

THE SKILLS DEVELOPMENT AUTHORITY BILL
(No. XXVII of 2019)

Explanatory Memorandum

The main object of this Bill is to provide for the establishment of the Skills Development Authority which shall act as an independent regulator, and shall ensure quality assurance and confer awarding powers to training institutions in the TVET sector, and to provide for matters related thereto.

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A BILL

To provide for the establishment of the Skills Development Authority

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Skills Development Authority Act 2019.

2. Interpretation

In this Act –

“Assembly” means the National Assembly;

“Authority” means the Skills Development Authority established under section 3;

“Board” means the Skills Development Authority Board referred to in section 7;

“Chairperson” means the Chairperson of the Board appointed under section 7;

“Director” means the Director of the Authority appointed under section 11;

“employee” –

(a) means a person employed under section 13; and

(b) includes the Director;

“inspector” means a person designated by the Authority to carry out inspections, examinations and investigations as provided in section 17;

“institution” means any local, regional or international institution;

“member” –

(a) means a member of the Board; and

(b) includes the Chairperson;

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

“Ministry” means the Ministry responsible for the subject of human resources;

“National Qualifications Framework” has the meaning assigned to it in the Mauritius Qualifications Authority Act;

“skills” means the acquired and practised ability to carry out a particular task;

“Skills Development Fund” means the Skills Development Fund set up under section 21;

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

“TVET” means Technical and Vocational Education and Training.

PART II – SKILLS DEVELOPMENT AUTHORITY

3. Establishment of Authority

(1) There is established for the purposes of this Act the Skills Development Authority.

(2) The Authority shall be a body corporate.

(3) The principal place of business of the Authority shall be at such place as the Board may determine.

4. Objects of Authority

The Authority shall –

- (a) regulate TVET sector;
- (b) ensure quality assurance in TVET sector;
- (c) confer awarding powers to training institutions;
- (d) develop a skills framework; and
- (e) maintain the Skills Development Fund.

5. Functions of Authority

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

- (a) make necessary provision for promoting and enhancing quality assurance in TVET sector;
- (b) establish the criteria required for training institutions to be given awarding powers;
- (c) develop quality assurance for the skills framework and ensure its implementation;
- (d) promote access to TVET;
- (e) manage the Skills Development Fund;
- (f) set up and maintain a register of skills and skilled persons;
- (g) facilitate and undertake research for the development of TVET;
- (h) identify and facilitate funding for implementation of skills framework in line with strategic national initiatives;
- (i) foster international collaboration in skills development;
- (j) ensure judicious and optimum utilisation of resources;
- (k) provide meaningful and accurate information to the public with regard to TVET;
- (l) promote public awareness and confidence in skills development;
- (m) advise the Minister on matters pertaining to quality assurance, regulations and funding in relation to the skills development; and
- (n) perform other such functions as are necessary to further the objects of the Authority.

6. Powers of Authority

The Authority shall have such powers as may be necessary to discharge its functions most effectively and may, in particular –

- (a) acquire, hold and dispose of its assets;

- (b) receive grants and donations;
- (c) fix and levy fees and charges;
- (d) employ its funds to defray expenses as per its functions;
- (e) enter, in such manner as it thinks fit, into agreements with any other institution, whether technical, vocational or otherwise.

PART III – MANAGEMENT

7. The Board

(1) The Authority shall be administered and managed by a Board to be known as the Skills Development Authority Board.

(2) The Board shall –

- (a) establish the policy of the Authority;
- (b) approve the work plan of the Authority;
- (c) manage the budget of the Authority;
- (d) ensure that adequate human and financial resources are provided to the Authority for the proper discharge of its functions; and
- (e) take necessary measures and decisions for the implementation of this Act.

(3) The Board shall consist of –

- (a) a Chairperson, to be appointed by the Prime Minister;
- (b) a Vice-chairperson from the private sector, to be appointed by the Minister after consultation with Business Mauritius;
- (c) the supervising officer of the Ministry or his representative;
- (d) the Financial Secretary or his representative;
- (e) a representative of the Attorney-General's Office;
- (f) the Permanent Secretary of the Ministry responsible for the subject of employment or his representative;

(g) 3 other persons having wide experience in TVET, business and industry, to be appointed by the Minister.

(4) The members of the Board shall hold office for a period of 3 years and shall be eligible for reappointment.

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

(6) Where a vacancy occurs in the membership of the Board, the vacancy shall be filled by a person appointed by the Minister, who shall hold office for the remainder of the term of office of that member.

(7) A member, other than an ex officio member, shall cease to hold office.

(a) on the completion of his term of office;

(b) on his resignation;

(c) where, without sufficient cause, he fails to attend 3 consecutive meetings of the Board.

(8) No member shall engage in any activity which may undermine the integrity of the Authority.

(9) The Board shall manage and utilise all the assets and funds vested in the Authority in such manner and for such purposes as, in its opinion, will best promote the objects of the Authority.

8. Meetings of Board

(1) The Board shall meet as often as may be necessary but at least once every 2 months at such time and place as the Chairperson may determine.

(2) At any meeting of the Board, 6 members shall constitute a quorum.

(3) Where the Chairperson is absent from a meeting of the Board, the members present shall elect a member to chair the meeting.

(4) At any meeting of the Board, every member shall have one vote on a matter in issue and, in the event of an equality of votes, the Chairperson shall have a casting vote.

(5) The decisions of the Board shall be taken by a simple majority of the members present at the voting in the meeting.

(6) (a) The Director shall designate an employee to act as Secretary to the Board.

(b) The Secretary shall –

- (i) give notice of every meeting of the Board to the members;
- (ii) prepare and attend every meeting of the Board;
- (iii) keep minutes of proceedings of any meeting of the Board;
- (iv) have no right to vote on any matter before the Board; and
- (v) perform such other duties as may be conferred upon him by the Board.

(7) A special meeting of the Board shall be convened by the Secretary within 7 days of the receipt by him of a request in writing signed by not less than 4 members and specifying the purpose for which the meeting is to be convened.

(8) (a) The Board may co-opt such other person as may be of assistance in relation to any matter before it.

(b) Any person co-opted under paragraph (a) shall –

- (i) have no right to vote on any matter before the Board; and
- (ii) be paid such fees and allowances as the Minister may determine.

(9) The Secretary shall cause minutes of proceedings of each meeting of the Board to be recorded and preserved.

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

9. Disclosure of interest

Where a member has an interest, direct or indirect, in a matter being considered or about to be considered by the Board, he shall disclose to the Board the nature of his interest, and shall not take part in any deliberation or take part in any decision of the Board with respect to that matter.

10. Committees

(1) (a) The Board may set up such committees as it may determine to assist it in the performance of its functions.

(b) A committee referred to in paragraph (a) shall consist of not more than 3 members.

(2) The Board shall determine the composition, functions and procedure for the convening and holding of meetings of any committee.

(3) The Board –

(a) may co-opt members who are not employees of the Authority to the committees;

(b) may delegate any of its powers to a committee but shall not be divested of any power so delegated and may at any time withdraw the delegation;

(c) may approve, amend or set aside the recommendation of a committee.

(4) Every committee established under this section shall regulate its meetings and proceedings in such manner as it thinks fit.

(5) The members or persons referred to in subsection (1)(b) shall be paid such fees or allowances as the Board may determine.

(6) A committee shall submit its report within such time as may be fixed by the Board and the report shall contain its observations, comments and recommendations on any matter referred to it by the Board.

(7) Any committee set up under subsection (1) shall be chaired by such person as the Board may determine.

11. Director

(1) The Board shall appoint a Director on such terms and conditions as it may determine, subject to the approval of the Minister.

(2) The Director shall –

(a) be the head of the Authority and shall be responsible for the execution of the policy of the Board and its decisions, and for the control and management of its day to day business;

- (b) act in accordance with such directions as he may receive from the Board; and
- (c) submit reports, work plans and budgets of the Authority, as the Board may determine.

(3) The Director shall, unless otherwise directed by the Board, attend every meeting of the Board and may take part in its deliberations but shall have no right to vote.

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

12. Delegation

(1) The Board may, subject to such instructions as it may give, delegate to the Director such of its powers and functions as may be necessary for the effective management of the day to day business and activities of the Authority, other than the power to –

- (a) sell or exchange any property or make any donation;
- (b) borrow money; or
- (c) enter into any transaction in respect of capital expenditure which exceeds the prescribed amount of the Authority under the Public Procurement Act.

(2) The Director may, with the approval of the Board, delegate any of his functions or powers to such employees as he may determine for the effective management of the day to day business and activities of the Authority.

13. Appointment of employees

(1) The Authority may, on such terms and conditions as it may determine, appoint such employees as it considers necessary for the proper discharge of its functions under this Act.

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

14. Conditions of service of employees

The Board may make provision to govern the conditions of service of its employees and, in particular, deal with –

- (a) the appointment, retirement, dismissal, discipline, pay and leave of, and the security to be given to, employees;
- (b) appeals by employees against dismissal and any other disciplinary measures; and
- (c) the establishment and maintenance of provident and pension fund schemes and any other scheme, and the contributions payable to and the benefits recoverable from these schemes.

15. Protection from liability

(1) No liability, civil or criminal, shall be incurred by the Authority or any member or any employee in respect of any Act done or omitted in good faith in the execution of its or his functions or exercise of its or his powers under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act, and for the purposes of that Act, every employee shall be deemed to be a public officer or a person lawfully engaged, authorised or employed in the performance of a public duty.

16. Powers of Minister

(1) The Minister may give such written directions of a general character to the Board, not inconsistent with this Act, as he considers necessary in respect of its activities and the Board shall comply with those directions.

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

PART IV – INSPECTION AND ENFORCEMENT

17. Inspection, examination and investigation

- (1) The Authority –
 - (a) shall establish an inspectorate division and an inspection programme to carry out both announced and unannounced inspection to monitor and ensure compliance with this Act; and
 - (b) may designate any person possessing the required qualifications and shall issue him with appropriate credentials to carry out an inspection.

(2) An inspector shall, with a view to verify compliance with this Act, have unrestricted access, at any time, to any premises in order to make such inspection, examination and investigation as may be necessary.

(3) An inspector may, in the discharge of his functions and in the exercise of his powers under this Act –

- (a) be accompanied by a police officer or any other person designated by the Authority;
- (b) seek and secure from any person any relevant information and documents which are required for the purpose of inspection, examination and investigation; and
- (c) question any person and take a written statement from that person which, in his view, may be pertinent to the inspection, examination and investigation being carried out.

(4) Where, in the course of an investigation, a person refuses to give any relevant information or to communicate any document on the ground of confidentiality, the Director may apply to a Judge in Chambers for an order directing that person to disclose the information required, or communicate any document required, for the purposes of the investigation.

(5) The Judge shall make an order under subsection (4) if he is satisfied that the information or document to be disclosed or communicated, as the case may be, is bona fide required for the purpose of the investigation.

(6) The Authority shall keep records of all findings and results of any inspection, examination and investigation.

18. Enforcement

(1) The Authority shall establish an enforcement policy to ensure that appropriate and consistent action is taken in case of non-compliance with this Act and that the enforcement action is commensurate with the seriousness of the non-compliance.

(2) When a person is found to be in non-compliance with this Act, the Authority shall take the appropriate enforcement action in accordance with the enforcement policy referred to in subsection (1).

(3) Any person who is subject to an enforcement action shall take necessary measures to remedy the non-compliance and shall take necessary measures to prevent its recurrence.

19. Power to summon

(1) The Director may, by written notice, summon any person to appear before him so as to give information or produce any document relevant to any inspection, examination and investigation.

(2) (a) The written notice specified in subsection (1) shall be issued to the person concerned by causing it to be –

- (i) handed over to him in person; or
- (ii) left at, or sent by registered post to, his registered address or his usual or last known place of business or residence.

(b) Any person to whom a written notice is issued in accordance with paragraph (a) who –

- (i) refuses to accept delivery of the written notice; or
- (ii) fails to take delivery of the written notice after being informed that it is at the post office,

shall be deemed to have been duly served with the written notice on the day on which he refuses to accept delivery.

PART V – APPEAL

20. Appeal

(1) Any person aggrieved by any decision of the Authority under this Act may, within 14 days of the date of the decision, appeal to the Minister by lodging with the Director a written notice of appeal together with the grounds of appeal.

(2) The person aggrieved shall, for the hearing of the appeal, pay such non-refundable fee as may be prescribed.

(3) The Minister may, on receipt of a notice under subsection (1), set up an ad hoc Appeal Committee to advise him on the subject matter of the appeal.

(4) (a) The Appeal Committee shall consist of –

- (i) a Chairperson, who shall be a barrister with at least 5 years' experience, to be appointed by the Minister; and

(ii) 2 other members, with at least 5 years' experience in the field of education, to be appointed by the Minister.

(b) No person shall be eligible to be appointed on the Appeal Committee where he –

(i) is regulated under this Act; or

(ii) has a direct or an indirect pecuniary or other interest in a matter being considered or about to be considered by the Appeal Committee.

(c) There shall be a secretary to the Appeal Committee who shall be a public officer designated by the supervising officer.

(5) The Appeal Committee shall –

(a) regulate its own procedure;

(b) determine any appeal; and

(c) advise the Minister whether to affirm, vary or reverse the decision of the Authority and shall state its reasons for doing so.

(6) (a) Where a member of the Appeal Committee has any interest, direct or indirect, in a matter which is the subject of an appeal before the Appeal Committee, he shall disclose the interest to the Appeal Committee and shall not take part in the proceedings.

(b) The Minister shall appoint, in relation to the subject matter under paragraph (a), another person to replace the member who disclosed his interest.

(7) A disclosure under subsection (6)(a) shall be recorded in the minutes of the meeting of the Appeal Committee.

(8) The members of the Appeal Committee and its secretary shall be paid such fees and allowances as the Minister may determine.

(9) Any appeal made under subsection (1) shall not have the effect of suspending the decision made by the Authority.

(10) The report of the Appeal Committee shall be submitted to the Minister within a period of 30 days as from the date of the setting up of the Appeal Committee.

PART VI – SKILLS DEVELOPMENT FUND

21. Skills Development Fund

- (1) The Authority shall set up a Skills Development Fund –
 - (a) into which all monies received from any source by the Authority shall be paid; and
 - (b) out of which all payments and grants required to be made by Authority shall be effected.
- (2) There shall be paid into the Fund –
 - (a) all money appropriated by the Assembly for the realisation of the objects of the Authority;
 - (b) all monies collected, dues or fees levied by the Authority;
 - (c) grants and donations;
 - (d) contributions or royalties received by the Authority;
 - (e) interest on investments; and
 - (f) any monies accruing to the Skills Development Fund.

PART VII – MISCELLANEOUS

22. Legal proceedings

- (1) The Authority shall act, sue and be sued in its name.
- (2) Service of process by or on the Authority shall be sufficient if made on behalf of or on the Director.

23. Execution of documents

Every deed, Act or document relating to the Authority shall be signed by the Chairperson and Director or any other member of the staff of the Authority designated by the Board on behalf of the Authority.

24. Annual report

- (1) The Authority shall, not later than 6 months after the close of every financial year, cause to be published a report on the activities of the Authority, including its audited accounts, in respect of that financial year.

(2) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June of the following year shall be deemed to be the first financial year of the Authority.

(3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply to the first financial year of the Authority.

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

(5) The Authority shall forward a copy of the report referred to in subsection (1) to the Minister.

(6) The Authority shall furnish to the Minister such information with respect to its activities, in such manner and at such time, as he may specify.

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

25. Donations and exemptions

(1) Article 910 of the Code Civil Mauricien shall not apply to the Authority.

(2) Notwithstanding any other enactment, the Authority shall be exempt from the payment of any charge, fee, rate or tax.

26. Transfer of property and borrowing

The Authority shall not, except with the approval of the Minister –

- (a) sell or exchange any property or make any donation; and
- (b) borrow any money, any borrowing shall be for the purposes of this Act.

27. Confidentiality

(1) No employee shall, during or after the tenure of his office, use or disclose any matter which came to his knowledge in the discharge of his functions, except –

- (a) for the purposes of this Act; or
- (b) where he is so required by a Court or under any enactment.

(2) Any person who, without lawful excuse, contravenes subsection (1) 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 2 years.

28. Offences

Any person who 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 2 years.

29. Regulations

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

(2) Regulations made under subsection (1) may provide –

- (a) for the procedure, criteria and conditions for quality assurance in TVET sector;
- (b) for the conferment of awarding powers to training institutions;
- (c) for setting up and maintaining of a skills framework for all occupations and for a skills register; and
- (d) for the levying of fees and taking of charges.

(3) Any person who contravenes any regulations made under 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 2 years.

30. Consequential amendments

(1) The Public Procurement Act is amended, in the First Schedule, in Part III, by adding the following new item –

Skills Development Authority

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

Skills Development Authority

31. Transitional provision

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

32. 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 the different sections of this Act.
