

SMALL AND MEDIUM SIZE ENTERPRISES DEVELOPMENT ACT 2011

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SCHEDULE

SMALL AND MEDIUM SIZE ENTERPRISES DEVELOPMENT ACT, 2011

A BILL FOR AN ACT TO ESTABLISH A PUBLIC AUTHORITY CALLED THE UTILITIES REGULATION AND COMPETITION AUTHORITY AND FOR MATTERS CONNECTED THERETO.

Enacted by the Parliament of The Bahamas

PART 1 - PRELIMINARY

1.a.i. Short title and commencement.

- (1) This Act may be cited as the Small and Medium Size Enterprises Development Act, 2011.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

1.a.ii. Interpretation.

In this Act all terms have the meanings given to them by the Interpretation and General Clauses Act unless expressly defined –

“**board**” means the board established under Part III;

“**client**” means any person receiving the benefit of any of the services provided by SMEDA;

“**financial year**” means a calendar year;

“**members**” includes all members of the board (and in respect of any matter where the secretary is entitled to vote, the secretary);

“**public officer**” means any employee of the Government of The Commonwealth of The Bahamas, or any public corporation or quasi government body;

“**the Minister**” means the Minister of Finance;

“**Securities**” shall have the same meaning as defined in section 4 of the Securities Industry Act, 2011

“**SMEDA**” means the Small and Medium Size Enterprises Development Agency established under section 4.

“SME’s” means Small and Medium Size Enterprises, defined from time to time by the board of SMEDA

PART II – ESTABLISHMENT OF SMALL AND MEDIUM SIZE ENTERPRISES DEVELOPMENT AGENCY

1.a.iii. Purpose.

- (1) The purpose of the Small and Medium Size Enterprises Development Agency is 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.
- (2) In carrying out its mandate SMEDA must focus its efforts entirely on meeting the needs of SME’s throughout The Bahamas at all stages of their life cycle.

1.a.iv. Establishment of SMEDA.

- (1) A public body called the Small and Medium Size Enterprises Development Agency (“SMEDA”) is hereby established.
- (2) SMEDA shall be a body corporate having perpetual succession and a common seal and have the power to purchase, lease or otherwise acquire and deal with and hold and dispose of land, investments, securities and any other property of whatsoever kind.
- (3) SMEDA may –
 - (a) sue and be sued in its corporate name ;
 - (b) enter into contracts and acquire, hold and dispose of any property; and
 - (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.
- (4) The Seal of SMEDA shall be kept in the custody of the Secretary of SMEDA or alternately any Officer of SMEDA as the board of SMEDA may approve, and may be affixed to instruments pursuant to a resolution of the board of SMEDA and in the presence of the Chairperson or Deputy Chairperson and one other board member.

- (5) The Seal of SMEDA shall be authenticated by the signature of the Chairperson or Deputy Chairperson and another board member, and the seal shall be officially and judicially noticed.
- (6) All documents, other than those required by law to be under seal, made by, and all decisions of, SMEDA may be signified under the hand of the Chairman, Deputy Chairman or any other persons authorised by the board of SMEDA.

5. Functions and powers of SMEDA.

- (1) In accordance with its purpose, SMEDA shall have such functions and powers as are conferred on it by this Act or under any other law.
- (2) In performance of its functions, SMEDA shall have the following powers -
 - (a) to carry out any undertaking in The Bahamas which appear to SMEDA to be needed for the achievement of its purposes;
 - (b) to assist other bodies or persons, either financially or in any other way, to carry on any undertaking, which appears to SMEDA to be needed for the achievement of its purposes;
 - (c) to carry on any activities incidental to any undertaking (whether or not property of SMEDA) which appear to SMEDA to be necessary for the promotion of the undertaking;
 - (d) to facilitate and encourage Bahamian entrepreneurs to develop any and all forms of commercial undertakings;
 - (e) to facilitate and encourage Bahamians to participate in industries and sectors of the economy deemed to be areas targeted for growth by the Bahamas Government or SMEDA;
 - (f) to issue guarantees to financial institutions or other bodies in respect of SME loans to Bahamian entrepreneurs for projects, which SMEDA determines can be commercially viable;
 - (g) to purchase loans made to SME's by qualified financial institutions as approved by the board from time to time;
 - (h) to provide direct loans to financial institutions for the specific purpose of on-lending to an SME borrower;
 - (i) to require such information from approved clients of SMEDA on an ongoing basis as is necessary in pursuance of its duties under this Act and any other law;
 - (j) SMEDA shall be entitled, by its authorized representatives, to inspect the books, records and accounts of an approved lender with respect to any guaranteed loan authorised by SMEDA, during the business hours of the lender, and where any such books, records or

- accounts are kept outside The Bahamas, to require the lender to furnish to SMEDA for inspection the originals or copies thereof or particulars, therefrom as SMEDA may from time to time require;
- (k) to conduct market investigations and market reviews and publish information and reports relating to its function as an SME agency;
 - (l) to organise courses, seminars, workshops and conferences in furtherance of its purpose;
 - (m) to act as administrator or trustee for any Bahamas Government programmes or business development related grants designed to facilitate and encourage the growth of SME's in The Bahamas;
 - (n) to advise the Minister on matters relating to SME's and the general business climate in The Bahamas; and
 - (o) to undertake any other activity relevant to the smooth functioning of SMEDA under this Act.
- (3) In pursuance of its functions under subsections (1) and (2), SMEDA may undertake such investigations and surveys, analysis and research as may appear to SMEDA to be necessary or appropriate, including (without prejudice to the generality of the foregoing) the collection of data and information on any of the following matters –
- (a) the availability of adequate funding and resources for SME's; and
 - (b) the development of SME's in the Bahamas.
- (4) SMEDA shall exercise its functions through the chief executive officer, who shall –
- (a) act on behalf of the board and provide the management needed for SMEDA;
 - (b) carry out the day to day management of SMEDA;
 - (c) be subject to the supervision of the board;
 - (d) follow directions and recommendations of the board; and
 - (e) be advised by and take into account the views of any committee established by the board.

6. Guidelines.

- (1) All regulatory and other measures by SMEDA shall be proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory.
- (2) SMEDA shall carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it and that is best calculated to promote its purpose.

7. Confidentiality.

- (1) SMEDA shall not be required to publish or otherwise divulge information other than for purposes of a criminal investigation that in the view of SMEDA would violate client confidentiality.
- (2) All board members, officers, employees and agents of SMEDA must comply with any confidentiality provisions under their terms of employment. Any person who contravenes such provisions shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

PART III – THE BOARD**8. Functions of the board.**

The board shall have the functions specified in this Act including the following-

- (1) to appoint the chief executive officer of SMEDA;
- (2) to direct or supervise the management of the business and the affairs of SMEDA;
- (3) to establish the general policies and standard operating procedures of SMEDA;
- (4) to authorize the strategic plan for SMEDA and its annual budget; and
- (5) To establish the Human Resources management policy guidelines, recruit and be responsible for attracting the best available talent to SMEDA in order to fulfil its objectives under this Act.

9. Structure of the board.

- (1) Subject to subsection (3) below, the board shall consist of nine persons being—
 - (i) a chairperson;
 - (ii) eight members, and
 - (iii) the chief executive officer who will be an ex-officio non- voting member of the Board.
- (2) All members of the board will possess the requisite expertise, experience and knowledge in either SME development and entrepreneurship or financial markets or Family Island development.
- (3) No public officer or Member of Parliament shall be eligible for appointment as a member at any time.
- (4) The number of members of the board may be increased by order of the Minister published in the Gazette, acting upon the recommendation of the

board, provided however that the number of members may only be increased if–

- (a) SMEDA’s obligations are extended to include the responsibilities currently carried out by other public sector agencies; and
 - (b) such a change in number is necessary to ensure that all sectors of the economy are sufficiently represented.
- (5) Prior to increasing the number of members under subsection (4), the board shall–
- (a) have regard to whether the members together have sufficient experience in each sector of the economy;
 - (b) consider whether the members together provide for a proper representation of The Bahamas as a whole; and
 - (c) request and consider the views of all relevant stakeholders involved in the development of SME’s in The Bahamas.
- (6) The Secretary to the board shall be entitled to attend meetings of the board although he or she shall not be entitled to vote at the meetings unless otherwise specified in this Act.
- (7) The Secretary to the board shall be the person responsible for ensuring SMEDA’s compliance with its legal obligations.
- (8) The Board of SMEDA shall also be the Board of The Bahamas Development Bank (“BDB”) as defined in Part II of the BDB Act.

10. Appointment of board members.

- (1) Four members shall be appointed outright by the Minister in accordance with sections 9(2) and 10(4) below and five shall be appointed by the Minister in accordance with the nominations process outlined in sections 10(2) and 10(3) below.
- (2) Three members shall be nominated one each by the Bahamas Chamber of Commerce and Employers Confederation, the Grand Bahama Chamber of Commerce and the Abaco Chamber of Commerce.
- (3) Two members shall be nominated (on a rotating basis to be determined by the board), by another Chamber of Commerce or Business Association from one of the Family Islands of the Commonwealth of The Bahamas.
- (4) Before appointing or nominating a person to be a board member respectively, the Minister, and the relevant Chambers of Commerce or Business Association identified in subsections (2) and (3) shall –
 - (a) Further to section 9(2), ensure that the person possesses broad experience, such as experience that would be expected of

- professionally qualified economists, bankers, lawyers, accountants or persons having backgrounds in business.
- (b) unless the member is reappointed in accordance with section 16, the appointment shall be made following an open and transparent process that confirms that any person who is appointed has appropriate experience, knowledge, good standing and reputation, taking into account the criteria in subsection (a).
- (5) Subject to the following provisions of this section, the members shall each hold and vacate office in accordance with the terms of their appointment.
 - (6) Members appointed in accordance with subsection (2) shall serve for an initial term of three years; Members appointed in accordance with subsection (3) shall serve an initial term of two years; and thereafter all further appointments of Members will be for four year terms.
- (7) No person may be appointed as a member if –
 - (a) he has held office as a member for two consecutive terms unless a period of three (3) years has expired since the expiration of the last appointment; or
 - (b) he has held office as a member for an aggregate of four terms.

11. The chairperson.

- (1) The Minister shall appoint the first chairperson under this Act for a term of two years.
- (2) All chairpersons selected subsequent to the Minister's initial appointment in subsection (1) shall thereafter be elected by the board and serve for a term of four (4) years.
- (3) In appointing the first chairperson, the Minister and thereafter the board shall ensure that the chairperson has appropriate expertise, experience and knowledge regarding SME's (in accordance with section 10(4) (a)) and/or commercial banking.
- (4) The chairperson shall be appointed at the expiry of the previous chairperson's term or as soon as reasonably practicable thereafter
- (5) In the absence of a nominated chairperson, the deputy chairperson appointed under section 12 shall act as chairperson.
- (6) No person may be a chairperson if he or she has been the chairperson for an aggregate duration of eight years or more in the preceding ten years.

12. The deputy chairperson.

- (1) The chairperson shall appoint one of the other members as the deputy chairperson.
- (2) The deputy chairperson shall be entitled to carry out the functions of the chairperson, in such cases and manner as may be determined by or in accordance with any directions given by the chairperson and the deputy chairperson shall, in the absence of the chairperson, take on the duties of the chairperson as required.
- (3) A minimum of three members may require the deputy chairperson to call a board meeting if they have requested that the chairperson call such a meeting and the chairperson has not done so within a reasonable period of time.

13. Resignation of members.

- (1) Any member may at any time resign his or her office by notice in writing to –
 - (a) in the case of the chairperson, the board; and
 - (b) in the case of all other members, the chairperson.

14. Proceedings of the board.

- (1) The board shall be convened by the chairperson on a monthly basis and extraordinary meetings may be called. The board may also decide at its discretion that a monthly meeting is not justified.
- (2) The procedure for carrying out functions which are conferred on the board shall be in accordance with such arrangements as may be determined by a majority of the board.
- (3) Unless otherwise specified in this Act, the quorum for the proceedings of the board shall be five members.
- (4) Unless otherwise specified in this Act, voting at a meeting of the board duly convened under subsection (3) shall be by a simple majority of the members present and voting and, if there is an equality of votes, the chairperson shall have a casting vote. No member (including the secretary) shall discuss with or disclose to any person who is not a member, any views or votes of any member.
- (5) No member shall vote at a meeting of the board on any matter regarding his or her appointment or the terms of his or her appointment.
- (6) In determining whether a member is present and voting for the purposes of subsection (4), the member must participate in the meeting but need not be physically present at the meeting.

15. Removal, resignation or death of members.

- (1) If the board is satisfied that any member—
 - (a) is an undischarged bankrupt or has had his estate sequestrated without being discharged; or
 - (b) had such financial or other interest as is likely to affect prejudicially the carrying out by him or her of his or her functions as a member; or
 - (c) is absent from meetings of the board for a period longer than four consecutive meetings without the permission of the board; or
 - (d) has neglected the duties of a member; or
 - (e) has been found to be guilty of material misconduct; or
 - (f) is incapacitated by physical health or mental illness; or
 - (g) becomes an elected Member of Parliament,
 - (h) becomes a public officer or enters into contract of employment with the Government or any of its agencies;
 - (i) the board may by notice in writing remove that member from the board.
- (2) For the purposes of this section, the quorum for proceedings of the board at which matters in subsection (1) are to be discussed shall be seventy five percent of all members. Voting at such meetings shall be by a seventy five percent majority of those members in attendance.
 - (3) In the event of death, resignation or removal of a member, the relevant person or body affected by the resignation as identified in section 10 (1), (2) and (3) may appoint a new non-executive member in accordance with section 10(4).

16. Reappointment of members.

Members may be reappointed for a further term unless

- (a) he advises the Chairman that he does not wish to be reappointed;
- (b) he has been appointed to the board for an aggregate of two consecutive terms;
- (c) he has held office as a member for an aggregate of four terms;
- (d) The Minister or the relevant Chamber of Commerce or Business Association responsible for making board appointments and nominations exercises its discretion otherwise; and
- (e) he could be removed under section 15.

17. Remuneration of members.

SMEDA shall pay members for their services to SMEDA –

- (a) such compensation approved in the annual plan; and
- (b) reasonable expenses which the members properly incur in connection with the exercise of their powers and the discharge of their responsibilities in relation to SMEDA.

PART IV – STAFFING OF SMEDA

18. Appointment of staff.

- (1) The board of SMEDA shall have the power to appoint officers, employees and agents as it considers necessary for the performance of its functions.
- (2) Subject to subsection (3), no officer, employee or agent may enter into an agreement for the provision of his or her services with any company primarily or substantially receiving financial or advisory support from SMEDA.
- (3) Subsection (2) shall not apply where –
 - (a) the officer, employee or agent will enter into the agreement referred to in subsection (2) on behalf or at the direction of SMEDA, or
 - (b) the board of SMEDA has approved the agreement.

19. Remuneration of staff.

- (1) SMEDA shall pay to the staff –
 - (a) such remuneration as approved by the annual plan and where necessary the board and
 - (b) reasonable expenses which the staff properly incur, and in accordance with any established procedures, in connection with the discharge of their responsibilities.
- (2) SMEDA shall also make for the staff, as approved by the annual plan and where necessary the board such provision (if any) for pensions, allowances or gratuities, and payments as the board in its discretion so decides.

PART V– DELEGATION AND SELF-REGULATION

20. Delegation of powers.

- (1) The powers of SMEDA shall be exercised by the board which shall at its discretion delegate certain powers and responsibilities to the chief executive officer.
- (2) The board of SMEDA may recognise or establish, or assist or encourage the establishment of, advisory bodies that have expertise in, or represent persons having interests in, any and all relevant economic sectors of the economy.
- (3) The functions of those advisory bodies shall include one or more of the following –
 - (a) the provision to SMEDA of advice, information and proposals in relation to any one or more of those matters;
 - (b) the representation of the views of any one or more groups of persons.

21. Committees.

- (1) The board of SMEDA shall establish –
 - (a) an audit committee; and
 - (b) such other committees as the board of SMEDA considers from time to time to be appropriate, to support the board or management in its functions.
- (2) For each committee, the board of SMEDA shall –
 - (a) appoint the committee's members, who may be members, officers, employees or agents of SMEDA; and
 - (b) establish the remit of each committee.
- (3) A committee of SMEDA may itself establish sub-committees whose members shall be members, officers, employees, or agents of SMEDA.

PART VI– FINANCIAL PROVISIONS

22. The SMEDA operating divisions.

- (1) SMEDA shall establish three operating divisions with separate accounts to ensure strict accountability within SMEDA and they shall be referred to together in this Act as the “operating accounts”.

- (2) The operating accounts which encompass the three operating divisions of SMEDA shall be known as
- (a) the financial services division will provide guarantees, and other financial instruments (in accordance with its functions and powers stipulated in section 5). The operational details of this programme will be outlined in the regulations accompanying this Act and in the standard operating procedures to be developed by the board;
 - (b) the non financial services division or SME Resource Centre will facilitate:
 - (i) the coordination of training and other business development services to be offered by SMEDA and third parties;
 - (ii) general guidance to entrepreneurs and firms and a one stop shop for information on administrative procedures. The operational details of this division will be outlined in the regulations accompanying this Act and in the standard operating procedures to be developed by the board; and
 - (c) the special programmes division will administer and coordinate projects designed for specific purposes with a particular public policy objective. Amongst other things, the Bahamas Government will execute a memorandum of understanding with SMEDA by which it undertakes to utilise the special programmes division of SMEDA for the administration and execution of all of its business start up, support programmes and any other business development related grants. The operational details of this programme will be outlined in the regulations accompanying this Act and in the standard operating procedures to be developed by the board.
- (3) There shall be credited into the appropriate divisional accounts –
- (a) all contributions by the Bahamas Government and other payments and fees received for financial or non-financial services provided by SMEDA;
 - (b) any other funding obtained by SMEDA from local or international sources;
 - (c) any other money, income, profit or proceeds derived from or representing any money or property which is lawfully vested in SMEDA from time to time.
- (4) Amounts received by SMEDA in respect of the financial services division will be held by SMEDA to meet expenses of the financial services division and discharge its obligations under such services.

- (5) SMEDA may from time to time invest in securities approved by SMEDA such part of the liquid assets of the fund accounts as it may approve.
- (6) It shall be the duty of SMEDA to manage its affairs in accordance with good business practices and to endeavour to make such profit over the long term as the board of SMEDA shall consider reasonable, so far as may be consistent with the duties imposed upon it under the provisions of this Act.

23. Capitalisation and Funding of SMEDA.

- (1) The funds and resources of SMEDA shall consist of –
 - (a) such moneys as may be provided by Parliament, within the annual budget;
 - (b) such moneys as may accrue to SMEDA from its operations;
 - (c) such moneys as may be borrowed by SMEDA pursuant to section 24 of this Act;
 - (d) such other moneys and property as may be in any manner be lawfully paid to or vested in SMEDA whether or not in respect of any matter incidental to its functions.
- (2) SMEDA shall be capitalised by the Bahamas Government in the amount of Twenty-five million dollars (\$25,000,000.00).
- (3) The capital should be comprised of Five million dollars (B\$5,000,000.00) in cash and Twenty million dollars (\$20,000,000.00) in promissory notes to be utilised over the first five years of SMEDA's operations. The promissory notes must be encashed within a 5 year period of their issuance, subject to the approval of the annual plan of SMEDA by the Minister in accordance with section 28(2) of this Act.
- (4) The initial amount of capital required in year one to launch SMEDA in accordance with subsection (2) above shall be determined by a needs analysis of SME's in The Bahamas as detailed in the regulations to accompany this Act.
- (4) The authorised capital of SMEDA shall be divided into ten million shares of the par value of five dollars (\$5.00) and all shares will be initially vested in the Bahamas Government or any public sector agency it so designates.
- (5) The Minister shall in intervals of no less than four years, subscribe for shares in SMEDA either in cash or in promissory notes in accordance with subsection (2), however in the case of promissory notes, the same

shall be fully funded to SMEDA prior to the next share subscription and upon every such occurrence the total shares subscribed for shall cumulatively be considered the paid in capital of SMEDA.

- (6) The Minister from time to time may approve the issuance of shares to other institutions or persons from the authorised capital of SMEDA.
- (7) The board of SMEDA with the concurrence of the Minister may declare dividends on all issued shares and such dividends shall be paid to shareholders out of the profits arising from the operations of SMEDA.
- (8) SMEDA shall conduct its affairs so as to ensure that its revenues which –
 - (a) are derived from the exercise of powers to impose charges or fees under this Act and any other law in respect of the carrying out its functions; and
 - (b) grants received from the Bahamas Government and any other funding agency either local or international, are at least sufficient to enable SMEDA to meet the costs of carrying out its functions over the long term,
- (9) SMEDA shall retain any excess sums collected under subsection (1) for application in the following financial year or years.

24. Borrowings

- (1) Subject to approval by the board, subsection (b) below and those terms and conditions (whether as to repayment, payment of interest or otherwise) as approved by the board –
 - (a) SMEDA may borrow sums required by it for meeting any of its obligations or discharging any of its functions from either domestic or international lenders and may in respect of any such borrowing, issue debentures, bonds or such other instruments in such form as the board may determine with the Bahamas Government retaining the discretion to guarantee any such instruments;
 - (b) Any application for a loan or loans in the aggregate exceeding five million dollars shall be approved by the Minister;
 - (c) SMEDA may apply to the Bahamas Government for loans, subject to the tenor of the facility not being for a period longer than 6 months before the next scheduled capital subscription in accordance with the four year strategic plan for SMEDA; and

- (d) A person lending money to SMEDA shall not be bound to inquire whether the borrowing of money is within the power of SMEDA.
- (2) Subject to subsection (3) and upon SMEDA's request, the Minister may guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, and the payment of interest and other charges on, any authorized borrowings of SMEDA made otherwise than by way of advance under the foregoing section.
- (3) All advances and guarantees provided by the Bahamas Government shall be given in accordance with the Financial Administration and Audit Act.

25. Investment of funds.

- (1) Any monies standing to the credit of SMEDA and not required for any current purpose (in this section referred to as "surplus funds") may from time to time either be carried to any reserve fund established under subsection (2) below or be invested by SMEDA in securities approved by the board; and SMEDA may from time to time, sell any or all of any such securities.
- (2) SMEDA shall establish a reserve fund, for which the management of the said reserve fund, the sums to be carried from time to time to the credit thereof, and the application thereof, shall be as SMEDA may determine provided that no part of the said fund shall be applied otherwise than for the purposes of SMEDA.
- (3) It shall be the duty of SMEDA so to exercise and perform its functions as to secure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue accounts over the long term.
- (4) Any excess of the revenue of SMEDA for any financial year thereof over the sums properly chargeable to its revenue account for that year shall be applied by SMEDA for such purposes as it may determine.
- (5) Monies paid into the operating accounts, which are not immediately required by SMEDA may be –
 - (a) deposited with any banking institution regulated by the Central Bank of The Bahamas; or

- (b) invested in securities issued by the Government of The Bahamas.

26. Exemptions.

SMEDA shall be exempt from the payment of real property taxes and shall not require a business licence under the terms of the Business Licence Act, a banking and trust licence under the Banks and Trusts Companies Regulation Act and a financial and corporate service provider's licence under the Financial and Corporate Service Providers Act. Additionally, SMEDA shall be exempt from the imposition of any tax, duty, rate, levy or other charge in respect of:

the issuing by it of shares, bonds or debentures; and

- 2. its acquisition or sale of securities, real property or personalty;

27. Accounts and Audit.

- (1) SMEDA shall –
 - (a) keep proper accounts and separate accounting reports in relation to the operating accounts; and
 - (b) prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of SMEDA with specific details on the three operating accounts.
- (2) The accounts shall, to the fullest extent possible, allocate SMEDA's revenues, costs and expenses, whether in respect of personnel or otherwise, to each of its three fund accounts namely financial services, non-financial services and special programmes.
- (3) In allocating SMEDA's costs and expenses under subsection (2), SMEDA shall use its reasonable endeavours to –
 - (a) allocate directly incurred costs and expenses –
 - (i) to the appropriate one of the three operating accounts to which they relate; or
 - (ii) where relating to a number of the operating accounts, to assign accordingly between the operating areas in accordance with a proportional formula to be detailed in the regulations accompanying this Act;
 - (b) allocate indirectly incurred costs and expenses on a reasonable and transparent basis.
- (4) The annual accounts of SMEDA in respect of each financial year –
 - (a) shall be prepared in accordance with International Financial Reporting Standards and International Auditing Standards;

- (b) shall be audited within four months of the end of the financial year by an independent auditing firm selected by the audit committee and approved by the board; and
 - (c) shall be published together with the auditors report in the annual report published under section 35.
- (5) Any statutory funds shall be audited in accordance with subsection (4).

28. Strategic Plan, Annual Plan and Annual Report.

- (1) SMEDA shall prepare—
 - (a) Upon the coming into force of this Act a four year strategic plan and subsequently thereafter every four years an updated strategic plan shall be prepared to coincide with any capital raising activities approved by the board in consultation with the Minister;
 - (b) Two months before the end of each financial year, a plan of its proposed objectives for the forthcoming year (the “Annual Plan”); and
 - (c) As soon as possible and in any event no later than four months after the end of each financial year a report of the carrying out of their functions during that financial year (the “Annual Report”).
- (2) The annual plan shall –
 - (a) in the context of the four year strategic plan, set out SMEDA’s strategy for the forthcoming financial year to meet the objectives set by the board in accordance with its mandate under this Act;
 - (b) set out the broad priorities of SMEDA for the two years following the forthcoming year provided that these may require adjustments in light of any developments in the economy and in accordance with the economic policy objectives laid out by the Government;
 - (c) include a series of key performance indicators against which it shall measure its performance during the forthcoming year;
 - (d) set out SMEDA’s budget based upon its target activities for the forthcoming year, including borrowing requirements
- (3) The annual report shall –
 - (a) outline SMEDA’s financial performance against its budget,

- (b) include a detailed report of SMEDA's performance against the key performance indicators published in the previous year's annual plan;
 - (c) set out the key activities carried out during the previous financial year, whether or not envisaged in the previous year's annual plan; and
 - (d) include the annual accounts in accordance with section 33 (4) of this Act.
- (4) SMEDA shall submit its Annual Report to the Minister and within 60 days thereafter publish its annual report.
- (5) SMEDA shall prior to the completion of each subsequent four year strategic plan be required to commission an independent review of its effectiveness in fulfilling the objectives of its current strategic plan.

PART VIII – MISCELLANEOUS

29. Protection of members of the board and members of staff.

- (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the board or member of staff of SMEDA in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.
- (2) Where any member of the board or member of staff of SMEDA is exempt from liability by reason only of the provisions of this section, SMEDA shall be liable to the extent that it would be if the said member of the board or member of staff was a servant or agent of SMEDA.

30. Regulations

The Minister may make regulations under this Act in consultation with the board prescribing anything which may be or is required to be prescribed under this Act to ensure the efficient and effective operation of SMEDA.

SCHEDULE

GENERAL PROVISIONS RELATING TO MEMBERS, OFFICERS AND STAFF

1. Conflicts of interest.

- (1) Throughout the term of his or her employment with SMEDA and for such further period determined in accordance with section 17, any member with a financial interest in, whether directly held or indirectly held through an associate or entity, or be an employee, a consultant or board member of any entity that is a client of SMEDA shall be ineligible for board membership unless such interest is declared to the board and the board in its discretion ratifies the board member's ability to continue serving as a member while continuing to hold the said financial interest.
- (2) Each member shall present a written declaration as to the existence of any financial interest, as described in subsection (1) and shall promptly inform the board of any such interest that arises or is likely to arise during his or her tenure on the board of SMEDA.
- (3) Any other member of staff shall comply with subsection (1) and (2) if so reasonably required by the board.
- (4) If any member or member of staff of SMEDA (to whom subsection (3) applies) knowingly fails to declare a financial interest as described in subsection (1), that person shall (unless ratified by the board), be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand dollars.
- (5) Each member shall declare on his or her appointment, reappointment, annually during his or her term and on request by the board any interest that he or she has, or know his or her associates has, in any entity which is a client of SMEDA. Any other member of staff shall comply with this subsection if so required by the board.

- (6) Any member found to be in conflict as defined in this section shall be required to recuse him or herself from decisions of the board that directly or indirectly impact them or their associate.
- (7) For the purposes of this section 21, “associate” means in relation to any individual –
 - (a) that individual’s spouse or partner or parents or minor dependents;
 - (b) any body corporate of which that individual is a director or where that individual can exercise voting control; and
 - (c) any employee or business partner of that individual.
- (8) For the purposes of this section 21, “voting control” means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a body corporate -
 - (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
 - (b) by an entitlement to exercise such a right to vote-
 - (i) through a nominee; or
 - (ii) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights.

2. Services in related sectors.

- (1) No member, or member of staff may, during his or her term of employment, engage in any employment, consulting or similar service relating to a client of SMEDA unless the same is ratified by the board.
- (2) For twelve months after his or her term of employment, any such person referred to in subsection (1) may only engage in such employment, consulting or similar service with the prior written approval of –
 - (a) in the case of members, the board; or
 - (b) in all other cases, the chief executive officer.
- (3) The board shall have the authority to waive the application of subsections (1) and (2) to any person or category of persons if it would be disproportionate to enforce it.
- (4) Any person who knowingly employs a person in contravention of subsections (1) and (2) shall be guilty of an offence and shall be subject to a fine not exceeding fifty thousand dollars

- (5) A person who engages in employment, consulting or similar service in contravention of subsection (1) and (2) shall be guilty of an offence and shall be subjected to a fine not exceeding twenty thousand dollars

3. Duty to act in good faith.

- (1) The members and members of staff shall act in the best interests of SMEDA applying sound business judgment
- (2) Nothing in this Act shall prevent SMEDA from –
- (a) consulting with any person or organisation on any matter related to SMEDA's functions, duties or powers; or
 - (b) issuing an instrument that has a differential or prejudicial effect on another client of SMEDA.

4. Audit committee.

- (1) The board shall appoint an audit committee chairperson and such chairperson shall -
- (a) at the time of his or her appointment, be a member of the board of SMEDA; and
 - (b) have appropriate accountancy skills and experience and shall be registered as a public accountant in accordance with the Public Accountants Act.
- (2) The audit committee shall –
- (a) comprise three members of the board, the secretary and the audit committee chairperson;
 - (b) meet at least quarterly every year; and
 - (c) review the interim and annual financial statements of SMEDA before submission to the Board
 - (d) report to the board within four months of publication of SMEDA's annual report on–
 - (i) SMEDA's performance against its annual plan; and
 - (ii) the extent to which SMEDA's deployment of its financial resources has delivered value for money.
- (3) The quorum for the proceedings of the audit committee shall be three audit committee members, including the audit committee chairperson. Voting shall be by a majority with the audit committee chairperson having a casting vote.

- (4) The board of SMEDA shall publish, in accordance with section 32, the audit committee's report within two months of it being delivered to the board.

5. Proceedings of the committees.

SMEDA shall make arrangements for the keeping of proper records –

- (a) of its proceedings;
 - (b) of the proceedings of any committee or sub-committee established under section 25; and
 - (c) of the proceedings of any meetings of the board.
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