

THE HUMAN RESOURCE DEVELOPMENT BILL
(No. XXIX of 2003)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of the Human Resource Development Council with a view to developing human resources in the Republic of Mauritius to meet national needs.

S. FOWDAR

*Minister of Training, Skills Development,
Employment and Productivity*

18 July 2003

(1) **THE HUMAN RESOURCE DEVELOPMENT BILL**
(No. XXIX of 2003)

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1. A BILL

To provide for the establishment of a Human Resource Development Council and for related matters

ENACTED by the Parliament of Mauritius, as follows -

(1) PART I - PRELIMINARY

1. Short title

This Act may be cited as the Human Resource Development Act 2003.

2. Interpretation

In this Act -

"Chairperson" means the Chairperson of the Council appointed under section 7;

"committee" means a committee established by the Council under section 12 and does not include a sectoral committee;

"Council" means the Human Resource Development Council established under section 3;

"Director" means the Director of the Council appointed under section 13;

"employee" –

(a) means an employee of the Council other than the Director; but

(b) does not include an employee referred to in section 18;

"Fund" means the National Training Fund set up pursuant to section 16;

"household worker" means a worker governed by the Domestic Workers (Remuneration Order) Regulations 1983;

"insured person" has the same meaning as in the National Pensions Act;

“levy” –

- (a) means the levy under section 18; and
- (b) includes the surcharge under section 19;

"member" means a member of the Council and includes the Chairperson and Vice-Chairperson;

"Minister" means the Minister to whom the subject of human resource development is assigned;

“sectoral committee” means a committee established by the Council under section 11.

PART II – HUMAN RESOURCE DEVELOPMENT COUNCIL

3. Establishment of the Council

- (1) There is established for the purpose of this Act the Human Resource Development Council.
- (2) The Council shall be a body corporate.

4. Objects of the Council

The objects of the Council shall be to -

- (a) promote human resource development in line with national economic and social objectives;
- (b) stimulate a culture of training and lifelong learning at the individual, organisational and national levels for employability and increasing productivity; and
- (c) provide the necessary human resource thrust for successful transformation of the economy of the country into a Knowledge Economy.

5. Functions of the Council

The functions of the Council shall be to -

- (a) advise the Minister on the formulation of human resource development policies and strategies;
- (b) establish linkages between the education and training systems and the workplace;
- (c) provide a forum for constant dialogue and consensus building among stakeholders on all matters relating to human resource development;
- (d) take appropriate measures to reduce the mismatch between demand and supply of human resource;
- (e) commission research in the field of human resource development;
- (f) encourage employers to invest in the training of their employees with a view to upgrading their skills and acquiring new skills;
- (g) initiate and monitor studies on the relevance and impact of training activities in relation to the socio-economic development of the country;
- (h) promote knowledge management and benchmarking at enterprise and national levels with a view to improving the effectiveness of human resource development;
- (i) identify and monitor the implementation of appropriate skills development and apprenticeship schemes and programmes;
- (j) monitor the participation of employers, employees, and job seekers in training schemes and programmes;
- (k) develop schemes for retraining and multi-skilling;
- (l) provide incentives for training institutions to acquire and upgrade their equipment and facilities;
- (m) manage the National Training Fund; and
- (n) perform such other functions as are necessary to further the objects of the Council.

6. Powers of the Council

The Council may do such things as appear requisite and advantageous in furtherance of its objects and may, in particular -

- (a) acquire, hold and dispose of assets;
- (b) employ its funds to defray expenses in connection with the performance of its functions;
- (c) impose a training levy on employers;
- (d) charge or waive fees in respect of any services provided by the Council; and
- (e) receive grants-in-aid and donations.

7. Membership of the Council

- (1) The Council shall consist of -
 - (a) a Chairperson, to be appointed by the Minister in consultation with the Mauritius Employers' Federation;
 - (b) a Vice-Chairperson, to be appointed by the Minister;
 - (c) the Financial Secretary or his representative;
 - (d) the Director, Ministry of Economic Development, Financial Services and Corporate Affairs, or his representative;
 - (e) the Permanent Secretary of the Ministry responsible for the subject of human resource development;
 - (f) the Permanent Secretary of the Ministry responsible for the subject of education or his representative;
 - (f) the Permanent Secretary of the Ministry responsible for the subject of labour or his representative;
 - (f) the Director of the Industrial and Vocational Training Board;
 - (f) the Director of the Mauritius Qualifications Authority;

- (f) the Director of the National Productivity and Competitiveness Council;
- (f) the Director of the Tertiary Education Commission;
- (l) 10 representatives of the key economic sectors, to be appointed by the Minister after consultation with the Mauritius Employers' Federation;
- (m) 2 representatives of registered trade unions, one from the public sector and the other from the private sector, to be appointed by the Minister; and
- (n) not more than 4 persons having experience in the field of human resource development, to be appointed by the Minister.

(2) Every member of the Council, other than an ex-officio member, shall hold office for a period of 2 years and shall be eligible for re- appointment.

(3) Every member shall be paid from the Fund such remuneration and allowances as the Minister may determine.

8. Meetings of the Council

(1) The Council shall meet at least once every 3 months at such time and place as the Chairperson may direct.

(2) The Chairperson shall call a meeting of the Council within 7 days of the receipt of a written request for that purpose addressed to him by any 3 other members of the Council.

(3) Fourteen members of the Council shall constitute a quorum.

(4) Subject to this Act, the Council shall regulate its meetings and proceedings in such manner as it thinks fit.

PART III - COMMITTEES

9. Executive Committee

- (1) There shall be an Executive Committee which shall consist of -
 - (a) the Chairperson of the Council, as Chairperson;
 - (b) the Vice-Chairperson of the Council, as Vice-Chairperson;
 - (c) the Permanent Secretary of the Ministry responsible for the subject of human resource development; and
 - (d) 5 other members of the Council, appointed by the Council.
- (2) The Executive Committee shall perform such task as may be assigned to it by the Council.

10. Meetings of the Executive Committee

- (1) The Executive Committee shall meet at least once every month at such time and place as the Chairperson may direct.
- (2) The Chairperson shall call a meeting of the Executive Committee within 7 days of the receipt of a written request for that purpose addressed to him by any 3 other members of the Executive Committee.
- (3) Five members shall constitute a quorum.
- (4) Subject to this section, the Executive Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

11. Sectoral Committees

- (1) The Council shall establish a sectoral Committee for each of the following sectors -
 - (a) agriculture;
 - (b) financial services;
 - (c) information and communication technology;
 - (d) manufacturing;
 - (e) public service;
 - (f) tourism.
- (2) Every sectoral committee shall –
 - (a) serve as liaison between the Council and its sector;

- (b) advise the Council on emerging economic trends and relevant training needs in its sector.
- (2) The Council shall appoint –
- (a) one of its members to chair each sectoral committee;
 - (b) as members of each sectoral committee, such number of persons having experience in each of the sectors specified in subsection (1), as it thinks fit.
- (4) Every sectoral committee shall regulate its meetings and proceedings in such manner as it thinks fit.

12. Committees

- (1) The Council may establish such other committees for such purpose as it thinks necessary and it may co-opt persons who are not members of the Council to the committees.
- (2) The Council may -
- (a) 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;
 - (b) amend or set aside the decision of a committee.
- (3) Every committee established under this section shall regulate its meetings and proceedings in such manner as it thinks fit.

PART IV - ADMINISTRATION

13. Director

- (1) There shall be a Director who shall be the chief executive officer of the Council.
- (2) The Director shall be appointed by the Council, with the approval of the Minister, on such terms and conditions as it thinks fit.
- (3) The Director shall -
 - (a) provide technical and professional support to the Council;
 - (b) monitor and ensure the proper implementation of the programme of work of the Council;
 - (c) prepare such papers, documents and studies as may be requested by the Council;
 - (d) be responsible for the execution of the policy of the Council and for the carrying out, controlling and managing of the day-to-day business and activities of the Council;
 - (e) carry out such other duties as may be entrusted to him by the Council or the Executive Committee.
- (4) The Director shall -
 - (a) attend every meeting of the Council, Executive Committee and other Committees; and
 - (b) take part in the deliberations of the Council but shall not be entitled to vote on any matter before the Council.

14. Appointment of employees

- (1) The Council may employ, on such terms and conditions as it thinks fit, such employees as may be necessary for the proper discharge of its functions.
- (2) Every employee shall be under the administrative control of the Director.

15. Conditions of service of employees

The Council may, with the approval of the Minister, make provision to govern the conditions of service of employees and, in particular, to deal with -

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

16. National Training Fund

- (1) The Council shall set up a National Training Fund -
 - (a) into which all money received from any source by the Council shall be paid; and
 - (b) out of which all payments and grants required to be made by the Council shall be effected.
- (2) There shall be paid into the Fund -
 - (a) all money appropriated by the National Assembly for the realisation of the objects of the Council;
 - (b) all money collected by way of training levy;
 - (c) duties or fees levied by the Council;
 - (d) grants and donations;
 - (e) contributions or royalties received by the Council;
 - (f) interest on investments; and
 - (g) any moneys lawfully accruing to the Fund.

17. Protection of members and officers

No civil liability shall lie against any member or officer of the Council for any act or omission except in so far as the act or omission complained of was done in bad faith.

PART V – TRAINING LEVY

18. Imposition of levy

(1) Every employer shall, in respect of every employee, other than a household worker, who is an insured person, pay a training levy in accordance with subsection (2).

(2) The levy under subsection (1) shall be payable on the employee's total basic wage or salary excluding overtime, bonuses and allowances in respect of a month at the rate specified in the Schedule.

(3) The levy payable under this section shall -

- (a) be paid monthly together with a return in such form as may be approved by the Ministry;
- (a) be paid at the end of the completed month and in any case -
 - (i) where the levy is paid electronically, not later than the end of the month following the end of the completed month; or
 - (ii) where the levy is paid other than electronically, not later than 20 days after the end of the completed month;
- (a) be paid at the Contributions Section of the Ministry together with the contributions payable under the National Pensions Act and the National Savings Fund Act;
- (a) be credited by the Ministry to a separate account to be kept by the Ministry;
- (a) be remitted by the Ministry to the Council at such intervals and subject to such terms and conditions as may be agreed upon between the Ministry and the Council.

(4) Payment of the levy under this section may be made and the return submitted electronically in such manner and through such computer system as may be approved by the Ministry.

(5) With effect from such date as may be notified in the *Gazette*, the Ministry may direct that any matter, act or thing referred to in subsection (3) shall be made, submitted or done electronically, unless otherwise authorised.

(6) For the purposes of this section -

“employee” has the same meaning as in the National Pensions Act but does not include a person employed by a private secondary school or a charitable institution;

“Ministry” means the Ministry responsible for the subject of social security;

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Without prejudice to any legal proceedings which may be instituted under this Act, where a person fails, within the prescribed time, to pay the levy under section 18, he shall be liable to pay, in addition to the levy, a surcharge of 5 per cent on the unpaid levy excluding the surcharge for each month or part of the month during which the levy remains unpaid, provided that the surcharge does not, in the aggregate, exceeds 100 per cent of the amount of unpaid levy.

20. Records

(1) Every person shall, for the purposes of section 18, keep a record specifying, in respect of each employee, his national identity number, full name, occupation, the total basic wage or salary, the pay period and the levy paid in relation to him.

(2) The record referred to in subsection (1) shall be made available on demand by the Ministry for examination.

21. Claim for unpaid levy

Where the Ministry is satisfied that the levy paid by the employer is not the full amount of levy to be paid, the Ministry may, by written notice serve on the employer, make a claim of the amount of levy which in its opinion ought to be payable by the employer, and that amount shall thereupon be the amount of levy due to be paid under sections 18 and 19.

22. Recovery of unpaid levy

The Ministry may, without prejudice to any legal proceedings which may be instituted under this Act, recover any unpaid levy in the same manner as income tax is recoverable under Part XI of the Income Tax Act.

23. Offences

Any person who contravenes any provision of sections 18, 19, 20 and 21 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

PART VI - MISCELLANEOUS

24. Powers of the Minister

The Minister may give such directions of a general character to the Council, not inconsistent with this Act, as he considers necessary in the public interest, and the Council shall comply with those directions.

25. Execution of documents

Every deed, act or document relating to the Council shall be signed by the Chairperson and the Director on behalf of the Council.

26. Donations and exemptions

- (1) Article 910 of the Code Napoleon shall not apply to the Council.
- (2) Notwithstanding any other enactment, the Council shall be exempt from the payment of any charge, duty, fee, rate or tax.

27. Accounts

- (1) The Council shall, on or before 31 October in every year, submit to the Minister a report together with an audited statement of accounts on the operation of the Council in respect of the 12 months ending on 30 June of the same year.
- (2) The report of the Council shall be laid before the National Assembly.

28. Regulations

(1) The Council may, with the approval of the Minister, make such regulations as it thinks fit for the purposes of this Act.

(1) Any regulations made under subsection (1) may provide -

- (a) for the levying of fees and taking of charges; and
- (b) that any person who contravenes the regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(3) The Minister may, by regulations, amend the Schedule.

29. Transitional provisions

(1) Any money standing to the credit of the Industrial and Vocational Training Board at the commencement of this Act, which has been collected as training levy under the Industrial and Vocational Training Board Act, shall vest in the Council.

(2) Any training levy unpaid under the Industrial and Vocational Training Board Act on the date immediately before the coming into operation of this Act shall, in respect of the corresponding period, be deemed to be unpaid under this Act.

(3) All proceedings, judicial or otherwise, commenced before and pending immediately before the date of the coming into operation of this Act in so far as they relate to the levy, by or against the Board established under the Industrial and Vocational Training Board Act shall be deemed to have been commenced, and may be continued, by or against the Council under this Act.

30. Consequential amendments

(1) The Industrial and Vocational Training Board Act is amended -

- (a) in section 4(c) by inserting after the word “schemes” the words “and impose or take any related fees or charges”;
- (a) by repealing sections 14, 14A, 14B, 14C, 14D and 14E and the Schedule.

(2) Subject to subsections (3) and (4), the Schedule to the Statutory Bodies (Accounts and Audit) Act is amended in Part II by inserting the following item in its appropriate alphabetical place -

Human Resource Development Council

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

(4) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Council.

(5) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

31. Commencement

(1) Subject to subsection (2) this Act shall come into operation on a day to be fixed by Proclamation.

(2) Different days may be fixed for the coming into operation of different provisions of this Act.

1. SCHEDULE

(section 18(2))

1. Rate of levy

One per cent