

PRIVATE SECONDARY EDUCATION AUTHORITY ACT

Act 20 of 1976 – 20 September 1976

ARRANGEMENT OF SECTIONS

SECTION

- | | |
|------------------------------------|---|
| 1. Short title | 14. Receipts and payments of Authority |
| 2. Interpretation | 15. Grants to secondary or pre-vocational schools |
| 3. Establishment of Authority | 16. Emoluments to teachers |
| 4. Objects of Authority | 17. Charges to General Fund |
| 5. Functions of Authority | 18. Loan redemption and depreciation |
| 5A. Powers of Authority | 19. Privilege in favour of Authority |
| 6. The Board | 20. Estimates |
| 6A. Consultative Committee | 21. Exemptions |
| 7. Remuneration of members | 21A. Power to make rules |
| 8. Meetings of Board | 21B. Power to give directives |
| 9. Powers of Minister | 21C. Offences |
| 10. Director | 22. Regulations |
| 11. Appointment of staff | 23. — |
| 12. Conditions of service of staff | |
| 13. Protection from liability | |

PRIVATE SECONDARY EDUCATION AUTHORITY ACT

1. Short title

This Act may be cited as the Private Secondary Education Authority Act.

[S. 1 amended by s. 3 of Act 20 of 2016 w.e.f. 1 October 2016.]

2. Interpretation

In this Act—

“aid” means any assistance granted to a secondary or pre-vocational school by the Authority under this Act;

“Authority” means the Private Secondary Education Authority established under section 3;

“Board” means the Private Secondary Education Board referred to in section 6;

“Director” means the person appointed as such under section 10;

“document”—

(a) means a document in any form; and

- (b) includes—
- (i) any writing on any material;
 - (ii) a book or graphical illustration; and
 - (iii) information recorded or stored by any electronic or other technological means and capable, with or without the aid of any equipment, of being reproduced;

“grant” means a grant payable under section 15 (1);

“guidelines” —

- (a) means guidelines issued under section 5 or 5A; and
- (b) includes any code, guidance note or other similar instrument which the Authority may issue under those sections;

“inspection” includes pedagogical inspection and quality assurance;

“manager” has the same meaning as in the Education Act;

“member” means a member of the Board and includes the Chairperson;

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

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“pre-vocational school” means a pre-vocational school registered under the Education Act, which is not owned and managed by Government;

“private secondary education” —

- (a) means post primary education, offered by a private secondary school, leading to public examinations at School Certificate or Higher School Certificate level, or their equivalent; but
- (b) does not include vocational or tertiary education;

“provisional grant” means a provisional grant payable under section 15 (2);

“rector” has the same meaning as in the Education Act;

“rules” means rules made by the Authority under section 21A;

“secondary school” means a secondary school registered under the Education Act, which is not owned and managed by Government.

[S. 2 amended by Act 56 of 1983; s. 3 of Act 50 of 2002; s. 4 of Act 20 of 2016 w.e.f. 1 October 2016.]

3. Establishment of Authority

(1) There is established for the purposes of this Act the Private Secondary Education Authority.

(2) The Authority shall be a body corporate.

[S. 3 amended by s. 5 of Act 20 of 2016 w.e.f. 1 October 2016.]

4. Objects of Authority

The Authority shall be responsible for—

- (a) promoting and encouraging education in secondary or pre-vocational schools;
- (b) setting up and operating, with the Minister's approval, schemes to provide aid;
- (c) controlling the manner in which and the purposes for which aid is made use of;
- (d) ensuring that the terms and conditions of employment of staff in secondary or pre-vocational schools comply with the relevant laws, rules, guidelines and directives;
- (e) the payment of grants to secondary and pre-vocational schools and ensuring that the grants are being used for the intended purposes; and
- (f) the registration and inspection of secondary or pre-vocational schools, their managers, rectors and members of teaching and non-teaching staff.

[S. 4 amended by Act 56 of 1983; s. 4 of Act 50 of 2002; s. 6 of Act 20 of 2016 w.e.f. 1 October 2016.]

5. Functions of Authority

The Authority shall have such functions as may be necessary to effectively further its objects and shall, in particular—

- (a) advise or assist in the setting up of pension schemes for the staff of secondary and pre-vocational schools;
- (b) collect all necessary data in order to enable the Authority to carry out its objects;
- (c) deal with matters relating to secondary and pre-vocational schools, their managers, rectors and members of teaching and non-teaching staff;
- (d) formulate appropriate policies, make rules, issue guidelines and directives, and set standards and conditions—
 - (i) for promoting and enhancing quality education in secondary schools;
 - (ii) for the registration of secondary and pre-vocational schools;
 - (iii) for ensuring efficiency and transparency in the manner in which grants are used by secondary and pre-vocational schools;
 - (iv) for the admission, transfer and discipline of students of secondary and pre-vocational schools; or
 - (v) that are incidental or conducive to the attainment of its objects;

- (e) undertake inspection and periodic quality audits in academic, infrastructural and other areas related to school management;
- (f) ensure that secondary and pre-vocational schools are managed in accordance with relevant laws, rules, guidelines, directives and standards;
- (g) carry out enquiries into complaints regarding secondary and pre-vocational schools and take necessary action or refer such complaints to appropriate authorities, as the case may be; and.
- (h) provide educational counselling, career guidance and psychological support, as appropriate, to students of secondary and pre-vocational schools.

[S. 5 amended by Act 56 of 1983; s. 5 of Act 50 of 2002; repealed and replaced by s. 7 of Act 20 of 2016 w.e.f. 1 October 2016.]

5A. Powers of Authority

(1) The Authority—

- (a) shall have such powers as may be necessary to make rules, issue guidelines and directives, and set standards and conditions to enable it to effectively discharge its functions and take appropriate action to ensure that secondary and pre-vocational schools comply with the rules, guidelines, directives, standards and conditions; and
- (b) may—
 - (i) subject to subsection (3) (d), take over, establish or operate secondary schools and pre-vocational schools, or laboratories, workshops or libraries in private secondary and pre-vocational schools; or
 - (ii) purchase, issue and control the use of text books and other educational requisites for secondary and pre-vocational schools.

(2) For the purpose of subsection (1), the Authority may—

- (a) require the manager of a secondary and pre-vocational school to—
 - (i) submit duly acquitted pay sheets or other similar documents pertaining to the salaries of the staff of the secondary and pre-vocational school; and
 - (ii) furnish information relating to the administration of, and teaching in, the secondary and pre-vocational school; and
- (b) inspect the books of account and attendance registers of a secondary and pre-vocational school.

(3) The Authority shall not, except with the written authorisation of the Minister—

- (a) raise loans or borrow money;

- (b) mortgage or charge its property;
- (c) issue debentures or other securities as security for any debt, liability or obligation of the Authority; or
- (d) exercise its powers under subsection (1) (b) (i).

[S. 5A inserted by s. 8 of Act 20 of 2016 w.e.f. 1 October 2016.]

6. The Board

(1) The Authority shall be administered by a Private Secondary Education Board.

(2) The Board shall consist of—

- (a) a Chairperson, to be appointed by the Prime Minister;
- (b) the Financial Secretary or his representative;
- (c) the Permanent Secretary or his representative;
- (d) a representative of the Ministry responsible for the subject of civil service;
- (e) the Director of the Mauritius Institute of Education or his representative;
- (f) the Director; and
- (g) 2 persons having wide experience in the field of education, to be appointed by the Minister.

(3) The members referred to in subsection (2) (a) and (g) shall hold office for a period of 2 years and shall be eligible for re-appointment.

(4) No person shall be qualified for appointment as a member under subsection (2) (g) if he is—

- (a) a member of, or a candidate for election to, the National Assembly or a local authority, or is otherwise actively engaged in politics; or
- (b) engaged or employed in the private secondary education sector.

[S. 6 amended by Act 56 of 1983; Act 55 of 1985; repealed and replaced by s. 9 of Act 20 of 2016 w.e.f. 1 October 2016.]

6A. Consultative Committee

(1) The Board may set up, on such terms and conditions as it may determine, such Consultative Committee as may be necessary in the discharge of its functions.

(2) A Consultative Committee shall consist of not less than 3 nor more than 7 members, including the Chairperson, to be appointed by the Board on such terms and conditions as it may determine.

(3) A Consultative Committee may include managers of private secondary schools or representatives of unions of employees of private secondary schools or relevant stakeholders.

(4) A Consultative Committee shall—

- (a) meet as often as may be necessary and at such time and place as the Chairperson of the Committee may determine; and
- (b) regulate its meetings and procedures as it may determine.

[S. 6A inserted by s. 10 of Act 20 of 2016 w.e.f. 1 October 2016.]

7. Remuneration of members

Every member may be paid such remuneration or allowance as the Minister may determine.

8. Meetings of Board

(1) Subject to subsection (2), the Chairperson shall preside at every meeting of the Board.

(2) In the absence of the Chairperson at a meeting of the Board, the Permanent Secretary or his representative shall preside at the meeting.

(3) The Board shall meet at such time and place as the Chairperson may appoint.

(4) Notice of every meeting shall be given to the members by the Director.

(5) At any meeting of the Board, 5 members shall constitute a quorum.

(6) Everything authorised or required to be done by the Board shall be decided by a simple majority of the members present and voting.

[S. 8 amended by s. 11 of Act 20 of 2016 w.e.f. 1 October 2016.]

9. Powers of Minister

(1) The Minister may, in relation to the exercise of its functions by the Board, give such directions to the Board as he considers necessary in the public interest and the Board shall comply with those directions.

(2) The Board shall furnish to the Minister such reports and other information with respect to the activities of the Authority, in such manner and at such time, as the Minister may require.

(3) The Director shall furnish to the Minister such returns or copies of such documents, including the minutes of proceedings of the Board and the accounts of the Authority, as the Minister may require.

10. Director

(1) There shall be a chief executive officer of the Authority who shall be—

- (a) known as the Director; and
- (b) appointed by the Prime Minister.

(2) The Director shall be responsible for the execution of the policy of the Authority and for the control and management of its day-to-day business.

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

11. Appointment of staff

(1) The Board may, with the approval of the Minister, appoint, on such terms and conditions as it thinks fit, such staff as may be necessary for the proper discharge of its functions under this Act.

(2) The staff of the Authority shall be under the administrative control of the Director.

12. Conditions of service of staff

The Board may, with the approval of the Minister, make provision for the conditions of service of the staff of the Authority, and, in particular, for—

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by, staff;
- (b) appeals by staff against dismissal and other disciplinary measures; and
- (c) the establishment and maintenance of a superannuation scheme and medical benefits and loan funds and the contributions payable and the benefits recoverable.

13. Protection from liability

(1) No liability, civil or criminal, shall attach to any member or to an employee of the Authority, in respect of any act which any one of them has done or omitted to do in good faith in the execution or purported execution of the functions of the Authority.

(2) Every member and every employee of the Authority shall be deemed to be a public functionary within the meaning of the Criminal Code.

[S. 13 amended by Act 55 of 1985.]

14. Receipts and payments of Authority

(1) The Authority may receive any money appropriated from the Consolidated Fund or Capital Fund and any other money lawfully accruing to the Authority from any other source.

(2) The Authority shall establish a General Fund into which all monies received by it and out of which all payments required to be made by it, shall be paid.

(3) Any cheque on any banking account kept by the Authority shall be signed by any 2 of the following persons—

- (a) the Chairperson;
- (b) the Director;
- (c) such other officer as may be designated for the purpose by the Board.

(4) The Authority may, with the approval of the Minister, establish such other special fund as it thinks fit for its development.

[S. 14 amended by Act 48 of 1992.]

15. Grants to secondary or pre-vocational schools

(1) (a) Subject to paragraphs (b) to (d), the Authority shall pay to every secondary or pre-vocational school a grant, the amount of which shall be determined in accordance with such criteria as the Authority may, with the approval of the Minister, determine.

(b) The Authority may apply different criteria in respect of different classes of secondary or pre-vocational schools.

(c) The Authority may decline to pay, or where the grant is already payable, cease to pay a grant to such class of secondary or pre-vocational schools as do not satisfy such conditions as approved by the Minister.

(d) The Authority may—

- (i) deduct from the grant which would otherwise be payable to a secondary or pre-vocational school under this section, the emoluments of any teacher employed in that school who has been on leave with pay for a period exceeding his leave entitlement; and
- (ii) for the purposes of this section and section 16, determine, in accordance with any enactment, the rates of pay at which any teacher employed in a secondary or pre-vocational school shall be remunerated.

(2) Where the criteria to enable payment of a grant to a secondary or pre-vocational school to be made have not been determined or are to be varied, the Authority shall make to that secondary or pre-vocational school a provisional grant, the amount of which shall be in the discretion of the Authority.

(3) A grant or a provisional grant payable under subsection (1) or (2) shall be paid at such time and in such instalments as the Authority may determine.

(4) Before any grant or provisional grant is made, the Authority may require the grantee to furnish such information as the Authority may require.

(5) Where the grant payable—

- (a) exceeds a provisional grant, the Authority shall pay any amount shortpaid;
- (b) is less than the provisional grant, the Authority shall deduct from any future grant payable to that school any amount overpaid in such number of instalments as the Authority may determine.

(6) A grant or provisional grant shall not be assignable or transferable or liable to be assigned, sequestered or levied upon except for the purpose of satisfying a debt due to the State.

(7) The Authority shall not pay any grant in respect of a teacher or any other member of the staff, whether teaching or otherwise, who has attained the age of 70 or such lesser age not below the age of 60 or in such other circumstances as may be prescribed.

(8) Notwithstanding any other enactment, where a secondary school fails to comply with—

- (a) this Act or any regulations made under it;
- (b) the Education Act or any regulations made under that Act; or
- (c) any condition imposed by the Authority,

the Authority may withhold any grant until the Authority is satisfied that the school has complied with the relevant enactment or condition.

[S. 15 amended by Act 42 of 1983; Act 55 of 1985; Act 56 of 1985; Act 48 of 1991; Act 21 of 2000; s. 12 of Act 20 of 2016 w.e.f. 1 October 2016.]

16. Emoluments to teachers

(1) Notwithstanding section 15, the Authority shall deduct from the grant or provisional grant payable to a secondary or pre-vocational school, the aggregate amount of the emoluments payable by that school to its staff and, subject to subsection (2), shall pay such emoluments directly to the members of the staff concerned without incurring any liability to the secondary or pre-vocational school or any other person.

(2) No payment of emoluments shall be made to a member of the staff under subsection (1) unless the Authority is satisfied that the emoluments are due.

(3) Where the emoluments of any member of the staff employed by a secondary or pre-vocational school are paid directly to him by the Authority, that member of the staff shall have no claim against the secondary or pre-vocational school in respect of his services for the month for which he has received his emoluments from the Authority.

(4) Notwithstanding any other enactment, where the emoluments of a member of the staff are paid directly to him by the Authority—

- (a) the Authority shall not be regarded as the employer of that person by reason of the payment of the emoluments to him;
- (b) the secondary or pre-vocational school shall always remain the employer of that person and shall, in relation to that person, be responsible for matters of promotion and supervision;
- (c) any amount overpaid to a member of the staff by the Authority shall be set off against any future emoluments payable to that person; and
- (d) matters of discipline and dismissal of a member of the staff shall be within the jurisdiction of such board of discipline and dismissal as may be prescribed and on such terms and conditions as may be generally and specifically prescribed.

(5) In this section, “member of the staff” means any member of the teaching and non-teaching staff of a secondary or pre-vocational school, other than the manager.

[S. 16 amended by Act 56 of 1983; Act 55 of 1985.]

17. Charges to General Fund

The Authority may, in furtherance of its objects and in accordance with the terms and conditions on which its funds may have been obtained, given or derived, charge to the General Fund all remuneration, allowances, salaries, fees, pensions and superannuation fund contributions, gratuities, working expenses and all other charges properly arising, including any necessary capital expenditure.

18. Loan redemption and depreciation

The Authority shall make adequate provision for—

- (a) the redemption of loans at due time;
- (b) interest on all other charges and expenses incurred in connection with loans; and
- (c) the depreciation or diminution in value of its assets.

19. Privilege in favour of Authority

(1) Any grant, provisional grant or aid made to a secondary or pre-vocational school shall be secured by a privilege in favour of the Authority.

(2) The privilege under subsection (1) shall—

- (a) rank concurrently with the privilege for the wages of employees (*gens de travail*) under article 2148 of the Code Civil Mauricien;
- (b) extend over all the property of the secondary or pre-vocational school; and
- (c) not require to be inscribed by the Conservator of Mortgages.

[S. 19 amended by Act 56 of 1983.]

20. Estimates

(1) The Authority shall, at least 3 months before the beginning of every financial year, submit to the Minister an estimate of the income and expenditure of the Authority for that financial year.

(2) (a) The Minister shall, before the beginning of the financial year but subject to paragraph (b), signify in writing his approval of the estimate.

(b) In signifying his approval under paragraph (a), the Minister may—

- (i) approve part only of the expenditure under any item;
- (ii) direct the Authority to amend the estimates in respect of any item in such manner as he thinks fit.

(3) The Authority shall not incur any expenditure unless it has received the prior approval of the Minister.

21. Exemptions

(1) Notwithstanding any other enactment, the Authority shall be exempt from payment of every duty, rate, charge, fee or tax.

(2) The Authority may—

- (a) frank letters and postal packets destined to persons in Mauritius; and
- (b) make remittances by money order,

free of charge.

21A. Power to make rules

(1) The Authority may, with the approval of the Minister, make such rules as it may determine in furtherance of its objects.

(2) Any rules made under subsection (1) may provide for the imposition of an administrative sanction in relation to such matters as may be prescribed.

[S. 21A inserted by s. 13 of Act 20 of 2016 w.e.f. 1 October 2016.]

21B. Power to give directives

(1) Where, in respect of a secondary school, the Authority has reason to believe that—

- (a) a directive is necessary or desirable to protect the interests, welfare, safety and health of the staff and students of the school;
- (b) industrial relations are becoming strained;
- (c) grants are not being used for the intended purposes;
- (d) the school has contravened or is likely to contravene a relevant law,

it may give the school such a written directive as it may determine in the circumstances.

(2) Without prejudice to the generality of subsection (1), the Authority may direct a secondary school—

- (a) in the case of a contravention of a relevant law, to do a specified act, or refrain from doing a specified act, for the purpose of—
 - (i) remedying the effects of the contravention; or
 - (ii) taking such measures as may be necessary to ensure that no contravention occurs;
- (b) to comply with a law;
- (c) to comply with any policy, rule, guideline, directive, standard or other similar instrument issued by the authority; or

(d) to comply with a directive within such time as it may determine.

(3) A secondary school which is given a directive shall comply with the directive notwithstanding any contract or arrangement to which it is a party.

(4) The Authority may impose such administrative sanction as may be prescribed if a school fails to comply with a directive issued to it within such time as may have been determined.

(5) No person shall knowingly hinder or prevent a secondary school from complying with a directive given to it under this section.

[S. 21B inserted by s. 13 of Act 20 of 2016 w.e.f. 1 October 2016.]

21C. Offences

Any person who fails to comply with any requirement imposed under this Act, or any rule, guideline or directive under this Act, 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 2 years.

[S. 21C inserted by s. 13 of Act 20 of 2016 w.e.f. 1 October 2016.]

22. Regulations

(1) The Minister may, after consultation with the Authority, make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide that any person who contravenes them 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 2 years.

[S. 22 amended by Act 48 of 1992.]

23. —
