

ANTIGUA AND BARBUDA



THE SMALL BUSINESS DEVELOPMENT ACT, 2007

No. of 2007

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ANTIGUA AND BARBUDA

THE SMALL BUSINESS DEVELOPMENT ACT, 2007

No. of 2007

AN ACT to provide for the establishment of a regulatory framework that would facilitate the growth of the small business sector in Antigua and Barbuda and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Small Business Development Act, 2007.

2. Interpretation

In this Act,

“approved small business” means a business approved by the Minister pursuant to subsection 4(4);

“Authority” means the Antigua and Barbuda Investment Authority established by the Investment Authority Act, 2006;

“certificate of registration” means a certificate issued by the Registrar under subsection 5(3);

“Credit Guarantee Scheme” means the Credit Guarantee Scheme for small business administered on behalf of the Government by the Development Bank;

“Development Bank” means the Antigua and Barbuda Development Bank established by the Antigua and Barbuda Development Bank Act, Cap 24;

“loan guarantee cover” means the amount of money for which a loan guarantee has been issued under the Credit Guarantee Scheme;

“Minister” means the Minister of Finance;

“prescribed” means prescribed by regulation made under this Act;

“provider of loan guarantees” has the meaning assigned to it by subsection 8(2);

“Registrar” means the Registrar of Intellectual Property and Commerce;

“small business to which this Act applies” means a small business that complies with section 3.

3. Small business

(1) A small business to which this Act applies is an enterprise

- (a) that has no more than 25 employees;
- (b) that is not a wholly- or majority-owned business or subsidiary of a larger company;
- (c) in which capital investment does not exceed \$2,000,000;
- (d) for which total annual sales do not exceed \$1,000,000; and
- (e) that is majority owned
 - (i) by citizens of Antigua and Barbuda, or
 - (ii) subject to subsection (2), by persons who are not citizens of Antigua and Barbuda.

(2) A small business that is majority-owned by persons who are not citizens of Antigua and Barbuda is not a business to which this Act applies unless

- (a) over one-half of the production of the business, calculated by value of the product, is exported;
- (b) there is a minimum investment in the business of \$500,000;
- (c) at least 50% of the employees of the business are citizens of Antigua and Barbuda; and
- (d) at least 40% of goods and services used for the production of the business is procured from companies located in Antigua and Barbuda.

4. Approved small business status

(1) The owner of a small business to which this Act applies that is, or intends to be, engaged in a prescribed activity may apply to the Authority for the business to be recognised as an approved small business.

- (2) An application made under subsection (1) must be in the prescribed form and accompanied by the prescribed documents.
- (3) The Authority shall make a recommendation to the Minister with respect to an application under subsection (1).
- (4) Where a recommendation has been made by the Authority in accordance with this section, the Minister may by order declare the business to be an approved small business for the purposes of this Act if he or she is satisfied that the business
 - (a) is a small business to which this Act applies; and
 - (b) is or will be engaged in a prescribed activity.
- (5) A declaration by the Minister under subsection (4) shall be published in the Gazette.

5. Registration of small businesses

- (1) The owner of a small business that is declared by the Minister to be an approved small business may apply to be registered as a small business under this Act. The owner shall send to the Registrar with a letter of application
 - (a) a copy of the application to the Authority;
 - (b) a copy of the declaration published in the Gazette; and
 - (c) the prescribed fee.
- (2) The Registrar shall keep a Register of Small Businesses in which he or she shall enter, on receipt of the documentation and fee referred to in subsection (1)
 - (a) the corporate name or any trading name or registration number of the business;
 - (b) a number assigned to the approved small business identifying it as such; and
 - (c) any prescribed particulars.
- (3) The Registrar shall issue a certificate of registration in respect of a small business registered under this Act in the prescribed form and the certificate is conclusive proof of the registration of the approved small business named in the certificate.
- (4) Any person may, on payment of the prescribed fee
 - (a) inspect a document filed with the Registrar under this section; or
 - (b) require from the Registrar a certified copy of a document filed pursuant to this Act or of a certificate of registration.

6. Changes to approved small businesses

- (1) Where, after a business is declared to be an approved small business, any change takes place in any of the particulars of the business supplied to the Authority at the time of the application under section 4, the owner of the business shall, within 21 days after the change or a longer period that the Minister approves in writing,
 - (a) send to the Authority and to the Registrar a statement in the prescribed form specifying the nature of the change; and
 - (b) send to the Registrar the prescribed fee.
- (2) The Registrar shall, on receipt of the statement and the prescribed fee, file the statement in the Register of Small Businesses.

7. Concessions

- (1) The owner of an approved small business may apply in the prescribed form to the Authority for one or more of the concessions specified in subsection (4) and shall attach to the application form the certificate of registration of the business.
- (2) The Authority shall make a recommendation to the Minister with respect to the grant of concessions.
- (3) The Minister may grant the concession if he or she is satisfied that the business will be of significant or substantial socio-economic benefit.
- (4) The concessions referred to in subsection (1) are:
 - (a) exemption from or reduction of payment of duty under the Customs Duties Act, 1993, No 27 of 1993, on the importation or purchase of raw materials, building materials, furniture, furnishings, fixtures, fittings, appliances, tools, spare parts, plant, machinery and equipment for use in the construction and operation of the business, the amount of the reduction to be specified by the Minister;
 - (b) exemption from or reduction of payment of duty under the Customs Duties Act, 1993, No 27 of 1993, on the importation or purchase of vehicles for use in the operation of the business, the amount of the reduction to be specified by the Minister;
 - (c) reduction of property tax under the Property Tax Act, 2006, of up to 75% in respect of land and buildings other than residential premises used in the operation of the business, the amount of the reduction to be specified by the Minister;
 - (d) exemption from payment of income tax under section 5 of the Income Tax Act, Cap. 212, on the income of the business for a period not exceeding five years specified by the Minister, after the later of
 - (i) the commencement of the business, and
 - (ii) the issuance of the certificate of registration;

- (e) after the end of the period mentioned in paragraph (d), a reduction of up to 10% of income tax payable under section 5 of the Income Tax Act, Cap. 212 on the income of the business for a period, both the amount of the reduction and the period to be specified by the Minister;
- (f) exemption from or reduction of payment of tax under section 40 of the Income Tax Act, Cap 212 for a period of up to three years from the grant of the concession, both the amount of the reduction and the period to be specified by the Minister;
- (g) exemption from stamp duty payable under the Schedule to the Stamp Act, Cap 410 under the headings “BILL OF EXCHANGE, CHEQUE, or ORDER”. “BOND for securing the repayment of money”, or “MORTGAGE BOND, DEBENTURE, CHARGE CONVENANT” on documents required for loans for the business or security for those loans that are specified by the Minister; and
- (h) reduction of stamp duty payable under the Non-Citizens Land Holdings Regulation Act, Cap. 293, and of stamp duty payable by the purchaser or transferee, and by the vendor or transferor, under the heading “CONVEYANCE or TRANSFER on SALE of any property” in the Schedule to the Stamp Act, Cap. 410 of up to 75% in respect of land and buildings other than residential premises used in the operation of the business, the amount of the reduction to be specified by the Minister.

(5) The owner of an approved small business that has been granted concessions under this section shall permit the Authority to inspect the books, records and accounts of the business during normal business hours.

(6) Concessions granted to the owner of an approved small business under this section terminate if the business ceases to qualify as a small business to which this Act applies.

(7) In this section, “socio-economic benefit” means involving or likely to lead, in Antigua and Barbuda, to

- (a) the generation of new investment or the development of product or processes;
- (b) an improvement in employment or production capacity through market research, technical invention or innovation; or
- (c) the enhancement of export potential or foreign exchange earnings or savings.

8. Loan guarantees

(1) An approved small business may apply for a loan guarantee cover under the Credit Guarantee Scheme through

- (a) a commercial bank operating in Antigua and Barbuda by virtue of a licence issued under the Banking Act, 2005, No 14 of 2005;
- (b) a financial institution other than a bank to which access to the Credit Guarantee Scheme has been granted by the Development Bank; or
- (c) another institution or organisation approved by the Development Bank as being eligible to access the Credit Guarantee Scheme.

(2) The Development Bank may designate in writing an organisation as a provider of loan guarantees where it is satisfied that the organisation is capable of evaluating the various risks associated with loan guarantees and has the financial capabilities to cover those risks.

(3) A designated provider of loan guarantees may, in accordance with a written agreement with the Development Bank, issue loan guarantees under the Credit Guarantee Scheme.

(4) The Development Bank may, with or without notice, revoke the designation of any organisation as a provider of loan guarantees under this Act.

9. Technical assistance

The Minister may, on the recommendation of the Authority, prescribe a government department, government agency, statutory corporation or private sector organisation as a provider of prescribed technical assistance for the purpose of assisting approved small businesses to start, continue or expand their operations.

10. Monitoring, inspection and appraisal

The Authority shall cause each approved small business to be monitored and inspected annually to ensure that compliance by the small business with this Act is maintained and to determine whether it still qualifies as a small business to which this Act applies and for these purposes may

- (a) cause the books, records and accounts to be inspected; and
- (b) request information that he or she considers necessary to enable the inspection to be carried out.

11. Notice of change of status

(1) The owner of a an approved small business shall, within 120 days after the occurrence of an event specified in subsection (2), inform the Authority by notice in writing of that occurrence.

(2) The events mentioned in subsection (1) are:

- (a) cessation of operation as an approved small business;
- (b) cessation of operation as a small business to which this Act applies; and

- (c) cessation of satisfaction of another requirement of this Act or the regulations.

12. Revocation

(1) The Minister may, on the recommendation of the Authority, revoke a declaration made under subsection 4(4) if

- (a) the particulars furnished by the owner of the business at the time of making the application under subsection 4(1) or at the time of registration under section 5 are found either to be false in a material particular or likely or calculated to deceive;
- (b) the approved small business does not submit information to the Minister in accordance with section 6, 10 or 11 or obstructs or prevents an inspection under subsection 7(5) or section 10;
- (c) the approved small business fails to
 - (i) submit income tax returns as required under the Income Tax Act, Cap 212 or the Personal Income Tax Act, 2005, No 1 of 2005; or
 - (ii) pay social security, medical benefits or education levy contributions as required under the Social Security Act, Cap 408, the Medical Benefits Act, Cap 271 or the Board of Education Act, 1994, No 11 of 1994; or
- (d) the approved small business has not started operation within six months of the issuance to it of a certificate of registration.

(2) The Minister shall revoke a declaration made under subsection 4(4) if

- (a) he or she is notified under section 11 that the business has ceased to operate; or
- (b) he or she becomes aware that the business is no longer a small business to which this Act applies.

(3) When the Minister revokes a declaration of approval in respect of a small business under subsection (2), he or she may require the owner of the small business to repay the amount of duty, tax or stamp duty that was granted as a concession under section 7 and that was attributable to the period of time after

- (a) where paragraph (2)(a) applies, the date of the notification that the business was no longer operating; and
- (b) where paragraph (2)(b) applies, the date on which the Minister became aware that the business was no longer a small business to which this Act applies.

(4) When a declaration of approval has been revoked

- (a) the Minister shall publish a notice of the revocation in the Gazette;
- (b) the Minister shall inform the holder of the registration certificate and the Attorney General of the amount to be repaid under subsection (3); and
- (c) the Registrar shall delete the business from the Register with effect from the date of the publication of the notice.

(5) The Attorney General may lodge an application for a caution under section 127 of the Registered Land Act, Cap. 374 in respect of the amount to be repaid under subsection (3) against land the proprietor of which is owner of the small business, and any lease or charge relating to that land.

13. Civil proceedings

All sums due and payable under subsection 12(3) may be recovered as a debt due to the Crown in civil proceedings.

14. Publication of information

(1) The Authority shall publicise the scheme of registration, incentives and concessions established by this Act and for that purpose may send information, including the information set out in the Schedule, to potential registrants under the Act.

(2) Publication of information does not constitute an offer or a legal liability on the part of the Authority or the Government.

15. Regulations

(1) The Minister may make regulations for the purpose of carrying this Act into effect and for the better carrying out of the objects and purposes of this Act and may make regulations prescribing anything that may or must be prescribed under this Act.

(2) Regulations under this Act may

- (a) make different provision in relation to different cases or circumstances;
- (b) define classes of persons to which the regulations apply by reference to any circumstances;
- (c) apply differently in respect of particular persons or cases, or classes of persons or cases; and
- (d) contain transitional, consequential, incidental or supplementary provisions.

(3) Regulations may create offences punishable by a fine not exceeding \$10,000.

16. Offences and punishment

(1) A person commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of twelve months or both, who knowingly makes a false statement in an application or document, whether or not submitted under this Act, for the purpose of

- (a) obtaining approval of a business for the purposes of this Act;
- (b) obtaining the registration of a business in the Register of Small Businesses; or
- (c) obtaining the grant of a concession under section 7.

(2) A person who contravenes or fails to comply with any of the provisions of this Act or a regulation commits an offence and except where another penalty is imposed, is liable on summary conviction to a fine of \$5,000.

(3) Where a body corporate is convicted of an offence under this Act, every director, manager, secretary or other similar officer of the body corporate, and every person who was purporting to act in such a capacity, who participated in the commission of the offence, or because of whose neglect the commission was made possible, shall be guilty of the offence in addition to the body corporate.

(4) For the purposes of subsection (3), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) In any proceedings for an offence under this Act, it is a defence for the person charged to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) For the purposes of subsection (5), a person is taken to have established the defence if he or she proves that he or she took all steps as were reasonably open to him or her to ensure that no offence would be committed and that

- (a) in the case of an offence under subsection (1),
 - (i) he or she acted under instructions given by his or her employer; or
 - (ii) he or she acted in reliance on information supplied by another person without any reason to believe that the information was false or misleading; and
- (b) in the case of an offence under subsection (2), he or she acted under instructions given by his or her employer.

(7) A person charged with an offence under this Act who wishes to rely on the defence provided by subsection (5) and intends to allege that the commission of the offence was due to an act or omission by another person, other than the giving of instructions to the person charged, or to rely on information supplied by another person, must, unless the court orders otherwise, serve notice on the prosecution, no later than seven clear days before the hearing, giving the information that he or she possesses identifying or assisting in the identification of that other person.

17. Consequential amendment – The Customs Duties Act, 1993

The Customs Duties Act, 1993, No 27 of 1993, is amended in section 4 by adding at the end the following subsection:

- “(3) No customs duty shall be charged on the importation of goods specified, and by persons specified, by the Minister of Finance in accordance with section 7 of the Small Business Development Act, 2007.”

18. Consequential amendment – The Income Tax Act, Cap 212

The Income Tax Act, Cap. 212 is amended

- (a) in subsection 8(1) by adding at the end the following paragraph:
 - “(r) income to the extent, and of the persons, specified by the Minister of Finance in accordance with section 7 of the Small Business Development Act, 2007;”
- (b) in section 40 by adding after subsection (6a) the following subsection:
 - “(6b) The Minister of Finance may reduce the tax payable under this section, or exempt a person from payment of tax under this section, for the period that he or she specifies under section 7 of the Small Business Development Act, 2007.”

19. Consequential amendment – The Non-Citizens Land Holding Regulation Act, Cap. 293

The Non-Citizens Land Holding Regulation Act, Cap 293. is amended in section 23 by adding the following subsection after subsection (2):

- “(3) The Minister of Finance may reduce the rate of stamp duty payable under section 23 by the persons and in respect of the land that may be specified by him or her in accordance with section 7 of the Small Business Development Act, 2007.”

20. Consequential amendment – The Property Tax Act, 2000

The Property Tax Act, 2000, No. 15 of 2000, is amended in section 13 by adding the following subsection after subsection (4):

- “(4a) The Minister may reduce the rate of tax to be paid by the persons and in respect of the land that may be specified by him or her in accordance with section 7 of the Small Business Development Act, 2007.”

21. Consequential amendment – The Registered Land Act, Cap 374

The Registered Land Act, Cap 374, is amended in section 127 by adding the following subsection after subsection (1a):

- “(1b) The Attorney General may, on behalf of the Government, lodge a caution with the Registrar in respect of a debt due to the Government under subsection 12(5) of the Small Business Development Act, 2007, forbidding the registration of dispositions in respect of the land, lease or charge concerned and the making of entries affecting the same.”

22. Consequential amendment – The Stamp Act, Cap 410

The Stamp Act, Cap 410, is amended in the Schedule—

- (a) by inserting at the end of the item headed “BILL OF EXCHANGE, CHEQUE, or ORDER”, at the end of the paragraph headed “EXEMPTIONS”, the following:

“(c) documents specified by the Minister of Finance under paragraph 7(4)(g) of the Small Business Development Act, 2006;”

- (b) by inserting after the item headed “BOND for securing the repayment of money” the following:

“EXEMPTIONS

Documents specified by the Minister of Finance under paragraph 7(4)(g) of the Small Business Development Act, 2006.”;

- (c) by inserting after the item headed ‘MORTGAGE BOND, DEBENTURE, CHARGE COVENANT, etc.’ the following:

“EXEMPTIONS

Documents specified by the Minister of Finance under paragraph 7(4)(g) of the Small Business Development Act, 2007.”;

- (d) by inserting after the item “CONVEYANCE OF TRANSFER ON SALE of any property” the following:

“EXEMPTIONS

Documents specified by the Minister of Finance under section 7(3)(f) of the Small Business Development Act, 2007.”

SCHEDULE

Section 14

Publication of Information

This schedule provides additional guidance on the framework for development of small business in Antigua and Barbuda established by the Small Business Development Act, 2007.

The Antigua and Barbuda Investment Authority may, within the scope of its discretion outlined in this Act, give special consideration regarding incentives and concessions to registrants who are

- (i) manufacturers;
- (ii) taxi or bus operators;
- (iii) persons engaged in the farming industry;
- (iv) persons engaged in the fishing industry; and
- (v) cooperatives engaged in any of the above activities.

For the purpose of this Schedule a manufacturer is one who by the application of a processing mechanism transforms raw materials into finished goods for sale. This effort includes all intermediate processes required for the production and integration of product components.

The Government will, as far as is feasible, reserve a portion (expected to be at least 25%) of the procurement of its goods and services for small business registered under the Act.

Passed the House of Representatives on the _____, 2007. Passed the Senate on the _____, 2007.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

The purpose of this Bill is to provide for a regime that would encourage small business in Antigua and Barbuda.

Clause 2 contains the definitions required for the interpretation of the Act for which this is the Bill.

Clause 3 defines the small businesses to which the Act applies for which this is the Bill, as businesses with no more than 25 employees, in which the investment in equipment and net assets is not greater than \$2,000,000, whose total annual sales are not greater than \$1,000,000 and are either owned by citizens of Antigua and Barbuda or have substantial connection with Antigua and Barbuda: for non-citizens the minimum investment in the business must be \$500,000, at least 50% of the employees are citizens of Antigua and Barbuda, at least 40% of the goods and services used for the production is procured from companies located in Antigua and Barbuda and over one-half of the production of the business is exported.

Clause 4 would provide for recognition of small businesses so that the Act applies for which this is the Bill when the small business intends to be engaged in a prescribed activity and provides that a declaration by the Minister of Finance to the effect that the Act for which is the Bill applies is to be published in the Gazette.

Clause 5 would provide for the registration of small businesses to which the Act for which is the Bill applies with the Registrar of Intellectual Property and Commerce and for the inspection by members of the public of the register.

Clause 6 would require small businesses to notify the Registrar and the Minister of Finance of changes in their information.

Clause 7 would provide for concessions for approved small businesses of customs duty on equipment and vehicles used in the business, reduction or elimination of income tax payable, reduction of property taxes on land and buildings used in the operation of the business and exemptions from stamp duty with respect to certain land and on certain loans and security for those loans. Clauses 17 to 22 would provide consequential amendments to the Acts required to permit the concessions.

Clause 8 would provide for the possibility of approved small businesses applying for loan guarantees.

Clause 9 would provide for the possibility of technical assistance from government or private sector organisations for approved small businesses to aid them in starting, continuing or expanding their operations.

Clause 10 would provide for the monitoring and inspection of small businesses to ensure compliance with the Act for which this is the Bill.

Clause 11 would provide for notification to the Antigua and Barbuda Investment Authority if the small business stops operations.

Clause 12 would provide for the revocation of declarations of approval by the Minister if the small business does not comply with requirements of the Act for which this is the Bill, or for failure to operate or to operate as a small business.

Clause 13 would provide that sums due under the Act for which this is the Bill are recoverable by Court proceedings.

Clause 14 would provide for publication of the scheme for small businesses created under the Act for which this is the Bill.

Clause 15 would provide for the making of regulations for carrying out the Act for which this is the Bill.

Clause 16 would provide for offences and penalties for contravention of the Act for which this is the Bill.

Justin L. Simon Q.C.
Hon. Attorney General and
Minister of Legal Affairs