

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE SMALL ENTERPRISES DEVELOPMENT ACT

CHAPTER 425 OF THE LAWS OF ZAMBIA

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THE SMALL ENTERPRISES DEVELOPMENT ACT

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CHAPTER 425

SMALL ENTERPRISES DEVELOPMENT

*Act No. 29 of 1996
Statutory Instrument
26 of 1997*

An Act to provide, for the establishment of the Small Enterprise Development Board and define its functions; establish the Micro and Small Enterprise Development Fund; provide for the development of the micro and small enterprises; provide for the registration of micro and small enterprises; repeal and replace the Small Industries Development Act, 1981; and provide for matters connected with or incidental to the foregoing.

[12th December, 1996

PART I

PRELIMINARY

1. This Act may be cited as the Small Enterprise Development Act, and shall come into operation on such date as the Minister may, by statutory instrument, appoint. Short title and commencement

2. In this Act, unless the context otherwise requires- Interpretation

"appointed date" means such date as the Minister may appoint under section *one*;

"Board" means the Board established under section *three*;

"committee" means a committee established under paragraph *four* of the Schedule;

"Chairperson" means the person elected Chairperson under section *four*;

"commercial estate" means any building or premises designated as a commercial estate under section *nineteen*;

"common facility" means any facility which is jointly used by a group of micro and small entrepreneurs;

"Director" means the person appointed under paragraph *seven* of the Schedule;

"enterprise" means an undertaking engaged in the manufacture or provisions of services, or any undertaking carrying on business in the field of manufacturing, construction and trading services but does not include mining or recovery of minerals; and "entrepreneur" shall be construed accordingly;

"financial institution" shall have the meaning assigned to it in Banking and Financial Services Act; Cap. 387

"Fund" means the Micro and Small Enterprise Development Fund established under section *twenty-six*;

"industrial estate" means any premises or building designated as an industrial estate under section *nineteen*;

"manufacturing" means the transforming, on a commercial scale, of raw materials or semi-processed materials into finished or semi-finished products, or the assembling of inputs into finished or semi-finished products, but does not include mining or recovery of minerals;

"member" means a member of the Board appointed under section *four*;

"micro enterprise" means any business enterprise-

- (a) whose amount of total investment, excluding land and buildings, does not exceed ten million Kwacha;
- (b) whose annual turnover does not exceed twenty million Kwacha; and

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(c) employing up to ten persons:

Provided that the values under paragraphs (a) and (b) may be varied by the Minister, by statutory instrument;

"Organisation" means the Small Industries Development Organisation established under the repealed Act; Act No. 18 of 1981

"promotional Agency" means any local or international organisation or institution which is engaged in promoting the development of micro or small enterprises;

"repealed Act" means the Small Industries Development Act, 1981; Act No. 18 of 1981

"rural area" shall have the meaning assigned to it in the Local Government Act; Cap. 281

"Secretary" means the person appointed Secretary under paragraph *eight* of the Schedule;

"service" means the provision, by a micro or small enterprise, on a commercial basis, of any activity or utility which satisfies the public needs;

"small enterprise" means any business enterprise-

(a) whose amount of total investment, excluding land and building, does not exceed-

(i) in the case of manufacturing and processing enterprises, fifty million Kwacha in plant and machinery; and

(ii) in the case of trading and service providing enterprises, ten million Kwacha;

(b) whose annual turnover does not exceed eighty million kwacha; and

(c) employing up to thirty persons;

Provided that the values under paragraphs (a) and (b) may be varied by the Minister, by statutory instrument;

"Vice-Chairperson" means the person elected Vice-Chairperson under section *four*.

PART II

THE SMALL ENTERPRISE DEVELOPMENT BOARD

3. (1) There is hereby established the Small Enterprise Development Board which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such things as a body corporate may by law do or perform.

Establishment of Small
Enterprise
Development Board

(2) The provisions of the Schedule shall apply in respect of the Board and its members.

4. (1) The Board shall consist of the following members:

Composition of Board

(a) a representative from each of the ministries responsible for-

- (i) finance;
- (ii) commerce, trade and industry;
- (iii) youth, sport and child development;
- (iv) local government and housing;
- (v) community development and social services; and
- (vi) science, technology and vocational training;

(b) eight persons, one each from-

- (i) the Small Scale Industries Association of Zambia;
- (ii) the Zambia National Farmers Union;
- (iii) the Trade Unions;
- (iv) the Bankers Association of Zambia;

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- (v) the Zambia Chambers of Commerce and Industry;
 - (vi) the National Economics Council of Zambia;
 - (vii) an agency promoting women in business; and
 - (viii) the Environmental Council of Zambia; and
- (c) two reputable private businessmen appointed by the Minister.

(2) The members referred to in paragraphs (a) and (b) of subsection (1) shall be nominated by their respective institutions and shall be appointed by the Minister.

(3) The Chairperson and Vice-Chairperson shall be elected by the members from amongst themselves:

Provided that the members appointed under paragraph (a) of sub-section (1) shall not be elected as Chairperson or Vice-Chairperson.

5. (1) The functions of the Board shall be to promote and facilitate the development of micro and small enterprises and to create a conducive environment for the attainment of that purpose.

Functions of Board

(2) Without prejudice to the generality of subsection (1), the functions of the Board shall be to-

- (a) formulate, co-ordinate and implement policies and programmes for promoting and developing micro and small enterprises;
- (b) monitor the efficiency and performance of micro and small enterprises having regard to the purpose for which they are established;
- (c) establish a data base of facilities and sources of finance, technology, raw materials, machinery, equipment and supplies with a view to promoting accessibility to micro and small enterprises registered under this Act;
- (d) provide marketing support services to micro and small enterprises;
- (e) register, collect, research and disseminate information relating to micro and small enterprises;

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- (f) register, monitor and co-ordinate activities and programmes of promotional agencies engaged in micro and small enterprise development;
- (g) assist in the development and upgrading of appropriate productive technologies for micro and small enterprises;
- (h) Locate and develop industrial estates and common facilities for use by micro and small enterprises;
- (i) establish training and processing centres to provide machinery and equipment to micro and small enterprises on a lease-out basis;
- (j) develop Zambian entrepreneurship;
- (k) arrange for independent training, management and consulting services to small entrepreneurs at such fee as the Board may determine;
- (l) provide the financial services specified under section *eighteen*; and
- (m) make recommendations to the Minister on any legislative reform which may be required for the development of micro and small enterprises.

6. (1) A member of the Board or staff of the Board or any person invited to attend a meeting of the Board or any committee of the Board shall not, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of that person's duties, the contents of any document, communication or information, whatsoever, which relates to, and which has come to that person's knowledge in the course of that person's duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment not exceeding three years, or to both.

(3) If any person having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, that person shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding six months, or to both.

PART III

REGISTRATION OF MICRO AND SMALL ENTERPRISES

7. (1) Any person undertaking a business enterprise may apply for a certificate under this Part. Registration of micro and small enterprises

(2) An application for a certificate shall be made to the Director in the prescribed form and shall be accompanied by a prescribed fee determined by the Board.

(3) The Director shall, upon receipt of an application for a certificate, submit the application to the Board for its consideration.

8. (1) The Board shall, within four weeks of receipt of an application for a certificate, register an enterprise as a micro or small enterprise and issue a certificate, with any incentives, under this Act, if- Issue of certificate

(a) the application is in accordance with the provisions of this Act; and

(b) the activity or business carried out by the enterprise does not contravene any law or regulation in force.

(2) The decision of the Board in respect of an application for a certificate shall be communicated to the applicant, in writing, within fourteen days of such decision.

9. (1) An applicant for a certificate who is aggrieved with the decision of the Board with respect to the application may appeal to the Minister within thirty days of such decision. Appeal against decision of the Board or Minister

(2) An applicant who is aggrieved with the decision of the Minister may appeal to the High Court within thirty days of the Minister's decision.

10. A certificate issued under section *eight* shall- Conditions of certificate

(a) contain terms and conditions of the certificate and any incentives granted; and

(b) have an unlimited period of validity.

11. (1) The holder of a certificate may at any time during the validity of the certificate, apply to the Board for variation of the terms and conditions of the certificate, the incentives granted or any matter relating to the certificate. Variation of certificate

(2) The Board shall consider the application referred to in subsection (1) and may grant or reject such application and shall give reasons where it rejects the application.

12. (1) Where the holder of a certificate decides not to continue with any project to which the certificate relates, the holder shall notify the Board in writing and shall agree with the Board on the terms and conditions of the surrender of the certificate with particular reference to anything done or any benefit obtained under the certificate. Surrender of certificate

(2) Where a certificate is surrendered under sub-section (1), the certificate shall lapse, and subject to section *fifteen*, be cancelled and the holder of the certificate shall cease to be entitled to any benefits obtainable under the certificate.

13. (1) A certificate shall not be transferred to a third party without the prior approval of the Board. Transfer of certificate

(2) Every application for approval to transfer a certificate shall be made to the Board and the Board may, within thirty days of the application, approve the application in accordance with this Act.

14. The Board may amend a certificate where- Amendment of certificate

- (a) some other person has succeeded to the interest in the business enterprise belonging to the holder of the certificate, by substituting for the name of the holder the name of the successor; or
- (b) the name of the business has changed, by substituting the name so changed.

15. (1) Subject to the other provisions of this Act, the Board may suspend or cancel a certificate if the holder- Suspension or cancellation of certificate

- (a) obtained the certificate by fraud or deliberate or negligent submission of false information or statements; or
- (b) contravenes this Act or any terms and conditions of the certificate.

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(2) The Board shall, before suspending or cancelling a certificate in accordance with sub-section (1), give its written notice to the holder thereof of its intention to suspend or cancel the certificate and shall give the reasons for the intended suspension or cancellation and require the holder to show cause, within a period of not more than thirty days, why the certificate should not be suspended or cancelled.

(3) The Board shall not suspend or cancel a certificate under this section if the holder takes remedial measures to the satisfaction of the Board within the period of thirty days referred to in subsection (2).

(4) If a holder who is notified under sub-section (2) fails to show cause to the satisfaction of the Board, or does not take any remedial measures to the satisfaction of the Board, within the time specified in that sub-section, the Board may suspend or cancel the certificate.

(5) Where a certificate is suspended, the holder of the certificate shall cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension.

(6) Where a certificate is cancelled, the holder of the certificate shall cease to be entitled to the rights and benefits conferred under this Act with effect from the date of such cancellation and shall return the certificate to the Director.

(7) Any person who is aggrieved with any decision of the Board under this section, may appeal to the Minister, subject to further appeal to the High Court.

16. Where the registration of any micro or small enterprise has been cancelled, suspended or incentive withdrawn, the micro or small enterprise affected may apply for re-registration.

Re-registration

17. (1) The Director shall keep and maintain a register of all micro and small enterprises registered under this Act, in which the Director shall enter the names and other details relating to the enterprises.

Maintenance of Register

(2) The register referred to in sub-section (1), shall be kept at such places as the Board may determine, and shall be open to inspection by the public at such times and on such conditions including the payment of fees for inspection, as may be determined by the Board.

PART IV

FINANCIAL SERVICES AND INCENTIVES

18. The Board shall, in order to facilitate the flow of financial resources to the small scale sector- Financial services

- (a) on its own or in cooperation with other promotional agencies, identify small entrepreneurs, institutions and projects which require financial assistance;
- (b) provide information on sources of finance and promote local investment for micro and small enterprises;
- (c) assist micro and small enterprises with the preparation of business plans, project proposals and other loan application documents with a view to promoting accessibility to financial resources;
- (d) in conjunction with any financial institution designated by the Minister for the purpose of financing micro and small enterprises, monitor, establish and design standards for loan administration, effective use of loan funds and repayment mechanisms by small entrepreneurs so as to curb misuse of financial resources;
- (e) either on its own or with other financial institutions, establish venture capital funds to promote investments registered under this Act; and
- (f) secure incentives through relevant authorities for any financial institution which undertakes to finance or develop an enterprise registered under this Act.

19. (1) The Board shall, in consultation with relevant Government authorities, and on such terms and conditions as may be agreed upon with the authorities, assist entrepreneurs registered under this Act with the provision of buildings or premises on which the entrepreneurs may undertake specified business activities. Industrial and commercial estate

(2) The Board may, for the purpose specified in subsection (1), designate-

- (a) industrial estates for the location of micro and small entrepreneurs engaged in manufacturing businesses or activities; and
- (b) commercial estates for the location of micro and small entrepreneurs engaged in the trading and sale of goods and services.

20. (1) An enterprise registered under this Act shall be entitled to the following incentives: Incentives to micro and small enterprises

- (a) exemption from payment of tax on income for-

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- (i) the first three years of operations for an enterprise operating in an urban area; and
- (ii) The first five years of operations for an enterprise in a rural area;
- (b) operating of a manufacturing enterprise for the first five years without a manufacturing licence required for such an enterprise under any law;
- (c) exemption from the payment of licensing fees required for such an enterprise under any law; and
- (d) exemption from the payment of rates on factory premises for the five years.

(2) The Trades Licensing Act shall not apply to an enterprise registered under this Act. Cap. 393

21. The Board may, in consultation with any person, institution, organisation or company, let out any building or premises for use by micro or small enterprises as an industrial or commercial estate, on such terms and conditions as may be agreed upon. Letting of buildings or premises by private persons

22. An owner of any building or premises let out for the purposes specified in section *twenty-one* shall be entitled to- Income tax allowances

- (a) capital allowances which shall be deducted in ascertaining the gains or profits at the following special rates:
 - (i) any building used as an industrial estate shall qualify for a wear and tear allowance of five per centum per annum of the cost, plus an initial allowance of ten per centum of the cost in the year in which the building is first used; and
 - (ii) a wear and tear allowance of fifty per centum per year of the cost in each of the first two years for implements, machinery and plant used exclusively for farming and manufacturing;
- (b) exemption from payment of tax on income received from rentals on such premises; and
- (c) exemption from the payment of rates on factory premises.

23. Any financial institution providing loan, or other financial relief or facilities to registered micro and small enterprises shall be entitled to the following incentives: Incentives to financial institutions

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- (a) exemption from payment of tax on income or interest payable on and received from loans provided to an enterprise carrying on manufacturing activities;
- (b) such institutions shall be allowed to maintain concessionary core liquid asset ratios and reserve requirements as may be permitted by the Bank of Zambia in consultation with the Minister and the Minister responsible for finance; and
- (c) expenditure incurred in training staff who specialise in micro and small scale enterprise financing shall be treated as tax deductible for tax purposes.

PART V

THE MICRO AND SMALL ENTERPRISE DEVELOPMENT FUND

24. (1) There is hereby established the Micro and small Enterprise Development Fund for supporting the development of the small scale sector. Establishment of Micro and Small Enterprises Development Fund

(2) The Fund shall consist of-

- (a) such sums as may be appropriated by Parliament for the purposes of the Fund;
- (b) moneys received by way of grants or donations for the purposes of the Fund; and
- (c) interest accrued from loans and other forms of investment.

25. (1) The Fund shall be vested in the Board and shall be managed and administered by the Board, in such manner as the Board may determine. Administration of Fund

(2) The Minister may, by statutory instrument, and in consultation with the Board, establish a criteria for the application and disbursement of funds from the Fund.

26. The Fund shall be audited every year, by auditors appointed under section *thirty*. Auditing of Fund

27. The Board shall cause to be prepared an annual audited statement of income and expenditure with respect to the Fund which shall be laid before the Minister. Statement of income and expenditure

PART VI

FINANCIAL PROVISIONS

28. (1) The funds of the Board shall consist of such moneys as may- Funds of Board

- (a) be appropriated by Parliament for the purposes of the Board;
- (b) be paid to the Board by way of fees, grants or donations; and
- (c) vest in or accrue to the Board.

(2) The Board may-

- (a) subject to the approval of the Minister, accept money by way of grants or donations from any source;
- (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions; and
- (c) Charge and collect fees in respect of programmes, publications, seminars, consultancy services and other services provided by the Boards.

(3) There shall be paid from the funds of the Board-

- (a) the salaries, allowances and loans of the staff of the board;
- (b) such reasonable travelling, transport and subsistence allowances for members of the Board or of any committee of the Board when engaged on the business of the Board at such rates as the Board may determine; and
- (c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

29. The financial year of the Board shall be a period of twelve months ending on 31st December of every year. Financial year

30. (1) The Board shall cause to be kept proper books of account and other records in relation to the account of the Board. Accounts

(2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board with the approval of the Minister.

(3) The auditors' fees shall be paid by the Board.

31. (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning its activities during that financial year. Annual Reports

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Board and there shall be appended to the report-

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1), lay it before the National Assembly.

PART VII

MISCELLANEOUS

32. Any person who-

Offences and penalties

- (a) furnishes the Minister, a member of the Board or any committee of the Board, or the Director with any information or explanation knowing it to be false in any material particular;

- (b) fails to comply with any order or demand lawfully made under this Act;
- (c) obstructs a member of the Board, a member of a committee of the Board, or a member of staff of the Board in the exercise of that person's functions under this Act; or
- (d) contravenes any provision of this Act;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

33. (1) Subject to the other provisions of this Act, a person who immediately before the appointed date held office as a member or Director of the Organisation established under the repealed Act, shall continue to hold such office as a member or Director of the Board for a period of three months.

Savings and
transitional provisions
Act No. 18 of 1981

(2) After the period referred to in subsection (1) members of the Board and the Director shall be appointed in accordance with this Act.

(3) Nothing in this Act affects the rights of any person employed by the Organisation immediately before the appointed date.

(4) Notwithstanding section *thirty-six*, all the property, assets, rights, liabilities and obligations of the Organisation existing immediately before the commencement of this Act, shall vest and continue to vest in, or subsist against, the Board, together with the rights, liabilities and obligations arising out of any contract or otherwise as if this Act had not come into force.

(5) Any proceedings or cause of action instituted or pending by or against the Organisation immediately prior to the appointed date, shall continue against the Board as if instituted under this Act.

(6) An entrepreneur who, immediately prior to the commencement of this Act, holds a certificate of incentives or certificate of registration issued under the repealed Act, shall give notice to that effect to the Board within six months after the commencement of this Act, attaching a certified copy of the certificate, and the rights and benefits accruing to the holder thereof, shall continue in accordance with this Act.

Act No. 18 of 1981

34. (1) The employees of the Organisation shall be deemed to be transferred to the Board from the commencement of this Act

Transfer of staff

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(2) The service of the employees referred to in subsection (1) shall be treated as continuous service.

35. The Minister may, by statutory instrument, and in consultation with the Board, make regulations prescribing- Regulations

- (a) all matters which by this Act are required or permitted to be prescribed;
- (b) any forms for the purposes of this Act;
- (c) any fees payable in respect of any service provided by the Board; or
- (d) Any other matters which are necessary or expedient for the proper carrying out of the provisions of this Act.

36. The Small Industries Development Act, 1981, is hereby repealed.

Repeal of Act
No. 18 of 1981

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SCHEDULE
(Section 3)

1. (1) The members referred to in subsection (1) of section *four* shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment after the expiration of such term for a further period of three years.

Tenure
office a
vacanc

(2) A member may resign upon giving one month's notice in writing to the Board and to the Minister.

(3) The office of a member shall become vacant-

- (a) upon the member's death;
- (b) if the member is absent without reasonable excuse from three consecutive meetings of the Board of which the member has had notice;
- (c) on ceasing to be a representative of the organisation which nominated that member; or
- (d) if the member is an undischarged bankrupt.

2. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary.

Seal of
Board

(2) The affixing of the seal shall be authenticated by the Chairperson or the Secretary or one other person authorised in that behalf by a resolution of the Board.

(3) Any document purporting to be a document duly executed or issued under the seal of the Board or on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

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3. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

Procee
Board

(2) The Board shall meet for the transaction of business at least once in every three months at such place and such times as the Chairperson may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Seven members of the Board shall constitute a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board-

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson or the Vice-Chairperson, such member as the members present and voting may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Board on any matter shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) Where any member referred to in paragraphs (a) and (b) of subsection (1) or section *four* is for any reason unable to attend any meeting of the Board, that member's organisation, as the case may be, may, in writing, nominate another person to attend such meeting and such person shall be deemed to be a member for the purpose of such meeting.

(8) The Board may invite any person whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board, but such person shall not be entitled to vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of its meetings and of every meeting of any committee established by the Board.

4. (1) The Board may establish committees for the purpose of performing any of its functions under this Act, and may delegate to any such committee such of its functions as it thinks fit.

Commi
the Bo:

(2) The Board may appoint as members of a committee established under sub-paragraph (1), persons who are or are not members of the Board, and such persons shall hold office for such period and on such terms and conditions as the Board may determine.

(3) Subject to any specific or general direction of the Board, any committee established under sub-paragraph (1) may regulate its own procedure.

5. (1) If any person is present at a meeting of the Board or of any committee of the Board at which any matter is the subject of consideration and in which that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching, such matter.

Disclos
interes

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

6. A member of the Board or any committee of the Board shall be paid such remuneration and allowances as the Board may determine with the approval of the Minister.

Remun
and
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7. (1) The Board shall appoint, on such terms and conditions as it may determine, a Director who shall be the chief executive officer of the Board and who shall be responsible for the administration and implementation of the decisions of the Board. Director

(2) The Director shall attend meetings of the Board and may address such meetings, but shall not vote on any matter.

8. (1) There shall be a Secretary of the Board appointed by the Board on such terms and conditions as the Board may determine. Secretaries

(2) The Board may, on such terms and conditions as it shall determine, appoint such other staff as it considers necessary.