

**EPZDA, MIDA AND SUBEX-M
(TRANSFER OF UNDERTAKING) ACT**

Act 19 of 2005 – 3 June 2005
(unless otherwise indicated)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Transfer of undertaking
4. Pending proceedings
5. Evidence
6. Staff on permanent and pensionable establishment
7. Staff employed on a fixed term performance contract
8. Repeals
9. Dissolution of organisations
10. Commencement

**EPZDA, MIDA AND SUBEX-M
(TRANSFER OF UNDERTAKING) ACT**

1. Short title

This Act may be cited as the EPZDA, MIDA and SUBEX-M (Transfer of Undertaking) Act.

2. Interpretation

In this Act—

“BPML” means Business Parks of Mauritius Ltd, incorporated and registered under the Companies Act;

“employee” means an employee of EPZDA, MIDA or SUBEX-M, as the case may be;

“Enterprise Mauritius” means Enterprise Mauritius incorporated and registered under the Companies Act;

“EPZDA” means the Export Processing Zones Development Authority established under section 3 of the Export Processing Zones Development Authority Act;

“MIDA” means the Mauritius Industrial Development Authority established under section 3 of the Mauritius Export Development and Investment Authority Act;

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

“organisation” means the EPZDA, MIDA or SUBEX-M, as the case may be;

“statutory body” means a statutory body specified in the Schedule to the Statutory Bodies Pension Funds Act;

“SUBEX-M” means the Sub-contracting and Partnership Exchange (SUBEX-M) established under section 3 of the Sub-contracting and Partnership Exchange (SUBEX-M) Act.

3. Transfer of undertaking

(1) The undertakings in moveable assets, of EPZDA, MIDA and SUBEX-M shall, on the coming into operation of this subsection, vest in Enterprise Mauritius.

(2) The undertaking of EPZDA in immovable assets shall, on the coming into operation of this subsection, vest in Enterprise Mauritius.

(3) Subject to subsection (4), the undertakings of MIDA in immovable assets shall, on the coming into operation of this subsection, vest in BPML.

(4) The undertaking of MIDA relating to its industrial estate in Plaine Verte shall, on the coming into operation of this subsection, vest in Enterprise Mauritius.

(5) This subsection shall be given effect to by an instrument drawn up and signed by the representatives of EPZDA, MIDA or SUBEX-M, and Enterprise Mauritius or BPML, as the case may be.

(6) The Government shall, on or after the coming into operation of this Act, enter into agreements with Enterprise Mauritius and BPML, on such terms and conditions as may be agreed upon in relation to any contract, right, obligation, liability or arrangement subsisting on the coming into operation of this Act in favour of or against EPZDA, MIDA and SUBEX-M.

(7) Any right or obligation not the subject of an agreement under subsection (6), which subsists on the coming into operation of this Act in favour or against the organisation shall, on the coming into operation of this Act, be a right or obligation enforceable in favour of or against the Government.

4. Pending proceedings

Any action, arbitration, proceedings or cause of action relating to the undertakings vested in Enterprise Mauritius or BPML, as the case may be, referred to in section 3 which immediately before the coming into operation of this Act, may be pending or in process against or in favour of EPZDA, MIDA and SUBEX-M, may be continued and enforced by, against or in favour of Enterprise Mauritius or BPML, respectively.

5. Evidence

Any document, matter or thing which if the Act had not been passed would have been admissible in evidence in respect of any matter for or against EPZDA, MIDA and SUBEX-M, shall, on or after the coming into operation of

this Act, be admissible in evidence in respect of the same matter for or against Enterprise Mauritius or BPML, as the case may be.

6. Staff on permanent and pensionable establishment

(1) Notwithstanding any other enactment, every employee on the permanent and pensionable establishment of EPZDA, MIDA, and SUBEX-M shall be dealt with in accordance with this section.

(2) (a) Subject to paragraph (b), any employee on permanent and pensionable establishment may apply for employment in Enterprise Mauritius indicating his preference for any particular business unit, and where he makes such application, he shall be given priority of consideration for the first recruitment exercise, with due regard being given to his experience and the efficiency of Enterprise Mauritius.

(b) Any employee may —

- (i) at his request, be redeployed, so far as is practicable, to a statutory body, where vacancies in similar positions are available; or
- (ii) opt for retirement on the ground of abolition of office and be paid his pension benefits in accordance with the provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder.

(3) Notwithstanding subsection (2), any employee may apply for employment in BPML, and where he makes such application, he shall be given priority of consideration for the first recruitment exercise.

(4) Every employee, shall, if recruited, be employed on terms and conditions which are generally not less favourable than those of his previous employment in his organisation.

(5) (a) Every employee who is recruited to form part of the management team of Enterprise Mauritius shall be employed on a fixed term performance contract.

(b) Every employee who is recruited as an employee not forming part of the management team, shall be appointed on the permanent and pensionable establishment of Enterprise Mauritius.

(c) Every employee who does not apply for employment in Enterprise Mauritius or BPML, as the case may be, or does not accept an offer of redeployment, shall be deemed to have been retired from the service of the organisation on the ground of abolition of office and shall be paid his pension benefits in accordance with the provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder.

(6) Every organisation shall pay to every employee recruited on permanent and pensionable establishment of Enterprise Mauritius or BPML, as the case may be, in cash any vacation leave, accumulated sick leave, and passage benefits entitlement standing to his credit.

(7) (a) Where any employee is offered and accepts appointment on a fixed term performance contract at Enterprise Mauritius or BPML, as the case may be, he shall be deemed to have been retired from the service of the organisation on the ground of abolition of office and he shall be paid his pension benefits in accordance with provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder.

(b) Where any employee is offered and accepts employment on the permanent and pensionable establishment of Enterprise Mauritius or BPML, as the case may be, his accrued pension benefits may, at his request and with the concurrence of SICOM, be transferred to—

- (i) such personal pension scheme to which the employee may have adhered; or
- (ii) such pension scheme or superannuation fund as may be established by Enterprise Mauritius or BPML, as the case may be, and his past pensionable service in the organisation shall be added to his service with Enterprise Mauritius or BPML, as the case may be.

(c) Where any employee who is offered employment on the permanent and pensionable establishment of Enterprise Mauritius or BPML, as the case may be, declines the offer of employment, he may, within a period of 7 days from the date on which the offer of employment is made to him, apply for redeployment to a statutory body and he may, so far as is practicable, be redeployed to such statutory body where vacancies in similar positions are available.

(d) Where any employee applies for employment and is informed that he will not be offered an employment in Enterprise Mauritius or BPML, as the case may be, he may, within a period of 7 days from the date on which he is so informed—

- (i) apply for redeployment and may, so far as is practicable, be redeployed to a statutory body where vacancies in similar positions are available; or
- (ii) opt for retirement from the service of the organisation on the ground of abolition of office and he shall be paid pension benefits in accordance with the provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder, and to a further additional pension at the annual rate of one sixtieth of his pensionable emoluments for each completed period of 6 years' pensionable service.

(e) Where an employee referred to in paragraphs (c) and (d) does not, within the specified period of 7 days, apply to be redeployed or opt to be retired on the ground of abolition of office, such employee shall be deemed to have been retired from the service of the organisation on the ground of abolition of office and he shall be paid his pension benefits in accordance with the provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder.

(f) Where any employee has requested to be redeployed under subsection (2) (b) or has applied to be redeployed under paragraphs (c) and (d) (i), does not accept an offer of employment made to him in the statutory body within 7 days of such offer, he shall be deemed to have been retired from the service of the organisation on the ground of abolition of office and he shall be paid his pension benefits in accordance with the provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder.

(8) Where it has not been possible to redeploy any employee who has requested to be redeployed under subsection (2) (b) or has applied to be redeployed under subsection (7) (c) and (d), that employee shall—

- (a) be deemed to have been retired from the service of the organisation on the ground of abolition of office; and
- (b) be paid, in addition to his pension benefits under the Statutory Bodies Pension Funds Act and regulations made thereunder, to a further additional pension at the annual rate of one sixtieth of his pensionable emoluments for each completed period of 6 years' pensionable service.

(9) The additional pension and further additional pension payable under subsections (7) (d) (ii), (8) (b) and (11) (b) shall not, together with the employee's pension payable under the Statutory Bodies Pension Funds Act and regulations made thereunder, exceed the pension to which the employee would have been entitled to, based on his salary at the date of retirement and on his pensionable service with the organisation, if he had continued to hold the office held by him at the retiring age of 60.

(10) Where an employee, if he were employed by Enterprise Mauritius or BPML, as the case may be, in the first recruitment exercise, would reach the age of 60 within the period of one year following the coming into operation of this Act—

- (a) that employee shall not be made an offer of employment or re-deployment; and
- (b) he shall be paid the salary and other benefits that he would have earned, had he remained until the age of 60 in the organisation in the office held by him as at the coming into operation of this Act.

(11) (a) Any employee against whom disciplinary proceedings are pending on the coming into operation of this Act—

- (i) who is not interdicted as at the coming into operation of this Act, shall be eligible to apply for employment at Enterprise Mauritius or BPML, as the case may be; or
- (ii) who is interdicted as at the coming into operation of this Act, shall be eligible to apply for an employment in Enterprise Mauritius or BPML, as the case may be, where following the completion of the disciplinary proceedings, he is re-instated in the office he held at the time of his interdiction.

(b) Where, upon the reinstatement of an employee under paragraph (a) (ii), no vacancy exists at Enterprise Mauritius or BPML, as the case may be, the employee shall be deemed to have been retired on the ground of abolition of office and he shall be paid his pension benefits in accordance with the provisions of the Statutory Bodies Pension Funds Act and regulations made thereunder, and a further additional pension at the annual rate of one sixtieth of his pensionable emoluments for each completed period of 6 years' pensionable service.

(c) For the purposes of paragraph (b), the date of retirement on the ground of abolition of service shall be deemed to be the date of the coming into operation of this Act.

(12) No person referred to in subsection (1) shall, on account of his employment by Enterprise Mauritius or BPML on a fixed term performance contract or on the permanent and pensionable establishment, or any resulting change in his job title, or on his retirement from the organisation on the ground of abolition of office, be entitled to claim that his contract of service has been terminated or adversely affected in breach of any other enactment.

(13) Any disciplinary inquiry, investigation or proceedings, pending or in process against any employee referred to in subsection (1) shall, as from the coming into operation of this Act, be taken up, continued and completed by the Permanent Secretary and any resulting order or decision shall have the same force and effect as if made by the organisation.

7. Staff employed on a fixed term performance contract

(1) Notwithstanding any other enactment but subject to subsection (2), the contract of every employee employed on a fixed term performance contract shall be terminated in accordance with the terms and conditions of such contract.

(2) (a) Every employee referred to in subsection (1) may apply for employment in Enterprise Mauritius indicating his preference for any particular business unit and where he makes such application, he shall be given priority of consideration for the first recruitment exercise, with due regard being given to his experience and the efficiency of Enterprise Mauritius.

(b) Notwithstanding paragraph (a), any employee referred to in subsection (1) may apply for an employment in BPML and, where he makes such an application, he shall be given priority of consideration for the first recruitment exercise.

(3) Any employee referred to in subsection (2) shall, if recruited by Enterprise Mauritius or BPML, be employed on a fixed term performance contract and on terms and conditions which shall generally not be less favourable than those of his previous employment.

8. Repeals

The following enactments are repealed—

- (a) the Export Processing Zones Development Authority Act;
- (b) the Mauritius Industrial Development Authority Act; and

- (c) the Sub-contracting and Partnership Exchange (SUBEX-M) Act.
(S. 8 not in operation.)

9. Dissolution of organisations

(1) On the coming into operation of this Act, every organisation shall be deemed to have been dissolved and Enterprise Mauritius shall become the owner of all documents and records of every organisation.

(2) (a) Notwithstanding subsection (1)—

- (i) the Board of EPZDA;
- (ii) the Board of MIDA; and
- (iii) the Management Committee of SUBEX-M,

shall continue in existence for the purposes of sections 6 and 7, and paragraphs (b) and (c) of this section.

(b) As soon as practicable after the coming into operation of this Act, the Board or Management Committee referred to in paragraph (a), as the case may be, shall prepare and submit to the Minister a report and audited statement of accounts, as required by sections 8 and 9 of the Statutory Bodies (Accounts and Audit) Act or section 13 of the repealed Sub-contracting and Partnership Exchange (SUBEX-M) Act, for the period commencing on the 1 July of the year preceding the year in which this Act comes into operation to the day immediately before the coming into operation of this Act.

(c) The report of the Board or Management Committee referred to in paragraph (a) shall be laid before the National Assembly.

(S. 9 not in operation.)

10. 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 provisions of this Act.
