

RATIONALE AND OVERVIEW OF DRAFT SME LEGISLATION

CURRENT STATE OF THE ENVIRONMENT FOR THE DEVELOPMENT OF SMALL AND MEDIUM SIZE ENTERPRISES

Small and medium size enterprises (“SME’s”) are universally acknowledged to be prime drivers of economic growth in democratic countries where a market based economic model is encouraged. The benefits of vibrant SME’s include; employment growth, the development of an entrepreneurial spirit that leads to an expanding middle class and a spirit of self sufficiency rather than dependency on the government and social service based programmes.

Successive governments of The Bahamas have recognized the importance of encouraging the growth and development of SME’s, but the good intentions have led to a number of overlapping government agencies and programmes that has resulted in an uncoordinated approach with respect to providing the needed support for the growth and development of SME’s. Further, in some cases, resources are either not allocated efficiently or some of the said agencies are under capitalised (e.g. The Bahamas Development Bank).

Presently the Government has the following agencies and programs providing SME Development support:

Ministry of Finance (grants duty exemptions, administration of Tariff and Excise Act);

Ministry of Financial Services and Investments (Industries Encouragement Act);

Ministry of Agriculture and Marine Resources (farming and fishing support);

Bahamas Agricultural & Industrial Corporation (project proposal support, building, land leases);

Bahamas Development Bank (loans);

Bahamas Venture Capital Fund (equity contributions and loans);

Ministry of Youth Sports and Culture (grants);

Office of the Prime Minister (Hotels Encouragement Act);

THE INVOLVEMENT OF THE INTERAMERICAN DEVELOPMENT BANK

As early as the fall of 2010, The Bahamas Government approached the Inter-American Development Bank (“IDB”) to acquire funding and technical support to reform the infrastructure it was using to support the growth and development of SME’s in The Bahamas. The Bahamas Chamber of Commerce and Employers Confederation (“BCCEC”) and certain other private sector stakeholders were consulted on the issue and in January 2011 Chancellors Chambers law firm was contracted by the IDB to draft new legislation that foreshadowed the creation of a new agency that would be the government’s primary driver of

the development of SME's in the country. The IDB's support was provided through a related agency called Compete Caribbean, a conglomerate of donor agencies which operate in the Caribbean.

The proposed legislation was to be called the Small and Medium Size Enterprises Development Bill 2011 and it was presented by the IDB to the government in May 2011.

Subsequently the IDB provided additional funding for the SME development project in order to accomplish the following:

- To establish legal and operational framework for the new small business agency; and
- To conduct a demonstration project in a Family Island

This consultation process is intended to review and critique the proposed new legislative framework in order to ascertain whether further changes are required before presenting the draft legislation to Parliament. Although presented to the Government in May 2011 by the IDB, the draft legislation was not brought to Parliament prior to the May 7th 2012 General Elections.

GOVERNMENT'S POLICY STATEMENT ON PLANS FOR THE DEVELOPMENT OF SMALL AND MEDIUM SIZE ENTERPRISES

A new government was elected on May 7th 2012, with similar policy objectives for the growth and development of SME's. In part, the Government's election platform document (called a Charter for Governance) acknowledges the short comings of the status quo stating:

"The Bahamas Development Bank has failed in large part because it mainly operates with a single product: lending money.

This lending places emphasis on the borrower's obligation to provide the bank with what is presumed to be strong collateral and to commit to the fast repayment of all sums borrowed. This policy has resulted in there being insufficient basis upon which to differentiate between The Bahamas Development Bank and any commercial bank.

The Bahamas Development Bank must change course.....

This reinvention will force the bank's management to evaluate the risk of each business application from a different perspective, while also obliging the bank to develop a wider array of assistance-focused products.

This wide array of products will include:

- *The provision of capital in any form, from straight equity provided it does not exceed the equity involvement of the current organizer of the business;*

- *Credit enhancement by measures such as guarantees issued to the favour of other current lenders;*
- *Investments in financing instruments that would be subordinated to third party investors.*
- *A key requirement in this reinvention will be the removal of partisan political considerations in evaluating grants, credit or other aspects of the management process.*

In this regard, the re-invented Bahamas Development Bank must be a major source of support for the sector”.

With draft legislation already in existence for the creation of the Small and Medium Size Enterprises Development Agency (“SMEDA”), the Government by this Consultation Document is initiating formal dialogue with all public and private sector stakeholders and the general public at large about the changes it proposes to make to the legal framework for SME development in The Bahamas. The said draft legislation intends to ensure that sufficient focus and resources are channeled effectively toward the growth and development of SME’s in the Bahamas.

INTENT OF PROPOSED NEW LEGISLATIVE FRAMEWORK

In summary, the Small and Medium Size Enterprises Development Bill (“the Bill”) is intended *“to promote, support and facilitate the development of Bahamian entrepreneurship by providing financial services and business development support to or for the benefit of SME’s in all economic sectors throughout The Bahamas for the purpose of greater participation of the SME sector in economic growth”* (section 3. (1) of the Bill). This quotation from the Bill is a very broad policy objective.

In an attempt to think outside the box and to embrace the possibility of radical change, the idea is that SMEDA would become the Government’s primary SME development vehicle. In order to bring as many aspects of SME development under one public umbrella, SMEDA was intended to enhance the ability of The Bahamas Development Bank, BAIC, the Venture Capital Fund and all other public sector SME support programmes to offer meaningful and impact support to SME’s.

Public support for SME development in the past has been focused primarily on loan funding through the Bahamas Development Bank (“BDB”). It is now accepted however, that this is not sufficient for the orderly development of SME’s. Business development support is critical. SMEDA therefore was envisioned as a successor to BDB, adopting the role that most closely resembled a one stop shop for SME development. For example, it is proposed that:

- the existing Board of the BDB becomes the new Board of SMEDA with additions made to the Board to bring it into alignment with the Bill;

- BDB would cease issuing new loans as BDB and seek only to manage its existing loan portfolio and BDB's existing functions would be amalgamated into SMEDA;
- SMEDA will be a vehicle to guarantee loans through other institutions, but will not act solely as a direct lender to SME's;
- The Bahamas Agricultural and Industrial Corporation ("BAIC") would continue to offer specialized technical support in the area of agriculture and would retain responsibility for the management of industrial parks , but new project support and advice would be transferred to SMEDA;
- Responsibility for the Venture Capital Fund ("VCF") would remain under its existing Board, but the VCF will become a part of SMEDA's portfolio and responsibility. All future funding for VCF will come through SMEDA and therefore the Board of the VCF will have dual reporting lines until the completion of the present investment cycle to the board of SMEDA and the Minister of Finance. Once SMEDA is operational any new round of funding for the VCF would be provided by SMEDA and the VCF's board will report directly to SMEDA's board exclusively.

Further, SMEDA was designed to minimize any need for government subvention above what has been agreed by the Minister in the beginning of its funding cycle. In this regard, it would have a limited ability to leverage its balance sheet to offer loans and guarantees for certain private sector loans that fulfill specific criteria.

Ultimately, the feedback received from this consultation process should assist the political directorate in making a decision that best serves the future development of SME's in The Bahamas regardless of what currently exists now and how long it's been in place.

HOW TO RESPOND TO THIS CONSULTATION

In responding to this Consultation Document, we invite you to carefully consider:

1. the objectives of the Bill and the legal framework it intends to create;
2. what legal framework is in the overall best interest of SME development in The Bahamas;
3. whether it is possible to create SMEDA as the sole agency responsible for SME development in The Bahamas;
4. identify the three biggest challenges facing SME development in The Bahamas and provide feedback on whether the Bill adequately addresses said challenges; and
5. Should all existing SME initiatives and programmes be merged under one umbrella and if not why not.

SUMMARY OF THE SMALL AND MEDIUM SIZE ENTERPRISES DEVELOPMENT BILL BY
SECTION

Part I – Preliminary

This section includes the short title and commencement of the Bill. It also contains the interpretation of certain words and terms in the context of their use within the Bill.

Part II – Establishment of the Small and Medium Size Enterprises Development Agency (“SMEDA”)

This section defines the purpose of SMEDA, which is as follows:

“to promote, support and facilitate the development of Bahamian entrepreneurship by providing financial services and business development support to or for the benefit of SME’s in all economic sectors throughout The Bahamas for the purpose of greater participation of the SME sector in economic growth” (section 3. (1) of the Bill).

Section 4 outlines how SMEDA is to be legally established including that it will be a separate public body corporate with its own corporate seal.

Section 5 outlines SMEDA’s functions and powers and sections 6 and 7 address general guidelines and confidentiality provisions respectively.

Part III – The Board

Section 8 itemises the functions of the Board, which include selecting the CEO of SMEDA and directly supervising the management of the business of SMEDA. It is noteworthy that the Board’s activities are not subject in any way to being overruled by a Minister of Government.

Section 9 deals with the structure of the Board. It is noteworthy that members of Parliament are not eligible to be members of the Board in any capacity. Sub clause (7) inserts an overlap function for the Board of The Bahamas Development Bank that needs to be explored in depth.

Section 10 identifies how Board members are to be appointed including the role of the Minister and various Chambers of Commerce in this process.

Section 11 identifies how the chairperson is to be selected and all issues related thereto. Likewise section 12 does the same for the deputy chairperson including the fact that the chairperson shall appoint one of the other members as deputy chairperson.

Section 13 addresses the resignation of Board members and section 14 addresses the proceedings of the Board.

Section 15 is entitled the removal, resignation or death of members. It identifies minimum criteria for Board members need to do to remain in good standing.

Section 16 identifies how members may be reappointed and section 17 addresses the remuneration of members.

Part IV – Staffing of SMEDA

Section 18 gives explicit power for staffing the organization to the Board and section 19 addresses the remuneration of staff, which shall be approved in the annual plan and where necessary the Board.

Part V – Delegation and Self – Regulation

Section 20 entitled delegation of powers affirms that the powers of SMEDA shall be exercised by the Board.

Section 21 entitled Committees confirms that the Board must appoint an audit committee and such other committees as it deems necessary.

Part VI – Financial Provisions

Section 22 indicates that SMEDA shall establish three operating divisions with separate accounts known as:

- a) The Financial Services Division;
- b) The Non Financial Services Division or SME Resource Centre; and
- c) The Specials Programmes Division.

Section 23 entitled capitalization and funding of SMEDA identifies the sources of funding for SMEDA. It confirms an initial capitalization of Twenty-five million dollars over the first five years of SMEDA provided by the government.

Section 24 entitled Borrowings addresses the borrowing power available to SMEDA.

Section 25 entitled Investment of funds identifies the power available to SMEDA to invest excess funds or funds designated to SMEDA but not immediately required.

Section 26 entitled Exemptions confirms that SMEDA will be exempt from real property taxes as well as other taxes and licensing requirements payable by businesses in The Bahamas.

Section 27 entitled accounts and audit lays out how SMEDA will be held accountable for the financial results of its activities.

Section 28 is entitled strategic plan, annual plan and annual report. It puts in place the need to produce a strategic plan every four years, which is complimented by an annual plan. The annual plan must be approved by the Board and then subsequently by the Minister as a pre-requisite to any funding the government will provide. Before proceeding on a new four year

strategic plan, SMEDA must initiate an independent review of how well it fulfilled its objectives under the existing or soon to be completed strategic plan.

Part VII – Miscellaneous

Section 29 entitled members of the Board and members of staff offers protection from liability for those carrying out the mandate of the Bill bona fide.

Section 30 entitled regulations gives the Minister the power in consultation with the Board to make regulations under the Bill.

SCHEDULE

The Schedule includes general provisions relating to members, officers and staff. For example it addresses conflicts of interest, the duty to act in good faith and provisions relating to the audit committee.

HOW RESULTS OF CONSULTATIONS WILL BE USED TO FURTHER THE GOVERNMENT'S SME DEVELOPMENT OBJECTIVES

The Government intends to bring the Bill to Parliament in 2013. Before doing so however, the government wants to ensure that it has consulted widely and given all relevant stakeholders an opportunity to provide their comments and feedback. The government is open to considering further changes to the Bill if the consensus is that such changes will improve the likelihood of the Bill fulfilling the government's goal of fostering a more coordinated and focused SME development programme that will lead to an environment where SME's can flourish in a sustainable way.

In short, the government wants to introduce legislation that engenders the widest possible consensus among public and private sector stakeholders. The government is cognizant of the fact that the Bill as proposed impacts the role and function of existing public sector stakeholders.