

THE SMALL AND MEDIUM ENTERPRISES BILL
(No. XV of 2017)

Explanatory Memorandum

The object of this Bill is to repeal the Small and Medium Enterprises Development Authority Act and replace it by a modern, more business friendly and appropriate legislative framework for the small and medium enterprises sector. Consequently, the Small and Medium Enterprises Development Authority (SMEDA) shall cease to exist and the functions of SMEDA shall be taken by SME Mauritius Ltd, a Government-owned company incorporated and registered under the Companies Act.

2. The Bill further provides, inter alia, for a Registrar of small and medium enterprises, a public officer from the Ministry, who shall –

- (a) be responsible for the registration of SMEs;
- (b) upon request by a person who intends to set up an enterprise having a project value not exceeding 20 million rupees, provide support and information to facilitate the obtention of any registration, permit, licence, authorisation or clearance which the enterprise may require.

S. BHOLAH
*Minister of Business, Enterprise and
Cooperatives*

03 November 2017

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A BILL

**To provide for the repeal of the Small and Medium Enterprises Development
Authority Act following the incorporation of SME Mauritius Ltd,
and for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows—

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Small and Medium Enterprises Act 2017.

2. Interpretation

In this Act –

“Economic Development Board” means the Economic Development Board established under the Economic Development Board Act 2017;

“enterprise” –

- (a) means any form of trade, business or manufacture, craft, cultivation of fruits, vegetables or flowers, livestock breeding, or activity approved as such by the Ministry; and

- (b) includes –
 - (i) any supply of services, including goods relating to those services; or
 - (ii) a co-operative society; but
- (c) does not include an office or employment or a religious or charitable institution;

“medium enterprise” means an enterprise which has the appropriate annual turnover specified in the First Schedule;

“microenterprise” means a small business owned and operated by an individual and which has the appropriate annual turnover specified in the First Schedule;

“Minister” means the Minister to whom responsibility for the subject of small and medium enterprises is assigned;

“Ministry” means the Ministry responsible for the subject of small and medium enterprises;

“public sector agency” includes any Ministry, Government department, local authority or statutory body;

“Registrar” means the Registrar of small and medium enterprises referred to in section 3;

“registration certificate” means a registration certificate issued under section 5(2);

“small enterprise” means an enterprise which has the appropriate annual turnover specified in the First Schedule;

“SME” –

- (a) means a small enterprise or medium enterprise; and
- (b) includes a microenterprise;

“SME Mauritius Ltd” means SME Mauritius Ltd incorporated and registered as such under the Companies Act;

“supervising officer” means the supervising officer of the Ministry.

PART II – REGISTRAR

3. Registrar

(1) There shall be, within the Ministry, a Registrar of small and medium enterprises who shall be a public officer.

(2) The Registrar shall –

- (a) be responsible for the registration of SMEs; and
- (b) discharge such other functions, and exercise such other powers, as may be conferred on him under this Act.

(3) The supervising officer may designate such public officers, or set up such technical committees, as may be necessary to assist the Registrar in the discharge of his functions under this Act.

PART III – REGISTRATION OF SMALL AND MEDIUM ENTERPRISES

4. Application for registration

(1) Every person who operates a microenterprise, small enterprise or medium enterprise may apply to the Registrar, in such form as the supervising officer may approve, for that enterprise to be registered as an SME.

(2) Every application under subsection (1) shall be accompanied by –

- (a) the name, address and Business Registration Number of the enterprise;
- (b) the nature and location of the business activity of the enterprise;
- (c) the expected or actual workforce of the enterprise; and
- (d) such non-refundable application fee as may be prescribed.

(3) The Registrar may, in determining the application, require the applicant to furnish such information or document as he may determine.

(4) The Registrar shall, within 15 days from the date of receipt of an application or from the date of receipt of any information or document sought under subsection (3), grant or reject the application, and inform the applicant thereof.

5. Issue of registration certificate

(1) Where the Registrar considers that an enterprise meets the criteria to be considered as a microenterprise, small enterprise or medium enterprise, he shall grant the application.

(2) Where the Registrar grants an application, he shall, on such terms and conditions as he may determine, register that enterprise as an SME and issue it with a registration certificate in such form as the supervising officer may approve.

(3) A registration certificate shall be valid for a period of 5 years.

(4) Where the holder of a registration certificate—

(a) changes the name or address of the SME; or

(b) intends to change the nature of the business activity in relation to which the registration certificate was issued,

he shall make an application in writing to the Registrar for the registration certificate to be amended, specifying the reasons for the change and give such additional information or document as the Registrar may require.

(5) Where the Registrar grants an application made under subsection (4), he shall, on such terms and conditions as he may determine and on payment of such fee as may be prescribed, issue, in respect of that SME, an amended registration certificate or a new registration certificate.

6. Renewal of registration certificate

(1) The holder of a registration certificate may apply for the renewal of the certificate at least 3 months prior to its date of expiry.

(2) Where the Registrar grants an application under subsection (1), he shall, on such terms and conditions as he may determine and on payment of such fee as may be prescribed, issue, in respect of that SME, a new registration certificate.

7. Cancellation or variation of registration certificate

(1) Subject to this section, the Registrar may cancel a registration certificate or vary its terms and conditions where—

(a) any information given to him by the applicant is false or misleading in any material particular;

- (b) the holder of the certificate fails, without lawful excuse, to –
 - (i) comply with any requirement of this Act;
 - (ii) comply with any terms and conditions specified in the certificate; or
 - (iii) pay any fees and charges levied under this Act; or
- (c) the SME, in respect of which the certificate has been issued, ceases to meet the criteria to be considered as a microenterprise, small enterprise or medium enterprise.

(2) The Registrar shall, before cancelling or varying a registration certificate, require, by notice in writing, the holder of the registration certificate to show cause, within 14 days of the notice, why the registration certificate should not be cancelled or varied.

8. Provision of support and information

(1) Where a person intends to set up an enterprise which has a project value not exceeding the value specified in the Second Schedule, he may request the Registrar, in writing, to provide support and information to facilitate the obtention of any registration, permit, licence, authorisation or clearance which the enterprise may require.

(2) Where the Registrar receives a request under subsection (1), he shall, notwithstanding any other enactment, ensure that the application is expeditiously processed by the relevant public sector agency.

(3) (a) Where an application is not likely to be determined within the statutory time limit, the public sector agency shall, as soon as practicable but not later than 3 working days from the statutory time limit, notify the Economic Development Board and the Registrar of the reasons for which the application cannot be determined.

(b) The Economic Development Board shall, on receipt of a notification under paragraph (a), examine the reasons and may make such recommendation to the relevant public sector agency as it may determine.

9. Cessation of business activity

Where an SME, in respect of which a registration certificate has been issued, ceases to meet the criteria to be considered as a microenterprise, small enterprise or medium enterprise, or where the SME ceases its business activity, either temporarily or permanently, the holder of the registration certificate shall inform the Registrar in writing within 15 days of the cessation.

10. Appeal

- (1) Any party aggrieved by a decision of the Registrar to –
- (a) refuse an application for the issue or renewal of a registration certificate;
 - (b) cancel or vary a registration certificate,

may, within 21 days of the date on which he is informed of the decision of the Registrar, appeal to the Minister and shall, at the same time, serve a copy of the appeal on the Registrar.

- (2) (a) An appeal under subsection (1) shall be –
- (i) in writing and provide a full and precise description of the grounds on which it is made;
 - (ii) lodged with the supervising officer; and
 - (iii) accompanied by such fee as may be prescribed.

(b) The fee referred to in paragraph (a)(iii) shall be refunded to the appellant where the appeal is allowed in whole or in part.

(3) The Registrar shall, after receipt of the copy of the appeal, forthwith submit to the Minister his reasons for the refusal, cancellation or variation, as the case may be.

(4) Where an appeal is lodged under subsection (1), the registration certificate shall, notwithstanding the duration of the registration certificate, continue to remain in force until the appeal is determined by the Minister.

(5) An appeal made under this section shall be determined by the Minister within 3 months from the date on which it is lodged with the supervising officer.

PART IV – MISCELLANEOUS

11. Register

- (1) The Registrar shall, in such form as he may determine, keep –
- (a) a register in respect of every SME registered under this Act; and

- (b) such other registers as may be necessary for the purposes of this Act.

(2) The Registrar shall ensure that any information recorded in a register is up to date and available for inspection or reproduction in usable form.

12. Offences

(1) Any person who –

- (a) contravenes this Act or any regulations made under it;
- (b) in any application made under this Act, makes a statement which is false or misleading in any material particular,

shall commit an offence.

(2) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

13. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under this section may provide for –

- (a) the amendment of the Schedules;
- (b) the levying of fees and taking of charges;
- (c) that any person who contravenes them 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 2 years.

14. Repeal

The Small and Medium Enterprises Development Authority Act is repealed.

15. Consequential amendments

(1) The Co-operatives Act 2016 is amended, in section 102(3)(f), by deleting the words “the Director of the Small and Medium Enterprises

Development Authority” and replacing them by the words “the Registrar of small and medium enterprises under the Small and Medium Enterprises Act 2017”.

(2) The Excise Act is amended, in the First Schedule, in Part IA, in item 39, by deleting the words “with the Small Enterprises and Handicraft Development Authority” and replacing them by the words “with the Small and Medium Enterprises Development Authority under the repealed Small and Medium Enterprises Development Authority Act or registered under the Small and Medium Enterprises Act 2017”.

(3) The Income Tax Act is amended –

(a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“SME Mauritius Ltd” has the same meaning as in the Small and Medium Enterprises Act 2017;

(b) in section 16A –

(i) in subsection (1), by repealing paragraphs (a) and (b) and replacing them by the following paragraphs –

(a) (i) is registered under the repealed Small and Medium Enterprises Development Authority Act on or after 2 June 2015; and

(ii) qualifies under a scheme referred to in section 5A of the repealed Small and Medium Enterprises Development Authority Act; or

(b) (i) is registered under the Small and Medium Enterprises Act 2017; and

(ii) qualifies under a scheme administered and managed by SME Mauritius Ltd,

(ii) in subsection (2), by repealing paragraph (c) and replacing it by the following paragraph –

- (c) in which the individual start the activities relating to a project under the scheme –
 - (i) referred to in section 5A of the repealed Small and Medium Enterprises Development Authority Act; or
 - (ii) administered and managed by SME Mauritius Ltd.

- (c) in section 49B –
 - (i) in subsection (1), by deleting the words “Small and Medium Enterprises Development Authority Act” wherever they appear and replacing them by the words “repealed Small and Medium Enterprises Development Authority Act or a scheme administered and managed by SME Mauritius Ltd”;
 - (ii) in subsection (4), by deleting the definition of “small company” and replacing it by the following definition –
 - “small company” means –
 - (a) a company incorporated under the Companies Act and registered under the repealed Small and Medium Enterprises Development Authority Act on or after 2 June 2015 or under the Small and Medium Enterprises Act 2017;
 - (b) a co-operative society set up on or after 2 June 2015 and registered under the repealed Small and Medium Enterprises Development Authority Act or under the Small and Medium Enterprises Act 2017.

- (d) in section 60(1)(b), by repealing subparagraph (i) and replacing it by the following subparagraph –
 - (i) a small enterprise or a medium enterprise registered under the repealed Small and Medium Enterprises Development Authority Act or under the Small and Medium Enterprises Act 2017; and

- (e) in the Second Schedule, in Part II, in Sub-part C –

- (i) in item 11, in paragraph (a), by deleting the words “under the Small and Medium Enterprises Development Authority Act” and replacing them by the words “registered under the repealed Small and Medium Enterprises Development Authority Act or the Small and Medium Enterprises Act 2017”;
- (ii) in item 11A, in paragraph (a), by deleting the words “Small and Medium Enterprises Development Authority Act” wherever they appear and replacing them by the words “repealed Small and Medium Enterprises Development Authority Act”.

(4) The Local Government Act is amended, in section 117(8), by deleting the words “Small and Medium Enterprises Development Authority Act” and replacing them by the words “Small and Medium Enterprises Act 2017”.

(5) The Public Procurement Act is amended –

- (a) in section 26B(2), by deleting the words “Small and Medium Enterprises Development Authority Act” and replacing them by the words “Small and Medium Enterprises Act 2017”;
- (b) in the Schedule, in Part II, by deleting the following item –

Small Enterprises and Handicraft Development Authority

(6) The Road Traffic Act is amended, in the First Schedule, in item 3(b), by deleting the words “by the Small Enterprises and Handicraft Development Authority” and replacing them by the words “under the Small and Medium Enterprises Act 2017”.

(7) The Sugar Industry Efficiency Act is amended, in section 29(1)(a)(x), by deleting the words “by the Small and Medium Enterprises Development Authority established under the Small and Medium Enterprises Development Authority Act 2009” and replacing them by the words “under the Small and Medium Enterprises Act 2017”.

(8) The Statutory Bodies (Accounts and Audit) Act is amended –

- (a) in the First Schedule, by deleting the item “Small and Medium Enterprises Development Authority” and its corresponding entry;

(b) in the Second Schedule, in Part I, by deleting the item “Small and Medium Enterprises Development Authority” and its corresponding entry.

(9) The Statutory Bodies Pension Funds Act is amended, in the First Schedule, by deleting the following item –

Small Enterprises and Handicraft Development Authority

(10) The Employment Rights (Workfare Programme) Regulations 2009 is amended, in regulation 4, by deleting the words “Small and Medium Enterprises Development Authority shall be the institution” and replacing them by the words “Ministry responsible for the subject of small and medium enterprises shall be”.

16. Transitional and saving provisions

(1) In this section –

“SMEDA” means the Small and Medium Enterprises Development Authority established under the repealed Small and Medium Enterprises Development Authority Act.

(2) Notwithstanding any other enactment, every person employed on the permanent and pensionable establishment of SMEDA shall be dealt with in accordance with this section.

(3) Every person who, at the commencement of this Act, is employed on the permanent and pensionable establishment of SMEDA may, within 30 days from the date of commencement of this Act, opt –

- (a) to be transferred to SME Mauritius Ltd on new terms and conditions which shall not be less favourable than those of his previous employment;
- (b) to be redeployed, so far as is practicable, to any Ministry or statutory body where vacancies in a similar position are available, on terms and conditions which shall not be less favourable than those of his previous employment; or
- (c) for retirement on the ground of abolition of office and be paid his pension benefits in accordance with the Statutory Bodies Pension Funds Act and regulations made thereunder, and the recommendations of the Pay Research Bureau Report 2016.

(4) No person employed on the permanent and pensionable establishment of SMEDA who exercises an option under subsection (3) or who fails to exercise any such option shall be entitled to claim that his employment

has been terminated or adversely affected in breach of any enactment.

(5) Any disciplinary inquiry, investigation or proceeding, pending or in process at the commencement of this Act, against any person employed on the permanent and pensionable establishment of SMEDA, shall be taken up, continued or completed by SME Mauritius Ltd, the Ministry or the statutory body, as the case may be, and any resulting order or decision shall have the same force and effect as if made by SMEDA.

(6) All assets and funds of SMEDA shall, at the commencement of this Act, vest in SME Mauritius Ltd.

(7) All rights, obligations and liabilities subsisting in favour of or against SMEDA shall, at the commencement of this Act, continue to exist under the same terms and conditions in favour of or against SME Mauritius Ltd.

(8) Any registration certificate issued under the repealed Small and Medium Enterprises Development Authority Act, which is valid at the commencement of this Act, shall be deemed to have been issued under this Act.

(9) Any application made to SMEDA and which is pending at the commencement of this Act shall be deemed to have been made to the Registrar and shall be dealt with in accordance with this Act.

(10) Any act or thing done, or any contract or agreement entered into, by SMEDA shall, at the commencement of this Act, be deemed to have been done or entered into by SME Mauritius Ltd.

(11) All proceedings, judicial or otherwise, initiated before and pending at the commencement of this Act, by or against SMEDA, shall be deemed to have been initiated, and may be continued, by or against SME Mauritius Ltd.

(12) Any document, matter or thing which if this Act had not been passed would have been admissible in evidence in respect of any matter for or against SMEDA shall, at the commencement of this Act, be admissible in evidence in respect of the same matter for or against SME Mauritius Ltd.

(13) Subject to subsection (8), a reference in an enactment or arrangement, agreement, certificate or any other document to –

- (a) the Small and Medium Enterprises Development Authority Act shall be construed as a reference to the Small and Medium Enterprises Act 2017; and
- (b) SMEDA shall be construed as a reference to SME Mauritius Ltd.

(14) Any scheme administered and managed by the SME One-Stop Shop under the repealed Small and Medium Enterprises Development Authority Act shall be administered and managed by SME Mauritius Ltd.

(15) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

17. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

[Section 2]

ANNUAL TURNOVER

Enterprise	(Rs)
Microenterprise	Not more than 2 million
Small enterprise	More than 2 million but not more than 10 million
Medium enterprise	More than 10 million but not more than 50 million

SECOND SCHEDULE

[Section 8(1)]

PROJECT VALUE

	(Rs)
Project value	20 million
