

## CHAPTER 318C

### SMALL BUSINESS DEVELOPMENT 1999-23

This Act came into operation on 27th December, 1999.

#### **Amended by:**

2004-24

2006-25

2007-47

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

2007

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#### **Guide to symbols in historical notes:**

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument



## **CHAPTER 318C**

### **SMALL BUSINESS DEVELOPMENT 1999-23**

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FIRST SCHEDULE

*Small Business Development Act Cap. 318C*

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***FEES***

**BARBADOS**

## SMALL BUSINESS DEVELOPMENT

1999-23

*An Act to provide for the establishment of a regulatory framework that would facilitate the growth of the small business sector in Barbados and contribute towards the socio-economic development of Barbados.*

[Commencement: 27th December, 1999]

**Short title**

1. This Act may be cited as the *Small Business Development Act*.

**Interpretation**

- 2.(1) For the purposes of this Act,

“approved private sector organisation” means a private sector organisation approved by the Minister pursuant to section 15(b);

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

“Central Bank” means the Central Bank of Barbados established by section 3 of the *Central Bank of Barbados Act*, Cap. 323C;

**THE LAWS OF BARBADOS**

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“Credit Guarantee Scheme” means the Credit Guarantee Scheme for small business administered by the Central Bank;

“employee” means an individual who has entered into or works under a contract of service with an employer, whether the contract is express or implied;

“group” means,

- (a) in relation to a company, that company and
  - (i) any other company which is its holding company or subsidiary;
  - (ii) any other company which is a subsidiary of its holding company;
  - (iii) any company which directly or indirectly controls or is controlled by any company referred to in subparagraph (i) or (ii);
  - (iv) any company which is controlled by a person who directly or indirectly controls a company referred to in sub-paragraph (i), (ii) or (iii);
  - (v) any company in which a group of relatives has a controlling interest;
- (b) in relation to a person other than a company,
  - (i) a group of relatives where each member of the group is substantially dependent upon the same income source;
  - (ii) a group of persons in which one member has power directly or indirectly to control the other members;
  - (iii) any other group of persons that may be prescribed by the Minister;

“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 responsible for business development;

“retailer of loan guarantees” means an organisation which evaluates the various risks associated with loan guarantees and which has the financial capabilities to cover such risks;

“sales” means income received in exchange for goods and services recorded for a given accounting period, either on a cash basis or on an accrual basis.

- (2) For the purposes of this Act,
- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
  - (b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.
- (3) For the purposes of this Act, “associate”, when used to indicate a relationship with any person, means,
- (a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 per cent of the voting rights
    - (i) under all circumstances;
    - (ii) by reason of the occurrence of an event that has occurred and is continuing; or
    - (iii) by reason of a currently exercisable option or right to purchase those shares to convertible debentures;
  - (b) a partner of that person acting on behalf of the partnership of which they are partners;
  - (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
  - (d) a spouse of that person within the meaning of subsections (3) and (4) of section 2 of the *Succession Act*, Cap. 249;
  - (e) a child, a step-child or adopted child of that person; and
  - (f) a relative of that person or of his spouse if that relative has the same residence as that person.

(4) For the purposes of this Act, a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held, directly or indirectly, by or on behalf of that person.

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[2006-25]

### **Small business**

- 3.(1) For the purposes of this Act, a small business is an enterprise that
- (a) is incorporated under the *Companies Act*, Cap. 308;
  - (b) has satisfied any 2 of the following criteria:
    - (i) the small business has not more than \$1 000 000 as stated or paid up capital;
    - (ii) the small business has not more than \$2 000 000 in annual sales;
    - (iii) the small business has not more than 25 employees;
  - (c) subject to subsection (2), is not more than 25 per cent owned or controlled by a company whose share capital and annual sales exceed the share capital and annual sales mentioned in paragraph (b) or by a subsidiary of that company or by a subsidiary of a larger group of companies;
  - (d) is not controlled by a company whose share capital and annual sales exceed the share capital and annual sales mentioned in paragraph (b) respectively;
  - (e) has no agreement for the payment of fees on a continuing basis for managerial or other services to any person where those services do not form part of the normal business operations of the enterprise.
- (2) Paragraph (c) of subsection (1) does not apply to a small business that is financed by venture capital.

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[2006-25]



**Approved small business status**

4.(1) A small business that is desirous of becoming an approved small business may make an application to the Minister in the manner specified in subsection (2) for the purpose.

(2) An application under subsection (1) shall be in duplicate in the Form I or IA set out in the *First Schedule* and shall be accompanied

- (a) by a certificate of incorporation;
- (b) by a certificate from the Commissioner of Inland Revenue, the Commissioner of Land Tax, the Director of the Value Added Tax Division and the Director of the National Insurance Department, where appropriate, stating that all liabilities for the payment of taxes and national insurance contributions in respect of the small business have been discharged;
- (c) where the business has gross assets or gross revenue which
  - (i) exceed \$1 000 000, by an audited financial statement;
  - (ii) do not exceed \$1 000 000, by a review engagement for the financial year immediately preceding that in which the application is made;
- (d) where the business has been in operation for less than one year, by a statement of financial projections for a period of 3 years from an accounting organisation or a qualified accountant;
- (e) by such other information as the Minister considers necessary to enable him to make a decision under subsection (4).

[2006-25]

(2A) For the purposes of this section, “qualified accountant” means an individual who is a member of the Institute of Chartered Accountants of Barbados or an Institute of similar repute within the Caribbean Community, and who is in

good standing as a member of an association of chartered, public or general accountants.

*[2006-25]*

(3) An application under subsection (1) shall contain the following information:

- (a) the name, residential address and occupation of each share-holder and director;
- (b) the number of shares held or to be held by each shareholder in the company to which the application relates;
- (c) the names of all other companies in which the shareholders and directors referred to in paragraph (a) are also shareholders or directors, and the extent of any such shareholding together with the address of the registered offices of those companies and the place where the substantial activity of those companies is carried on;  
*[2004-24]*
- (cc) the names of the directors and shareholders of any company affiliated with the small business and the number of shares held by them;  
*[2006-25]*
- (d) the type of business and location;
- (e) the actual or estimated investment in plant and equipment;
- (f) the number of persons employed or to be employed;
- (g) the estimated annual income of the business;
- (h) where applicable, particulars to enable a determination of the level of exports, foreign exchange earnings and foreign exchange savings;
- (i) the date of the commencement of the business or the date on which the business is likely to commence, as the case may be;

*[2006-25]*

*[2006-25]*

(4) Where an application referred to in subsection (1) has been made and the Minister is satisfied that the business

- (a) is a small business within the meaning of section 3(1); and
- (b) carries on an activity which is of significant or substantial socioeconomic benefit to Barbados,

the Minister may by order declare the business to be an approved small business.

[2006-25]

(5) A declaration by the Minister under subsection (4) shall be published in the *Official Gazette*.

### **Registration of small businesses**

5.(1) A small business which is declared by the Minister to be an approved small business shall submit to the Chief Business Development Adviser

- (a) a copy of the application made in accordance with section 4; and
- (b) a copy of the declaration to be published in the *Official Gazette* pursuant to section 4.

(2) The Chief Business Development Adviser shall keep a separate register, to be known as “The Register of Small Businesses”, in which he shall enter, upon receipt of the documentation referred to in subsection (1) and the fee set out in the *Second Schedule*, the following:

- (a) the corporate name and number;
- (b) a number assigned by the Chief Business Development Adviser to the approved small business identifying it as such; and

[2006-25]

- (c) the particulars referred to in section 4(3).

[2006-25]

(3) The Chief Business Development Adviser shall issue a certificate of registration in respect of every small business registered under this Act in the

Form III set out in the *First Schedule*; and the certificate shall be conclusive proof of the registration of the approved small business named in the certificate.

[2006-25]

(4) Any person may in respect of an approved small business registered under this section, upon payment of the fee prescribed in the *Second Schedule*,

(a) inspect any documents filed with the Chief Business Development Adviser under this section; or

(b) require from the Chief Business Development Adviser a certificate of registration, a certified extract or a certified or uncertified copy of any document filed with the Chief Business Development Adviser pursuant to this Act.

[2006-25]

[2006-25]

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[2006-25]

### **Changes to approved small businesses**

**6.(1)** Where after the declaration of approved small business status under section 4(4) any change is made or occurs in any of the particulars supplied to the Minister at the time of the application for that status, the business shall, within 21 days after the change or such longer period as the Minister may allow, forward to the Minister a statement in writing in the Form II set out in the *First Schedule* specifying the nature and date of the change.

[2006-25]

(2) The Chief Business Development Adviser shall, upon receipt of the statement referred to in subsection (1) and the prescribed fee set out in the *Second Schedule*, file the statement in the Register of Small Businesses.

[2006-25]

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[2006-25]

## Incentives

7.(1) Subject to the provisions of this Act, the Minister may grant to an approved small business one or more of the incentives specified in subsection (3) where he is satisfied that the business will be of significant or substantial socio-economic benefit to Barbados.

(2) Where any approved small business is one of a group of companies or is associated or affiliated with or controlled by another body corporate, only one such approved small business shall be eligible to receive any of the incentives specified in subsection (3).

(3) Subject to subsection (2) and notwithstanding any enactment to the contrary, an approved small business is entitled to any one or more of the following incentives subject to such conditions as are specified in this section:

- (a) the payment of corporation tax at the rate of 15 per cent on the profits of the business;  
*[2006-25; 2007-47]*
- (b) exemption from import duty on raw materials and plant and equipment imported for use in the business;  
*[2006-25]*
- (c) exemption from withholding tax on dividends and interest earned on any investment in an approved small business or in any fund approved for investment in small businesses;
- (d) exemption from the payment of stamp duty under the *Stamp Duty Act*, Cap. 91 on all documents related to the business where the registration of those documents is required by law; and
- (e) a deduction of corporation tax of an amount equal to 20 per cent of the actual expenditure incurred in respect of the use of technology, market research and any other activity that is, in the opinion of the Commissioner of Inland Revenue, directly related to the development of the business.

(3A) An approved small business shall not be eligible for the incentive specified in paragraph (b) of subsection (3) where any income earned by that business is derived from the rental of its plant and equipment.

[2006-25]

(4) The deduction of tax specified in subsection (3) shall be limited to the tax payable by the approved small business, and no deduction shall be allowed to the extent that the amount sought to be deducted is in excess of the tax that is payable by the enterprise.

(5) An approved small business that has been granted incentives under subsection (3) shall permit the Minister to inspect, at all reasonable times, the books, records and accounts of the business.

(6) All incentives granted to an approved small business under this Act shall terminate if the business ceases to qualify as a small business for 3 consecutive years.

[2006-25]

(7) An approved small business shall not be eligible for any of the incentives specified in subsection (3) where it fails to comply with the provisions of section 5 or 6.

(8) In this section “socio-economic benefit” means

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

(9) An approved small business shall not be eligible for any incentives under the *Tourism Development Act*, Cap. 341, the *Fiscal Incentives Act*, Cap. 71A, the *Special Development Areas Act*, Cap. 237A, or the *Shipping Incentives Act*, Cap. 90A.

[2006-25]

(10) An approved small business that has been granted incentives under paragraph (b) of subsection (3) shall

- (a) keep a record of the articles imported; and
- (b) permit the Comptroller of Customs or a person authorised by him, to inspect, at all reasonable times, such records and to have access to any premises under its control for the purpose of verifying the accuracy of the particulars contained in the record.

[2006-25]

### **Loan guarantees**

8.(1) An approved small business may apply for a loan guarantee cover under the Credit Guarantee Scheme through any one of the following:

- (a) any commercial bank operating in Barbados by virtue of a licence issued under Part II of the *Financial Institutions Act*, Cap. 324A;
- (b) any financial institution other than a bank to which access to the Credit Guarantee Scheme has been granted by the Central Bank; or
- (c) any other institution or organisation approved by the Central Bank as being eligible to access the Credit Guarantee Scheme.

(2) The Central Bank may in writing designate any organisation catering to the needs of small businesses, as a retailer 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 such risks.

[2006-25]

(3) A retailer of loan guarantees shall, by written agreement with the Central Bank, have the right to issue loan guarantees under the Credit Guarantee Scheme.

[2006-25]

(4) The Central Bank shall have the right to revoke the designation of any organisation as a retailer of loan guarantees under this Act.

[2006-25]

**Technical assistance**

**9.(1)** The Cabinet may designate any government department, agency or approved private sector organisation as a provider of technical assistance in the form and manner specified in subsection (2) for the purpose of assisting approved small businesses to commence, continue or to expand operations.

(2) The technical assistance to which subsection (1) refers includes

- (a) the development of product design;
- (b) the development of package and label design;
- (c) the provision of assistance in the development and maintenance of quality control;
- (d) the provision of marketing assistance for the local and export market;
- (e) the provision of assistance to businesses seeking to participate in overseas trade shows;
- (f) the preparation of business plans to facilitate the initial financing and management of the business;
- (g) the financing of feasibility studies relating to the development of new businesses or products;
- (h) the provision of assistance in managerial accounting or budgetary analysis; or
- (i) the provision of assistance in general or production management and in any other appropriate area.

[2006-25]



**Monitoring and inspection**

**10.** The Minister shall cause each approved small business to be monitored and inspected to ensure that compliance by the small business with the provisions of this Act is maintained, and for this purpose may

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

**Appraisal**

**11.(1)** The Minister shall cause an approved small business to be examined annually for the purpose of determining whether it continues to satisfy the criteria specified in section 3 to be an approved small business.

(2) For the purposes of subsection (1), an approved small business shall not later than 3 months after the end of each financial year, submit to the Minister a copy of its financial statements.

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[2006-25]

**Notice of change of status**

**12.** Where an approved small business ceases to operate as such a business or ceases to satisfy the requirements of this Act or the regulations, that business shall, by notice in writing, within 120 days from the date of the cessation inform the Minister of that fact.

**Revocation**

**13.(1)** Where

- (a) it is discovered at any time that the particulars furnished by an approved small business at the time of making an application under

section 4(1) or at the time of registration under section 5 were false in any material particular or were likely or calculated to deceive;

- (b) the approved small business fails or refuses to submit information to the Minister pursuant to section 6 or interferes with or prevents an inspection or the submission of information required under section 7(5) or 10;
- (c) there is a failure on the part of the approved small business to
  - (i) submit income tax returns as required under the *Income Tax Act*, Cap. 73;
  - (ii) pay national insurance contributions as required under the *National Insurance Act*, Cap. 47; or
- (d) it is found that the approved small business has not commenced operation within 6 months of having been declared an approved small business,

the Minister may revoke the declaration of approval.

(2) The Minister shall revoke a declaration of approval of an approved small business where

- (a) the Minister is notified under section 12 that it has ceased to operate; or
- (b) the business is no longer a small business within the meaning of section 3.

(3) Where the Minister has revoked the approval in respect of a small business under subsection (1) or (2), the small business shall pay to the

- (a) Commissioner of Inland Revenue; or
- (b) Comptroller of Customs,

as the case may be, any sums which, but for section 7, would have been payable as income tax or customs duty.

- (4) Notwithstanding subsection (3), the Minister of Finance, may, where he is satisfied that the payment of any sums due under that subsection would cause undue hardship, or that it is expedient to do so, waive the whole or part of those sums payable by the small business.
- (5) Where a declaration of approval has been revoked under subsection (1) or (2), the Minister
- (a) shall cause a notice of the revocation to be published in the *Official Gazette*; and
  - (b) shall forward a copy of that notice to the Registrar, who shall strike the business from the Register with effect from the date of the publication of the notice.

### **Civil proceedings**

- 14.** All sums due and payable under section 13(3) may be recovered as a debt due to the Crown in civil proceedings.

### **Regulations and orders**

- 15.** The Minister may
- (a) make regulations to give effect to the operation of this Act;
  - (b) by order approve private sector organisations for the purposes of this Act; and
  - (c) by order amend the Schedules to this Act.
- [2006-25]

### **Offences**

- 16.(1)** Where an approved small business commits an offence under this Act and a director or officer of the business knowingly authorised, permitted or acquiesced in the commission of the offence, the director or officer is also guilty of an offence and is liable on summary conviction to a fine of \$3 000 or to imprisonment for a term of 12 months or to both such fine and imprisonment.

(2) Where any statement required to be furnished under this Act contains any matter that is false in any material particular to the knowledge of any person signing it, that person shall, on summary conviction, be liable to imprisonment for 12 months or to a fine of \$3 000, or to both such fine and imprisonment.

**Fees**

17. There shall be payable to the Chief Business Development Adviser in respect of the matters set out in the *Second Schedule* the fees specified in that Schedule in relation to those matters.

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[2006-25]

**FIRST SCHEDULE**

*Small Business Development Act Cap. 318C*



















































**SECOND SCHEDULE***(Sections 5(2), 5(4), 6(2), 17)****FEES***

<b>Service</b>	<b>Fees</b>
	\$
1. On application to the Registrar for registration as a small business under section 5 together with the issue of a Certificate of registration.	100 00
2. For certification of any document under section 5(4).	10 00
3. For search (inspection) under section 5(4).	5 00
4. For an uncertified copy of any document requested under section 5(4) in addition to the fee for search under item (4) per page.	1 00
5. For filing a statement of any change within the meaning of section 6(2), which fee shall cover the issue of one certificate of registration of such statement if necessary.	25 00

*[2006-25]*