:

3. Type of Business:

4. Address of principal place of business

5. Address of principal or registered office of business:

6. Telephone number:

7. Facsimile number:

8. Email Address:

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9. Estimated investment/capital investment:
10. Existing or estimated total annual income:
11. No. of employees during last financial year:
(i) Full time:
(ii) Part-time:
12. Particulars:
Level of exports:
Foreign Exchange earnings/savings:
13. Date of commencement of business

I /We,....., hereby declare on oath that the information contained herein is true and correct to the best of my/our knowledge, information and belief.

Sworn/Affirmed)
at) Director/Secretary/Owner/Partner
on the day of)
20 .)

Before me:

.....
Justice of the Peace/Commissioner of Oaths

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FORM 2

(Section 10)

MONTSERRAT

A.D. 20..

MICRO AND SMALL BUSINESS ACT 2013

APPLICATION OF RENEWAL

TO: Registrar

In accordance with section 10 of the Micro and Small Business Act I/ We hereby give notice of application for renewal for registration of a micro business or small business.

[Please fill in particulars as required or indicate "not applicable (N/A)"]

1. Name (including the trading name of Business):
2. Business Incorporation or Certificate of Registration No.:
3. Micro and Small Business Act Registration No.:
4. Date of registration:
5. Type of Business:
6. Address of principal place of business:
7. Address of principal or registered office of business:
8. Telephone number:
9. Facsimile number:
10. Email Address:

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FORM 3

(Section 11)

MONTSERRAT

AD. 20..

MICRO AND SMALL BUSINESS ACT 2013

CERTIFICATE OF REGISTRATION

Business Incorporation No:

Micro Business /Small Business Registration No:

I hereby certify that was
registered as a Micro Business /Small Business under the Micro and Small Business Act
2013 on the day of , 20 ..

.....

Registrar

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FORM 6

(Section 14)

MONTSERRAT

A.D. 20..

MICRO AND SMALL BUSINESS ACT 2013

APPLICATION FOR CONCESSION

(Please fill in particulars as required or indicate “not applicable (N/A)”))

Section A

1. Name (including the trading name of business)
2. Company Incorporation or Certification of Registration No:
3. Type of Business
4. Address of principal place of business
5. Address of principal or registered office of business
6. Telephone number of principal office of business
7. Telephone number of registered office of business
8. Facsimile number of principal place of business
9. Facsimile number of registered office of business
10. Residential Address
-
11. Residential Telephone Number

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12. Email address
13. Is the Micro Business /Small Business
- an individual a sole proprietor a partnership
- a firm a company
14. Date established
15. Date business registered
16. Number of persons employed
17. Does the business contribute to Social Security yes no
18. Tax identification number
19. Estimated investment/capital investment
20. Existing or estimated total annual income

Section B

(Please indicate below all items for which concessions are sought)

1. Exemption from duty on building materials, furniture, appliances, tools, plant, machinery and equipment for use in the construction and operation of the business.
2. Exemption from duty on importation or purchase of motor vehicle for use in the operation of the business – (specify type and how many)

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3. Exemption from/reduction of Income Tax on the income of the business (specify for how many years).
4. Exemption from/reduction of stamp duty.
5. Reduction of stamp duty on land transfers.

Section C

Purpose for which concession is sought

.....

Section D

Please provide the value of the items for which concessions is sought.

1. Cost price of items \$
2. Estimated value of concession sought \$

Section E

1. Have you or your business been granted a concession before? yes no
2. Give details of all concessions received within the past two (2) years.
.....
.....
.....

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Section F

Certification

The undersigned hereby certifies that the information contained in the above form and in the accompanying attachments is true and correct to the best of his or her knowledge, information and belief. The undersigned agrees to notify the Committee immediately of any material change in this application. The undersigned authorises the Committee to contact, without further notice to the undersigned, any person or institution for the purpose of verifying the information in this application.

.....
Director/Secretary/Owner/Partner

Date

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SCHEDULE 2

(Section 23)

FEES

The fees payable under the Act are as follows:

<i>Column 1</i>	<i>Column 2</i> \$ c
1. On application to the Registrar for registration as a micro business or small business under section 7 together with the issue of a Certificate of registration: (a) micro business (b) small business	\$100.00 \$150.00
2. For certification of any document in custody of the Registrar.	25.00
3. For search (inspection) of the Register or registered business file.	25.00
4. For an uncertified copy of any document in custody of the Registrar, in addition to the fee for search under item (3) per page.	25.00
5. For filing a notice of change within the meaning of section 13, together with the issue of a new certificate of registration, if necessary.	25.00
6. On application to the Registrar for renewal of registration as a micro business or small business under section 10 together with the issue of a Certificate of registration: (a) micro business (b) small business	\$50.00 \$75.00

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Teresina Bodkin (Sgd.)
SPEAKER

Passed the Legislative Assembly this 5th day of March, 2013.

Judith Baker (Sgd.)
CLERK OF LEGISLATIVE ASSEMBLY