

THE NATIONAL HERITAGE FUND BILL

(No. XXXIX of 2003)

Explanatory Memorandum

The object of this Bill is to repeal the National Heritage Trust Fund Act and the National Monuments Act in order to provide for the establishment and management of a National Heritage Fund which shall deal with matters relating to -

- (a) the safeguard, management and promotion of the national heritage of Mauritius;
- (b) the identification of sites, monuments, intangible heritage and all other objects of cultural significance to be designated as national heritage;
- (c) the preservation of national heritage as source material for scientific and cultural investigation and as an enduring basis for the purposes of development, leisure, tourism and enjoyment of present and future generations; and
- (d) the education and sensitisation of the public on cultural values, in respect of national heritage and the instillation of a sense of belonging and civic pride in the national heritage.

08 August 2003

M. Ramdass
Minister of Arts and Culture

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A BILL

To provide for the establishment and management of the National Heritage Fund and for matters relating to national heritage

ENACTED by the Parliament of Mauritius as follows -

1. Short title

This Act may be cited as the National Heritage Fund Act 2003.

2. Interpretation

In this Act -

“Board” means the Board established under section 5;

“Chairperson” means the Chairperson of the Board;

“cultural significance” means aesthetic, anthropological, archaeological, architectural, botanical, ethnological, geological, historical, linguistic, palaeontological, scientific, social, spiritual or technological value;

“Director” means the person appointed under section 9;

“Fund” means the National Heritage Fund established under section 3;

“intangible heritage” means intangible aspects of inherited culture and includes culinary arts, cultural traditions, customs, festivities, oral history and traditions, performing arts, rituals, popular memory and skills and techniques connected with material aspects of culture;

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

“Minister” means the Minister to whom the responsibility for the subject of arts and culture is assigned;

“monument” means -

- (a) any structure of cultural significance, remains of such a structure, building or group of buildings, which, because of its homogeneity or its place in the landscape is of outstanding value; and
- (b) architectural work, work of monumental sculpture and painting, element or structure of an archaeological nature, inscription, cave dwelling which is of outstanding value;

"national heritage" means -

- (a) a national heritage designated in section 12 and specified in the Schedule; and
- (b) includes a national monument designated under the repealed National Monuments (Designation) Regulations 1985 and specified in the Schedule.

“site” means any area on land or underwater, with or without any structure, building, monument or object, thereon having a cultural significance.

3. Establishment of the National Heritage Fund

(1) There is established, for the purposes of this Act, a Fund to be known as the National Heritage Fund.

(2) The Fund shall be a body corporate.

4. Objects of the Fund

The objects of the Fund shall be to -

- (a) safeguard, manage and promote the national heritage of Mauritius;
- (b) preserve the national heritage sites as a source material for scientific and cultural investigation and as an enduring basis for the purposes of development, leisure, tourism and enjoyment of present and future generations worldwide; and
- (c) educate and sensitise the public on cultural values, national heritage and to instill a sense of belonging and civic pride with respect to national heritage.

5. Establishment of the Board

(1) The Fund shall be administered and managed by a Board to be known as the National Heritage Fund Board.

(2) The Board shall consist of -

- (a) a Chairperson, appointed by the Prime Minister;
- (b) a representative of the Prime Minister’s Office;
- (c) a representative of the Ministry responsible for the subject of arts and culture;
- (d) a representative of the Ministry responsible for the subject of finance;

- (e) a representative of the Ministry responsible for the subject of tourism;
- (f) a representative of the Ministry responsible for the subject of education;
- (g) a representative of the Ministry responsible for the subject of local government;
- (h) a representative of the Ministry responsible for the subject of environment;
- (i) a representative of the Ministry responsible for the subject of housing and lands;
- (j) a representative of the Mauritius Association of Architects;
- (k) a representative of the Mauritius Museums Council; and
- (l) 3 persons having wide experience in matters relating to national heritage to be appointed by the Minister.

(3) The members of the Board shall hold office for a period of 3 years and shall be eligible for re-appointment.

(4) Subject to the approval of the Minister, the Board may provide for the payment of a fee to every member of the Board.

6. Functions and powers of the Board

The Board may do all such things as appear requisite and advantageous for the furtherance of the objects of this Act and in particular shall -

- (a) identify sites, monuments, structures, intangible heritage or such other objects of cultural significance to be designated as national heritage;
- (b) establish and maintain a register of designated national heritage;
- (c) regulate and authorise activities pertaining to the exploration, excavation, salvage of national heritage or any object or structure of cultural significance;
- (d) manage national heritage entrusted to it;
- (e) make such arrangements as are necessary to enable the public, whether on payment of a fee or free of charge, to view and enjoy a national heritage;

- (f) produce and publish materials to sensitise the public of the existence of a national heritage;
- (g) make surveys, prepare maps and plans and collect information in relation to any monument, site or intangible heritage which can be designated as a national heritage;
- (h) hold meetings, lectures and exhibitions and give advice or other information pertaining to the pursuit of objects of the Fund;
- (i) undertake or support research into the means of preserving a national heritage;
- (j) co-operate with any local or public authority or other body concerned in the objects of the Fund;
- (k) work in collaboration with the international community to trace and recover any national heritage which may be outside the territory of Mauritius or to restore foreign heritage or to jointly manage shared heritage;
- (l) provide guidance to owners of national heritage for restoration and management of the national heritage;
- (m) where appropriate, lease or entrust the management of a national heritage, vested in the Board, to any person on such terms as the Minister may approve;
- (n) have access and control of any heritage site for the purpose of exercising its functions and powers under this Act;
- (o) take such measures, as deemed necessary, to maintain, protect and promote a national heritage and to attain the objects of the Fund;
- (p) raise funds by subscriptions, donations, grants, gifts or loans; and
- (q) advise the Minister generally on all matters pertaining to national heritage.

7. Meetings of the Board

(1) Subject to section 37(6) and (8) of the Interpretation and General Clauses Act, the Board shall regulate its meetings and proceedings in such manner as it thinks fit.

(2) The Board shall meet at such time and place as the Chairperson may determine-

- (a) at least once a month; or

- (b) whenever the Chairperson deems it necessary or where a request for a meeting is made by not less than 5 members.
- (3) Seven members shall constitute a quorum.
- (4) (a) The Board may co-opt representatives of bodies other than those specified in section 5(2), to attend meetings.
 - (b) No co-opted member shall have the right to vote.

8. Disclosure of interest

A member who has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered by the Board shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge, disclose in writing the nature of his interest to the Board and shall not –

- (a) be present during any deliberation of the Board with respect to that matter; and
- (b) take part in any decision of the Board with respect to that matter.

9. The Director

(1) The Board shall, with the approval of the Minister, appoint on such terms and conditions as the Board may determine, a Director.

(2) The Director shall be responsible for the execution of the policy and decisions of the Board and for the control and management of the day to day business of the Fund.

(3) In the exercise of his functions, the Director shall act in accordance with such directions as he may receive from the Board.

10. Appointment of staff

(1) The Board shall, with the approval of the Minister, appoint on such terms and conditions as the Board may determine, such staff as may be reasonably necessary for the purposes of, or in connection with, the discharge of its functions.

(2) Every member of the staff shall be under the administrative control of the Director.

11. Appointment of Advisory Committees

(1) The Board may set up an Advisory Committee on an *ad hoc* basis to advise the Board on matters pertaining to the objects of the Fund.

- (2) Any Committee set up under subsection (1) shall consist of -
- (a) a Chairperson, designated by the Board from members of the Board;
 - (b) such other members of the Board as the Board may designate; and
 - (c) such co-opted members having appropriate specialized skills in the relevant fields, as the Minister may designate.
- (3) The Committee may regulate its meetings and proceedings in such manner as it thinks fit.

12. Designation of national heritage

The Minister may, on recommendation of the Board, designate by regulations -

- (a) any monument;
- (b) any object or site of cultural significance;
- (c) any intangible heritage;
- (d) any natural feature consisting of physical and biological formation or group of such formations which are of outstanding value; and
- (e) any geological and physiographical formation or precisely delineated area which constitute the habitat of animals and plants of outstanding value,

in Mauritius to be a national heritage.

13. Ownership of national heritage

- (1) The ownership of a national heritage shall remain vested in the owner.
- (2) Where the Minister designates a private property as national heritage, the Director shall forthwith give notice, in writing, to the owner of that property.
- (3) Any owner of a national heritage who intends to alter structurally or make any addition to any national heritage shall -
- (a) give notice, in writing, of his intention to do so to the Director; and
 - (b) not commence any alteration or addition to the national heritage unless the Board has, with the approval of the Minister, authorised the said alteration or addition.

(4) Where the Board is of the opinion that a national heritage shall be compulsorily acquired for the public benefit, the Board may make a recommendation to that effect to the Ministry responsible for the subject of lands.

(5) Where the Minister responsible for the subject of lands is satisfied that the compulsory acquisition of a national heritage will be for the public benefit, he may acquire the national heritage in accordance with the Land Acquisition Act.

14. Maintenance of national heritage

(1) The Board may, by written notice, request the owner of a national heritage to maintain, or effect repairs to, the national heritage in such manner and within such time as may be specified in the notice.

(2) The Director or any officer designated by him shall, for the purposes of inspection and maintenance, have access to any national heritage at all reasonable times after giving reasonable notice, in writing, to the owner.

(3) Where the Board is satisfied that the owner of a national heritage is unable to maintain the national heritage, the Board may provide assistance to that owner, in such manner as it deems appropriate.

(4) Any person who interferes with, hinders or obstructs -

(a) any inspection or maintenance work; or

(b) any officer in the exercise of his powers or duties under this Act,

shall commit an offence.

15. Powers of the Minister

(1) The Minister may give such directions of a general character to the Board not inconsistent with the objects of the Fund, which he considers necessary in the public interest, and the Board shall comply with those directions.

(2) The Board shall furnish to the Minister such information with respect to its activities as the Minister may require.

(3) The Minister may, after consultation with the Board, by regulations, cancel the designation of a national heritage where the national heritage has ceased to exist or where it would no longer serve the public interest that the national heritage remains so designated.

16. Prohibition on exports

No person shall export, or cause to export, a national heritage without the prior approval of the Board.

17. Offences

- (1) Any person who unlawfully -
 - (a) alters, damages, destroys, defaces, digs up, moves, changes, covers, conceals or in any other way disfigures a national heritage;
 - (b) removes any part of a national heritage; or
 - (c) otherwise contravenes this Act,

shall commit an offence.

(2) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

18. Delegation of powers

Subject to such instructions and rules of a general nature as it may give or make, the Board may delegate to the Chairperson or to the Director such of its powers under this Act as may be necessary to assist it in the effective management of the Fund, other than the power to -

- (a) borrow money;
- (b) raise loans; or
- (c) enter into any transactions involving capital expenditure which exceeds 100,000 rupees.

19. Execution of documents

(1) Subject to subsection (2), all documents shall be deemed to be executed by or on behalf of the Fund if signed by the Chairperson or the Director.

- (2) Every cheque of the Fund shall be signed by any 2 of the following persons -
 - (a) the Chairperson;
 - (b) the Director; or
 - (c) such other member as may be appointed for that purpose by the Board.

20. General Fund

- (1) There shall be a General Fund -
 - (a) into which shall be paid -
 - (i) all monies accruing to the Fund, including all charges or fees that may be prescribed;
 - (ii) all donations, grants and contributions received by the Fund; and
 - (iii) any other sum which may lawfully accrue to the Fund;
 - (b) out of which all payments required to be made by the Fund shall be effected.
- (2) The Board may establish such other special funds as it thinks fit for the furtherance of its objects.

21. Donations and legacies

Article 910 of the Code Napoleon shall not apply to the Fund.

22. Exemptions

Notwithstanding any other enactment -

- (a) the Fund shall be exempt from the payment of any duty, rate, charge, fee or tax;
- (b) no stamp duty or registration shall be payable in respect of any document under which the Fund is the sole beneficiary.

23. Regulations

- (1) The Minister may, after consultation with the Board, make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide -
 - (a) for the levying of fees or taking charges in respect of the activities conducted or facilities provided by the Fund;
 - (b) that any person who contravenes those regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year; and

- (c) for an amendment to the Schedule.

24. Repeal

The following enactments are repealed -

- (a) the National Heritage Trust Fund Act;
- (b) the National Monuments Act;
- (c) the National Monuments (Designation) Regulations 1985.

25. Consequential amendments

(1) Subject to subsections (2) and (3), the Schedule to the Statutory Bodies (Accounts and Audit) Act is amended in Part II by deleting the words “National Heritage Trust Fund” and replacing them by the words “National Heritage Fund”.

(2) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Fund.

(3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall apply in relation to the first financial year of the Fund.

(4) The auditor to be appointed under section 5 of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

26. Transitional provisions

(1) All assets and liabilities of the National Monuments Board and of the National Heritage Trust Fund shall be transferred to the Fund.

(2) A person who immediately before the day on which this Act comes into operation, is employed by the National Heritage Trust Fund shall -

- (a) where he is not employed by the Fund, be entitled to such compensation as may be provided in his contract of employment or by law; and
- (b) not be entitled to any compensation where that person is appointed to the staff of the Fund without break in the continuity of employment and on terms not less favourable than those of his previous employment with the National Heritage Trust Fund.

(3) Where this Act does not make provision for the necessary transition from the repealed enactments specified in section 24, the Minister may make such regulations as are necessary for that purpose.

27. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.