

THE MANUFACTURING SECTOR WORKERS WELFARE FUND BILL
(No. XXVI of 2012)

Explanatory Memorandum

The main object of this Bill is to provide for the establishment of the Manufacturing Sector Workers Welfare Fund which will replace the Export Processing Zones Labour Welfare Fund. The Bill provides for the social and economic welfare applicable to workers and their families in the former export processing zone to be extended, with better provisions, to workers in manufacturing enterprises in specified fields with 10 or more workers, their spouses and children.

2. The Bill provides, *inter alia*, that the Fund –
- (a) shall manage its financial and other resources;
 - (b) may give loans or financial assistance to workers, their spouses and children;
 - (c) may do all such things as appear to be necessary and conducive to the promotion of the welfare of workers, their spouses and children.

S. A. Y. A. R. MOHAMED
Minister of Labour,
Industrial Relations and Employment

26 October 2012

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A BILL

To establish the Manufacturing Sector Workers Welfare Fund

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Manufacturing Sector Workers Welfare Fund Act 2012.

2. Interpretation

In this Act –

“authorised officer” means such officer as may be authorised by the General Manager in writing;

“Board” means the Board referred to in section 6;

“CBRD” means the Central Business Registration Database established under the Business Registration Act;

“Chairperson” means the Chairperson of the Board;

“child”, in relation to a worker –

- (a) means his unmarried child, stepchild or adopted child, who is under the age of 18; and
- (b) includes –
 - (i) an unmarried child under the age of 18 whose guardianship or custody is entrusted to the worker by virtue of any other enactment or of an order of a Court of competent jurisdiction;
 - (ii) an unmarried child under the age of 18 placed in the worker’s foster care by virtue of an order of a Court of competent jurisdiction;

“committee” means a committee set up by the Board under section 10;

“contribution” means the contribution referred to in section 18;

“financial year” has the same meaning as in the Finance and Audit Act;

“Fund” means the Manufacturing Sector Workers Welfare Fund established under section 4;

“General Manager” means the General Manager of the Fund appointed under section 12;

“manufacturing enterprise” means an enterprise employing 10 or more workers in a field specified in the First Schedule;

“member” –

- (a) means a member of the Board; and
- (b) includes the Chairperson;

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

“officer” –

- (a) means any officer appointed under section 14; and
- (b) includes the General Manager;

“worker” –

- (a) means a person employed by a manufacturing enterprise and whose basic wage or salary does not exceed the rate specified in the Second Schedule; and

- (b) includes a retired worker who has previously contributed to the Fund; but
- (c) does not include –
 - (i) a trainee; or
 - (ii) a worker in employment for less than a calendar month.

3. Application of Act

This Act shall apply to the Island of Mauritius only.

PART II – THE FUND

4. Establishment of Fund

(1) There is established for the purposes of this Act the Manufacturing Sector Workers Welfare Fund.

(2) The Fund shall be a body corporate.

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

5. Object and functions of Fund

(1) The object of the Fund shall be to advance and promote the social and economic welfare of workers, their spouses and their children.

(2) The functions of the Fund shall be to –

- (a) finance all such things as appear requisite and advantageous for or in connection with the advancement and promotion of the social and economic welfare of workers, their spouses and children;
- (b) manage the financial and other resources of the Fund;
- (c) give loans or financial assistance to workers, their spouses and children;
- (d) do all such things as appear to be necessary and conducive to the promotion of the welfare of workers, their spouses and children.

PART III – ADMINISTRATION OF FUND

6. The Board

- (1) The Fund shall be administered by a Board which shall consist of –
- (a) a Chairperson, to be appointed by the Minister;
 - (b) a representative of the Ministry responsible for the subject of labour;
 - (c) a representative of the Ministry responsible for the subject of finance;
 - (d) a representative of the Ministry responsible for the subject of industry;
 - (e) a representative of the Ministry responsible for the subject of gender;
 - (f) 4 representatives of workers, to be appointed by the Minister after consultation with such trade unions of workers as he may determine; and
 - (g) 4 representatives of employers, to be appointed by the Minister after consultation with such organisations of employers as he may determine.

(2) A member, other than a member referred to in subsection (1)(b) to (e), shall hold office for such period and on such terms and conditions as the Minister may determine.

(3) Every member shall be paid such fee or allowance as the Minister may determine.

- (4) No person shall be qualified to be a member where he is –
- (a) a member of the Assembly;
 - (b) a member of a local authority; or
 - (c) otherwise actively engaged in politics.

7. Powers of Board

The Board shall have such powers as are necessary to attain its objects and discharge its functions most effectively and may, in particular –

- (a) require the submission of a bond to secure the recovery of any loan granted;
- (b) receive grants from Government and raise funds from other sources for the benefit of workers, their spouses and children; and

(c) issue guidelines for the purposes of this Act.

8. Vacancy in membership of Board

(1) A member, other than a member referred to in section 6(1)(b) to (e), shall cease to hold office –

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

(b) on his resignation, by notice in writing given to the Minister.

(2) Where a member resigns under subsection (1)(b), his seat shall become vacant as from the date on which the Minister receives the notice.

(3) (a) Where a vacancy occurs in the membership of a member appointed under section 6(1)(a), (f) and (g), the vacancy shall be filled by a fresh appointment.

(b) A person appointed under paragraph (a) shall hold office for the remainder of the term of office of the person whom he replaces.

9. Meetings of Board

(1) The Board shall meet as often as the Chairperson thinks necessary, but at least once every month.

(2) A meeting of the Board shall be held at such time and place as the Chairperson thinks fit.

(3) At any meeting of the Board, 7 members shall constitute a quorum.

(4) (a) The Chairperson shall chair a meeting of the Board.

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

(5) (a) A special meeting of the Board –

(i) may be convened by the Chairperson at any time; or

(ii) shall be convened by the General Manager within 21 days of the receipt of a request in writing signed by not less than 7 members.

(b) Any request made under paragraph (a)(ii) shall specify the purpose for which the special meeting is to be convened.

(6) At any meeting of the Board, each 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.

(7) (a) The Board may, where it considers necessary, co-opt such other persons with relevant expertise not already available to the Board, to assist it in relation to any matter before it.

(b) A person co-opted under paragraph (a) shall have no right to vote on any matter before the Board.

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

10. Committees

(1) The Board may set up such committees as may be necessary to assist it in the discharge of its functions under this Act.

(2) Every committee shall consist of not fewer than 3 but not more than 6 members of the Board.

(3) The Board shall appoint a chairperson for every committee on such terms and conditions as it may determine.

(4) A committee may –

(a) meet as often as may be necessary and at such time and place as the chairperson of the committee thinks fit;

(b) meet as and when required by the Board;

(c) co-opt, with the approval of the Board, such other person as may be of assistance to any matter before the committee, but that person shall not have the right to vote;

(d) regulate, subject to any direction given by the Board, its meetings and proceedings in such manner as it may determine.

11. Disclosure of interest

(1) Where any member or the General Manager, or a relative or associate of the member or General Manager, has a pecuniary or other material interest in relation to any matter before the Board or a committee, that member or General Manager shall –

(a) disclose the nature of the interest before or at the meeting of the Board or the committee convened to discuss that matter; and

(b) not take part in any deliberation of the Board or the committee relating to that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of proceedings of the meeting of the Board or committee, as the case may be.

(3) In this section –

“associate” and “relative” have the same meaning as in the Prevention of Corruption Act.

12. General Manager

(1) The Board shall, with the approval of the Minister, appoint, on such terms and conditions as it may determine, a General Manager who shall be the chief executive officer of the Fund.

(2) The General Manager shall be responsible for the execution of the policy of the Board and for the control and management of the day-to-day business of the Fund.

(3) The General Manager shall, in the exercise of his functions, act in accordance with such directions as he may receive from the Board.

(4) (a) The General Manager shall, unless otherwise directed by the Board, attend every meeting of the Board.

(b) The General Manager may take part in the deliberations of a meeting of the Board, but shall not have the right to vote.

13. Delegation

(1) The Board may, subject to such instructions of a general nature as it may give, delegate to the General Manager such of its functions and powers as may be necessary for the effective management of the day-to-day business of the Fund, other than the power to –

- (a) sell or exchange any property;
- (b) make or receive any grant or donation;
- (c) borrow money or raise funds.

(2) The General Manager may, with the approval of the Board, delegate his functions to such officer as he may designate.

14. Appointment of officers

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

(2) Every officer shall be under the administrative control of the General Manager.

15. Conditions of service of officers

(1) The Board may make provision to govern the conditions of service of its officers and, in particular, to deal with –

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

(2) For the purpose of an appeal referred to in subsection (1)(b), the Minister shall set up an ad hoc appeal body to hear the appeal.

16. Powers of Minister

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

(2) The Minister may require the Board to furnish any information or document in relation to the activities of the Fund, and the Board shall supply such information or document.

PART IV – REGISTRATION, CONTRIBUTION AND LOAN

17. Registration of manufacturing enterprises

(1) Every person registered under the Business Registration Act who or which employs 10 or more persons and operates in a field specified in the First Schedule shall, on the commencement of this Act, be deemed to be registered with the Fund as a manufacturing enterprise under this Act.

(2) For the purposes of subsection (1), the Board shall have online access to the CBRD and shall create and maintain a database for the collection and enforcement of contributions under this Act.

18. Contribution to Fund

(1) Subject to this section, every manufacturing enterprise shall make a monthly contribution to the Fund in accordance with the rate specified in Part I of the Third Schedule.

(2) Every worker shall make a monthly contribution to the Fund in accordance with the rate specified in Part II of the Third Schedule.

(3) Every manufacturing enterprise shall, every month, deduct from the basic wage or salary, or other allowance, of a worker the amount of contribution specified in Part II of the Third Schedule at the time the basic wage or salary, or other allowance, is paid to the worker.

(4) Every manufacturing enterprise shall remit to the Fund the amount deducted under subsection (3), together with its monthly contribution under subsection (1), within such period and in such manner as may be prescribed.

19. Penalty for late remittance of contribution

(1) Where a manufacturing enterprise fails to remit the amount of contribution under section 18 within the prescribed period, it shall be liable to pay to the Fund, in addition to the contribution, a penalty representing 5 per cent of the amount of the contribution, excluding the penalty under subsection (2), for each month or part of the month during which the contribution remains unpaid.

(2) A penalty –

- (a) shall not, in the aggregate, exceed the amount of contribution remaining unpaid; and
- (b) shall be paid to the Fund within such time and in such manner as may be prescribed.

20. Enforcement

(1) (a) For the purposes of ensuring compliance with this Act, the General Manager or any authorised officer may, at any reasonable time, enter the premises of any manufacturing enterprise and require the person in charge of the enterprise –

- (i) to produce for examination any record relating to the number of workers and the contributions payable under section 18;
- (ii) to make copies or extracts from the records referred to in subparagraph (i);
- (iii) to answer all proper questions, either orally or in writing.

(b) The General Manager or any authorised officer may, in the course of an examination at the premises, remove and retain such records or documents for such period as may be reasonable, for their examination.

(2) Where a manufacturing enterprise has not remitted the full amount of contribution required to be remitted under section 18, the General Manager shall, after agreement with the manufacturing enterprise as to the quantum of the contributions short remitted, issue a written notice, by registered post, to the manufacturing enterprise, claiming the amount of contribution short remitted, together with the appropriate penalty under section 19(1).

(3) Where a notice is issued under subsection (2), the amount claimed shall be paid to the Fund within such period and in such manner as may be prescribed.

(4) Every manufacturing enterprise shall comply with a notice issued under subsection (2).

(5) The General Manager may, by notice in writing, require any person in charge of an enterprise in the manufacturing sector to produce, within such period as may be specified in the notice, any record or information which he considers reasonably necessary for the performance of his functions under this Act.

(6) Every person to whom a notice under subsection (5) is issued shall comply with the notice.

21. Grant of loans

The Board may grant loans to workers for such purposes and on such terms and conditions as it may determine.

22. Repayment of loans

(1) A worker to whom a loan has been granted may repay the loan, or any balance due on the loan, or any part of it, before it becomes due, without payment of any indemnity or any other charge.

(2) Where a worker has been granted a loan, his manufacturing enterprise shall, on the basis of the terms and conditions of the loan, deduct from the basic wage or salary, or other allowance of the worker, a sum not exceeding one-third of such basic wage or salary or other allowance, and remit that sum to the Fund within such period and in such manner as may be prescribed.

PART V – FINANCIAL PROVISIONS AND ACCOUNTS

23. General Fund

The Fund shall establish a General Fund –

- (a) into which –
 - (i) a separate account shall be kept in respect of the assets and liabilities of the General Fund under the repealed Export Processing Zones Labour Welfare Fund Act transferred to the Fund at the commencement of this Act;
 - (ii) all contributions, reimbursement of loans, penalties and other money received shall be paid; and
- (b) out of which all payments or loans required to be made or granted shall be effected.

24. Donations and exemptions

(1) Article 910 of the Code Civil Mauricien shall apply to the Fund.

(2) Notwithstanding any other enactment, the Fund shall be exempt from payment of any registration duty, fee or charge in respect of any document under which the Fund is the sole beneficiary.

25. Transfer of property and borrowing

(1) The Fund shall not, except with the approval of the Minister –

(a) sell or exchange any property or make any investment or donation; or

(b) subject to subsection (2)(a), borrow any money.

(2) (a) The Fund shall not borrow any money except for the purpose of carrying out its object or discharging its functions under this Act.

(b) The Minister to whom the responsibility for the subject of finance is assigned may, subject to such terms and conditions as it may determine, guarantee the performance of an obligation undertaken by the Fund pursuant to the borrowing of money by the Fund.

(3) Where the Fund has borrowed money, it shall make adequate provision for –

(a) the redemption of the loan at due times; and

(b) the payment of interest and other charges and expenses incurred in connection with the loan.

(4) Any surplus money of the Fund shall be invested in such manner as may be approved by the Minister, after consultation with the Board.

26. Estimates

(1) The Board shall submit to the Minister, not later than 30 September in every year, an estimate of the income and expenditure of the Fund for the next financial year for his approval.

(2) Subject to subsection (3), the Minister shall, before the beginning of a financial year, signify in writing his approval of the estimate.

(3) The Minister may, in signifying his approval under subsection (2) –

(a) approve only part of the expenditure under any item; and

- (b) direct the Board to amend the estimate in respect of any item.

27. Execution of documents

No deed, instrument, contract, cheque or other document shall be executed or signed by or on behalf of the Fund unless it is signed by –

- (a) the Chairperson or, in his absence, any other member designated by the Board; and
- (b) the General Manager or, in his absence, any other officer designated by the Board.

28. Annual report

(1) The Board shall, not later than 3 months after the end of every financial year, submit to the Director of Audit –

- (a) an annual statement of the receipts and payments of the Fund for that financial year; and
- (b) a balance sheet made up to the end of that financial year showing the assets and liabilities of the Fund.

(2) On receipt of the statement of accounts under subsection (1), the Board shall, not later than one month from the date of receipt, submit to the Minister an annual report of its activities for the financial year together with the audited statement of accounts.

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

PART VI – MISCELLANEOUS

29. Protection from liability

No liability, civil or criminal, shall be incurred by the Fund, the Board, any committee, a member or any officer in respect of any act done or omitted in good faith in the performance of its or his functions or exercise of its or his powers under this Act.

30. Confidentiality

No member, officer or any person appointed as member of a committee shall disclose to any unauthorised person any matter which comes to his knowledge in the performance of his functions.

31. Offences

Any person who –

- (a) fails to comply with section 11 shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years;
- (b) fails to comply with section 18, 19 or 20(4) shall commit an offence and shall, on conviction, be liable, in addition to the amount of contributions short remitted and the penalty under section 19, to a fine not exceeding 50,000 rupees on each count;
- (c) fails to comply with section 20(1) or (6) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees;
- (d) knowingly provides any document or statement, or gives any information in relation to this Act or any regulations made under this Act, which is incorrect or false or misleading in any material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20,000 rupees;
- (e) obstructs the General Manager or any authorised officer in the exercise of his powers under section 20(1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees; or
- (f) contravenes any other provision of this Act or any regulations made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

32. Jurisdiction

Notwithstanding –

- (a) section 114(2) of the Courts Act; and

- (b) section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence under this Act and may impose any penalty provided by this Act.

33. Regulations

The Minister may –

- (a) make such regulations as he thinks fit for the purposes of this Act; and
- (b) by regulations, amend the Schedules.

34. Repeal

The following enactments are repealed –

- (a) the Export Processing Zones Labour Welfare Fund Act; and
- (b) the Export Processing Zones (Collection of Contributions) Regulations 1989.

35. Consequential amendments

(1) The Business Registration Act is amended, in section 9A –

- (a) in subsection (1) –
 - (i) in paragraph (d), by deleting the word “ and”;
 - (ii) by inserting, after paragraph (d), the following new paragraph –
 - (da) the Manufacturing Sector Workers Welfare Fund;
and

(b) in subsection (2), by inserting, in the appropriate alphabetical order, the following new definition –

“Manufacturing Sector Workers Welfare Fund” means the Manufacturing Sector Workers Welfare Fund established under the Manufacturing Sector Workers Welfare Fund Act 2012;

(2) The Statutory Bodies (Accounts and Audit) Act is amended –

- (a) in the First Schedule, in Part II –
 - (i) by deleting the following item with its corresponding entry –

Export Processing Zones Labour Welfare Fund Export Processing Zones Labour Welfare Fund Act

- (ii) by inserting, in the appropriate alphabetical order, the following new item with its corresponding entry –

Manufacturing Sector Workers Welfare Fund Manufacturing Sector Workers Welfare Fund Act 2012

- (b) in the Second Schedule, in Part II –

- (i) by deleting the following item with its corresponding entry –

Export Processing Zones Labour Welfare Fund Export Processing Zones Labour Welfare Fund Act

- (ii) by inserting, in the appropriate alphabetical order, the following new item with its corresponding entry –

Manufacturing Sector Workers Welfare Fund Manufacturing Sector Workers Welfare Fund Act 2012

36. Transitional provisions and savings

- (1) In this section –

“EPZLWF” means the Export Processing Zones Labour Welfare Fund established under the repealed Export Processing Zones Labour Welfare Fund Act;

“repealed enactments” means the Export Processing Zones Labour Welfare Fund Act and the Export Processing Zones (Collection of Contributions) Regulations 1989.

(2) (a) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 31 December next following shall be deemed to be the first financial year of the Fund.

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

(3) (a) Notwithstanding any other enactment, every person employed by the EPZLWF at the commencement of this Act shall be dealt with in accordance with this section.

(b) Every person who, at the commencement of this Act, is employed on the permanent and pensionable establishment of the EPZLWF shall be entitled to be transferred to the permanent and pensionable establishment of the Fund on terms and conditions which shall be not less favourable than those of his previous employment.

(c) The period of service of every person employed on the permanent and pensionable establishment of the EPZLWF who is transferred to the Fund under paragraph (b) shall be considered to be an unbroken period of service with the Fund.

(d) No person employed on the permanent and pensionable establishment of the EPZLWF shall, on account of his transfer to the Fund or any resulting change in his job title, be entitled to claim that his employment has been terminated or adversely affected in breach of any enactment.

(e) Notwithstanding any other enactment, the contract of every person employed on a fixed term performance contract by the EPZLWF which is in force at the commencement of this Act shall be deemed to have been entered into with the Fund and shall remain governed by its existing terms and conditions.

(f) Any proceedings, judicial or otherwise, pending at the commencement of this Act against a person employed by the EPZLWF shall be taken up, continued or completed by the Fund and any resulting order or decision shall have the same force and effect as if made by the EPZLWF.

(g) The assets and funds of the EPZLWF shall, at the commencement of this Act, vest in the Fund.

(h) Subject to paragraphs (b) to (f), all rights, obligations and liabilities subsisting in favour of or against the EPZLWF shall, at the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the Fund.

(i) Any act or thing done under the repealed Export Processing Zones Labour Welfare Fund Act and pending at the commencement of this Act shall be deemed to have been commenced, and may be continued, by the Board under this Act.

(j) Any loan granted under the repealed Export Processing Zones Labour Welfare Fund Act and outstanding at the commencement of this Act shall be deemed to have been granted and remained outstanding under this Act.

(4) (a) Any contribution required to be made by an export enterprise under the repealed Industrial Expansion Act or by a company which manufactures goods in a field specified in the First Schedule for export and is the holder of a registration certificate issued by the Board of Investment established under the Investment Promotion Act, and payable into the General Fund under the repealed Export Processing Zones Labour Welfare Fund Act during the period 1 October 2006

to the commencement of this Act, shall be deemed to be payable under the repealed Export Processing Zones Labour Welfare Fund Act.

(b) Any export enterprise under the repealed Industrial Expansion Act or any company which manufactures goods in a field specified in the First Schedule for export and is the holder of a registration certificate issued during the period 1 October 2006 to 1 February 2009 by the Board of Investment established under the Investment Promotion Act, or any manufacturer of goods in a field specified in the First Schedule registered with the Customs Department of the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act, and in operation at the commencement of this Act with 10 or more workers shall be deemed to have been registered as a manufacturing enterprise under section 17 of this Act.

(c) Any contribution short remitted to the General Fund, together with any surcharge, under the repealed Export Processing Zones Labour Welfare Fund Act during the period 1 October 2006 to the commencement of this Act shall be remitted to the General Manager under this Act in such manner as may be prescribed, and the General Manager shall follow up cases of short remittance, non-repayment or late repayment of loans issued to ensure that all loans are repaid.

(d) Any contribution made under the repealed Export Processing Zones Labour Welfare Fund Act shall be deemed to have been made under this Act.

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

37. 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 different sections of this Act.

FIRST SCHEDULE

[Section 2]

Assembling electronic goods
Food processing and bottling of beverages
Manufacturing chemicals and plastic
Manufacturing footwear and leather goods
Manufacturing jewellery and related articles
Manufacturing medical and optical equipment
Manufacturing metals
Manufacturing paper
Manufacturing pharmaceutical products
Manufacturing watches and clocks
Manufacturing wearing apparel
Printing and reproduction of recorded media
Textile
Manufacturing furniture

SECOND SCHEDULE

[Section 2]

RATE OF BASIC WAGE OR SALARY

30,000 rupees monthly

THIRD SCHEDULE

[Section 18]

RATE OF CONTRIBUTION

PART I

Manufacturing enterprise 9 rupees monthly in respect of each worker

PART II

Worker 3 rupees monthly
