

THE STATUS OF THE ARTIST BILL

(No. VII of 2023)

Explanatory Memorandum

The main object of this Bill is to provide for the establishment of the Professional in the Arts Council.

2. The Council will, in the discharge of its functions and exercise of its powers –

- (a) categorise persons engaged as professional artists, specialised professionals in the Arts, technical professionals and occasional professionals in the Arts, and register them as professionals in the Arts;
- (b) promote the status of professionals in the Arts;
- (c) enhance the social and economic status of professionals in the Arts;
- (d) implement the State Recognition Allowance scheme and pension scheme for professionals in the Arts;
- (e) enhance access to training and skills development for professionals in the Arts; and
- (f) develop and promote the marketing of artistic products and services nationally and internationally.

3. The Bill further provides for matters connected and incidental thereto.

A. TEELUCK

Minister of Arts and Cultural Heritage

12 May 2023

THE STATUS OF THE ARTIST BILL

(No. VII of 2023)

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A BILL

To provide for the establishment of the Professional in the Arts Council

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Status of the Artist Act 2023.

2. Interpretation

In this Act –

“atypical worker” has the same meaning as in the Workers’ Rights Act 2019;

“Council” means the Professional in the Arts Council established under section 3;

“Director” means the Director of the Council appointed under section 12;

“entertainer” means a musician, a dancer, a singer, a fashion model, a fire-breather, a pyrotechnic artist, a magician, a circus artist, a spoken word artist or such other artist as may be prescribed;

“financial year” has the same meaning as in the Finance and Audit Act;

“officer” –

(a) means an officer of the Council appointed under section 13; and

(b) includes the Director;

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

“Ministry” means the Ministry responsible for the subjects of arts;

“occasional professional artist” –

(a) means a creator or performer, or both a creator or performer; and

(b) includes an entertainer –

(i) whose work has artistic value and may be protected by copyright;

- (ii) who frequently disseminates or performs his work in such places as his peers may recognise;
- (iii) who has a proven record of artistic achievement and is or is qualified through an educational or a training programme; and
- (iv) whose profession as a professional artist is not his primary occupation and source of income;

“occasional professional in the Arts” means an occasional professional artist, an occasional specialised professional in the Arts or an occasional technical professional whose artistic activity is not his primary occupation and source of income but who engages in his respective activity on an occasional basis for additional income;

“occasional specialised professional in the Arts” means a person –

- (a) who performs a specialised function in the field of management, education, restoration, documentation or other activity directly related to live or recorded artistic performance or to the production or dissemination of visual arts and literature;
- (b) who has a proven record of artistic achievement and is or is qualified through an educational or a training programme; and
- (c) whose profession as a specialised professional in the arts is not his primary occupation and source of income;

“occasional technical professional” means a person –

- (a) engaged in a technical profession directly related to live or recorded artistic performance or to the production or dissemination of visual arts and literature;
- (b) who has a proven record of artistic achievement and is or is qualified through an educational or a training programme; and
- (c) whose profession as a technical professional is not his primary occupation and source of income;

“professional artist” –

- (a) means a creator or performer, or both a creator or performer; and

- (b) includes an entertainer –
 - (i) whose work has artistic value and may be protected by copyright;
 - (ii) who frequently disseminates or performs his work in such places as his peers may recognise;
 - (iii) who has a proven record of artistic achievement and is or is qualified through an educational or a training programme; and
 - (iv) whose profession as a professional artist is his primary occupation and source of income;

“professional card” means a professional card issued under section 14(5)(b);

“professional in the Arts” –

- (a) means a professional artist, a specialised professional in the Arts or a technical professional who works, on a regular or occasional basis –
 - (i) as a self-employed; or
 - (ii) as an atypical worker; and
- (b) includes an occasional professional in the Arts registered under section 14(5)(a);

“Register” means the register kept under section 15;

“self-employed” has the same meaning as in the Income Tax Act;

“specialised professional in the Arts” means a person –

- (a) who performs a specialised function in the field of management, education, restoration, documentation or other activity directly related to live or recorded artistic performance or to the production or dissemination of visual arts and literature;
- (b) who has a proven record of artistic achievement and is or is qualified through an educational or a training programme; and

- (c) whose profession as a specialised professional in the arts is his primary occupation and source of income;

“State Recognition Allowance scheme and pension scheme” means such scheme as may be prescribed;

“technical professional” means a person –

- (a) engaged in a technical profession directly related to live or recorded artistic performance or to the production or dissemination of visual arts and literature;
- (b) who has a proven record of artistic achievement and is or is qualified through an educational or a training programme; and
- (c) whose profession as a technical professional is his primary occupation and source of income.

PART II – ESTABLISHMENT OF PROFESSIONAL IN THE ARTS COUNCIL

3. Establishment of Council

(1) There is established, for the purposes of this Act, a Professional in the Arts Council.

(2) The Council shall be a body corporate.

4. Objects of Council

The objects of the Council shall be to –

- (a) categorise persons engaged as professional artists, specialised professionals in the Arts, technical professionals and occasional professionals in the Arts, and register them as professionals in the Arts;
- (b) promote the status of professionals in the Arts;
- (c) enhance the social and economic status of professionals in the Arts;
- (d) implement the State Recognition Allowance scheme and pension scheme for professionals in the Arts;

- (e) enhance access to training and skills development for professionals in the Arts; and
- (f) develop and promote the marketing of artistic products and services nationally and internationally.

5. Functions and powers of Council

The Council shall have such functions and powers as are necessary to further its objects most efficiently and effectively and shall, in particular –

- (a) develop and maintain a directory of professionals in the Arts;
- (b) publish an annual list of professionals in the Arts;
- (c) gather and disseminate information on funding sources, opportunities for creative and professional collaboration and educational programmes;
- (d) put in place, measures and actions aimed at nurturing and supporting professionals in the Arts, artistic creations and the affirmation of artistic vocations;
- (e) gather and disseminate information on existing preferential treatment measures;
- (f) organise professional training and workshops for professionals in the Arts to update their knowledge on their profession, receive retraining and improve their small business management and technical skills in various artistic disciplines;
- (g) improve the availability of information and data relevant to professionals in the Arts;
- (h) receive donations and grants locally and abroad;
- (i) maintain an artistic and cultural calendar of events, shows and festivals;
- (j) publicise opportunities for participation in national and international cultural shows, events and festivals;
- (k) publicise training opportunities in Mauritius and abroad;

- (l) advertise national and international competitions, national and international funding opportunities and international artist-in-residence-programmes;
- (m) award prizes and honours for merits and promote artists, creative writers, arts promoters, researchers and cultural entrepreneurs by publishing a directory with a personal description of each professional in the Arts and information on his work;
- (n) provide information on existing fiscal measures, social security and other issues relevant to professionals in the Arts;
- (o) build valuable networks between professionals in the Arts and business leaders;
- (p) advise the Minister and other public authorities with regard to artistic and cultural policy developments;
- (q) do such other things as may be necessary for the purposes of this Act.

PART III – ADMINISTRATION AND MANAGEMENT OF COUNCIL

6. The Board

(1) The Council shall be administered and managed by a Board, which shall consist of –

- (a) a Chairperson, to be appointed by the Minister;
- (b) a representative of the Prime Minister’s Office;
- (c) a representative of the Ministry;
- (d) a representative of the Ministry responsible for the subject of education;
- (e) a representative of the Ministry responsible for the subject of finance;
- (f) a representative of the Ministry responsible for the subject of labour;

- (g) a representative of the Ministry responsible for the subject of social security;
- (h) a person having wide experience in the field of visual arts, to be appointed by the Minister;
- (i) a person having wide experience in the field of literature, to be appointed by the Minister;
- (j) a person having wide experience in the field of music, to be appointed by the Minister;
- (k) a person having wide experience in the field of audio-visual and digital media, to be appointed by the Minister;
- (l) a person having wide experience in the field of dance, to be appointed by the Minister; and
- (m) a person having wide experience in the field of performing arts, to be appointed by the Minister.

(2) A member, other than a member referred to in subsection (1)(b) to (e), shall hold office for a period of 3 years and shall be eligible for reappointment.

7. Meetings of Board

(1) Subject to this Act, the Board shall regulate its meetings and proceedings in such manner as it may determine.

(2) The Board shall meet at least once every month at such time and place as the Chairperson may determine.

(3) At any meeting of the Board, 7 members shall constitute a quorum.

(4) The Chairperson or, in his absence, a member to be elected from among its members shall preside over a meeting of the Board.

(5) Every member shall be paid such fee or allowance as the Minister may determine.

(6) The Board may, with the approval of the Minister, co-opt any person who may be of assistance in relation to any matter before the Board, but that person shall not have the right to vote on any matter considered by the Board.

(7) Everything authorised or required to be done by the Board shall be decided by a simple majority of the members present and voting.

(8) At any meeting of the Board, each member shall have one vote and in the event of equality of votes, the Chairperson shall have a casting vote.

8. Secretary to Board

(1) There shall be a Secretary to the Board, to be appointed by the Board on such terms and conditions as it may determine.

(2) The Secretary to the Board shall –

- (a) prepare and attend every meeting of the Board;
- (b) keep minutes of its proceedings of any meeting of the Board;
- (c) follow up on the implementation of the Board's decisions;
- (d) service the Board and such other committees as may be set up by the Board; and
- (e) perform such other duties as may be conferred upon him by the Board.

9. Sectoral Expert Committees

(1) There shall be, for the purpose of assessing applications for the registration of professionals in the Arts, the following Sectoral Expert Committees –

- (a) Sectoral Expert Committee on matters relating to visual arts, which shall comprise –
 - (i) the member referred to in section 6(1)(f), as chairperson;
 - (ii) 2 assessors having knowledge and experience in the field of visual arts, to be appointed by the Board on such terms and conditions as it may determine;
- (b) Sectoral Expert Committee on matters relating to literature, which shall comprise –

- (i) the member referred to in section 6(1)(g), as chairperson;
 - (ii) 2 assessors having knowledge and experience in the field of literature, to be appointed by the Board on such terms and conditions as it may determine;
- (c) Sectoral Expert Committee on matters relating to music, which shall comprise –
 - (i) the member referred to in section 6(1)(h), as chairperson;
 - (ii) 2 assessors having knowledge and experience in the field of music, to be appointed by the Board on such terms and conditions as it may determine;
- (d) Sectoral Expert Committee on matters relating to audio-visual and digital media, which shall comprise –
 - (i) the member referred to in section 6(1)(i), as chairperson;
 - (ii) 2 assessors having knowledge and experience in the field of audio-visual and digital media, to be appointed by the Board on such terms and conditions as it may determine;
- (e) Sectoral Expert Committee on matters relating to dance, which shall comprise –
 - (i) the member referred to in section 6(1)(j), as chairperson;
 - (ii) 2 assessors having knowledge and experience in the field of dance, to be appointed by the Board on such terms and conditions as it may determine; and
- (f) Sectoral Expert Committee on matters relating to performing arts, which shall comprise –
 - (i) the member referred to in section 6(1)(k), as chairperson;

- (ii) 2 assessors having knowledge and experience in the field of performing arts, to be appointed by the Board on such terms and conditions as it may determine.

(2) An assessor of a Sectoral Expert Committee shall hold office for a period of 3 years and shall be eligible for reappointment.

(3) Every Sectoral Expert Committee may co-opt such other member as it deems appropriate and necessary to assist it in the discharge of its functions.

(4) Every member of a Sectoral Expert Committee shall be paid such fee or allowance as the Minister may determine.

(5) Subject to any direction given by the Board, a Sectoral Expert Committee shall regulate its meetings and proceedings in such manner as it may determine.

10. Committees

(1) The Board may set up such other committees as it deems necessary.

(2) Subject to any direction given by the Board, any committee set up shall regulate its meetings and proceedings in such manner as it may determine.

11. Disclosure of interest

(1) Where any member has a pecuniary or other personal interest in relation to any matter before the Board, any Sectoral Expert Committee or any other committee, that member –

(a) shall disclose the nature of the interest before or at the meeting convened to discuss that matter; and

(b) shall not take part in any deliberations relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of proceedings of the meeting of the Board, Sectoral Expert Committee or committee, as the case may be.

12. Director

(1) There shall be a Director who shall, with the approval of the Minister, be appointed by the Board on such terms and conditions as it may determine.

(2) The Director shall, subject to this Act, be responsible for the implementation of all decisions of the Board and for undertaking the day to day administration of the Council.

(3) The Director shall attend every meeting of the Board and may take part in its deliberations but shall not have the right to vote.

(4) The Director shall, in the discharge of his functions, act in accordance with such directions as he may receive from the Board.

(5) The Director may, with the approval of the Board, delegate any of his functions to such officer as he may determine.

13. Staff of Council

(1) The Board may, on such terms and conditions as the Minister may approve, appoint such officer as it considers necessary for the proper discharge of its functions under this Act.

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

(3) The Board may make provision to govern the conditions of service of its officers and, in particular, for –

- (a) the appointment, dismissal, discipline, pay and leave of its officers;
- (b) appeals by its officers against dismissal and other disciplinary measures; and
- (c) the establishment and maintenance of pension fund schemes and the contributions and the benefits payable to or from the schemes.

PART IV – REGISTRATION OF PROFESSIONALS IN THE ARTS

14. Application for registration

(1) Any person who intends to be registered as a professional in the Arts shall make an application to the Council in such form and manner as it may approve.

(2) An application under subsection (1) shall be accompanied by such non-refundable processing fee as may be prescribed.

(3) (a) On receipt of an application made under subsection (1), the Director shall refer the application to the appropriate Sectoral Expert Committee for its assessment and recommendations.

(b) The Sectoral Expert Committee may request the applicant to furnish such documentary evidence and such other information as it may require and may, where it considers it necessary, call the applicant for an interview.

(c) The Sectoral Expert Committee shall, after assessing the application, send its recommendations to the Board.

(4) On receipt of the recommendations of the Sectoral Expert Committee, the Board may approve or reject the application.

(5) Where the Board grants an application, the Council shall –

- (a) register the person as a professional in the Arts on such terms and conditions as the Council may determine; and
- (b) issue him with a professional card.

(6) A professional card issued under subsection (5) shall be valid for a period of 5 years from the date of its issue and may be renewed for further periods of 5 years, on such terms and conditions as the Council may determine.

15. Register

(1) The Director shall keep a register of professionals in the Arts, or such other register as may be necessary, in such form and manner as the Board may determine.

(2) The Director shall enter in the Register –

- (a) the name, address, qualifications, where applicable, and date of registration of every professional in the Arts;
- (b) the category under which a professional in the Arts is registered;
- (c) any alteration in the particulars of a professional in the Arts;
- (d) where a professional in the Arts is deregistered, an annotation to that effect; and

(e) such other particulars as the Board considers appropriate.

(3) The Director shall make available for consultation, the Register to any person wishing to consult the Register against payment of such fee as may be prescribed.

16. Deregistration as professional in the Arts

(1) The Board may deregister a professional in the Arts where –

- (a) any information provided by him in his application for registration or renewal is false or misleading in any material particular;
- (b) he no longer meets any of the conditions for registration under section 14; or
- (c) he has passed away.

(2) Where a professional in the Arts is deregistered, the professional card issued shall be surrendered to the Director.

(3) The Council shall, before deregistering a professional in the Arts, require that person, by notice in writing, to show cause why he should not be deregistered.

(4) Where the Council is satisfied that the professional in the Arts should be deregistered, it shall cause the Director to remove the name and other particulars of the professional in the Arts from the Register.

(5) The Council may, where the name and other particulars of a professional in the Arts have been removed from the Register, restore the name and other particulars of the professional in the Arts on good cause shown and on payment of such fee as may be prescribed.

17. Review of decision of Council

(1) A person who is aggrieved by a decision of the Board –

- (a) not to register him as a professional in the Arts; or
- (b) to deregister him as a professional in the Arts,

may make an appeal to the Minister against such decision.

(2) An appeal under subsection (1) shall be made within 21 days of the date on which the person is informed of the decision of the Board.

(3) The Minister shall, for the purpose of an appeal under subsection (1), set up an appeal committee which shall consist of –

- (a) a representative of the Ministry;
- (b) a representative of the Ministry responsible for the subject of labour; and
- (c) a representative of the Ministry responsible for the subject of social security.

(4) The appeal committee shall, within 21 days of the request for appeal, determine the appeal and submit its recommendation to the Minister.

(5) The Minister shall, on receipt of the recommendation of the appeal committee, forthwith inform the appellant of the determination of the appeal.

(6) Where the Minister decides in favour of the appellant, he shall instruct the Council, to review its decision and the Council shall act accordingly.

PART V – FINANCIAL PROVISIONS AND ACCOUNTS

18. General Fund

There shall be a General Fund –

- (a) into which shall be paid –
 - (i) any grant, donation and contribution received by it;
 - (ii) any fee, rental or interest; and
 - (iii) any other sum which may lawfully accrue to it;
- (b) out of which all payments required to be made by the Council shall be effected.

19. Donations

Article 910 of the Code Civil Mauricien shall not apply to the Council.

20. Annual report

(1) The Board shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Council in respect of every financial year.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of the Council before the Assembly.

(3) The auditor appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

PART VI – MISCELLANEOUS

21. Contract for services

(1) Notwithstanding any other enactment, no person shall retain the services of a professional in the Arts unless a written contract is entered between that person and the professional in the Arts.

(2) A contract referred to in subsection (1) shall specify the terms of payment and the duration during which the services are to be provided.

(3) The terms of payment required under subsection (1), other than in respect of an atypical worker, shall be made not later than 15 days after the services are provided.

(4) A contract shall be amended to reflect any change in the quantum of payment or the duration of the contract, or any other term and condition of the contract.

22. Powers of Minister

(1) The Minister may give such directions of a general nature to the Board, not inconsistent with this Act, as he considers necessary in the public interest, and the Board shall comply with such directions.

(2) The Minister may require the Board to furnish such information in such manner and at such time as he thinks necessary with respect to the activities of the Council and the Board shall supply such information.

23. Protection from liability

No liability, civil or criminal, shall be attached to the Council, the Board, any Sectoral Expert Committee, a member of the Board or any committee, or any officer in respect of any act done or omitted to be done in good faith in the discharge of its or his functions under this Act.

24. Execution of documents

(1) Subject to subsection (2), no deed, document, instrument, contract or cheque shall be executed by, or on behalf of, the Council unless it is signed by –

- (a) the Chairperson, or in his absence, any other member designated by the Board; and
- (b) the Director, or in his absence, such officer as the Board may designate.

(2) A deed, a document, an instrument, a contract or a cheque signed in accordance with subsection (1) shall be deemed to be duly executed by, or on behalf of, the Council.

25. Seal of Council

The seal of the Council shall bear such device as the Board may approve.

26. Offences

Any person who –

- (a) obstructs any staff of the Council in the discharge of his functions under this Act; or
- (b) otherwise contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 12 months.

27. Regulations

(1) The Minister may 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 and the taking of charges;
- (b) the manner by which a professional card may be renewed;
- (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.

28. Consequential amendments

(1) The Local Government Act is amended, in the Twelfth Schedule, by inserting, in the appropriate alphabetical order, the following new item –

Professional in the Arts (registered under the Status of the Artist Act 2023)

(2) The Statutory Bodies (Accounts and Audit) Act is amended, in the Schedule, by inserting, in the appropriate alphabetical order, the following new item –

Professional in the Arts Council Status of the Artist Act 2023

(3) The Workers' Rights Act 2019 is amended, in section 17(3), in the definition of "atypical worker", in paragraph (b), by adding the following new subparagraph, the word "but" at the end of subparagraph (v) being deleted and replaced by the word "or" and the word "or" at the end of subparagraph (iv) being deleted –

- (vi) is registered as a professional in the Arts under the Status of the Artist Act 2023; but

29. 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.
