

South Africa

## National Small Business Act, 1996

Act 102 of 1996

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# National Small Business Act, 1996

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## South Africa

# National Small Business Act, 1996

## Act 102 of 1996

*Published in Government Gazette 17612 on 27 November 1996*

**Assented to on 12 November 1996**

**Commenced on 20 June 1997 by [National Small Business Act, 1996: Commencement](#)**

*[This is the version of this document as it was from 26 November 2003 to 14 December 2004.]*

*[Amended by [National Small Business Amendment Act, 2003 \(Act 26 of 2003\)](#) on 26 November 2003]*

*[Afrikaans text signed by the President.]*

## ACT

**To provide for the establishment of the Advisory Body and the Ntsika Enterprise Promotion Agency; to provide guidelines for organs of state in order to promote small business in the Republic; and to provide for matters incidental thereto.**

*[long title substituted by section 8 of [Act 26 of 2003](#)]*

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Chapter 1

### 1. Definitions

In this Act, unless the context otherwise indicates—

"**Agency**" means the Ntsika Enterprise Promotion Agency established by [section 9](#);

"**Board**" means the Board of Directors of the Agency contemplated in [section 11](#);

"**Chief Executive Officer**" means the Chief Executive Officer of the Agency appointed as contemplated in [section 11\(1\)\(b\)](#);

"**constitution of the Agency**" means the constitution of the Agency contemplated in [section 13](#) and adopted in terms of [section 16\(1\)](#);

"**constitution of the Council**" *[definition of "constitution of the Council" deleted by section 1 of [Act 26 of 2003](#)]*

"**Council**" *[definition of "Council" deleted by section 1 of [Act 26 of 2003](#)]*

"**Director-General**" means the Director-General of the Department of Trade and Industry, or an officer of that Department designated by that Director-General;

"**Minister**" means the Minister of Trade and Industry;

"**National Co-ordinator**" *[definition of "National Co-ordinator" deleted by section 1 of [Act 26 of 2003](#)]*

"**National Small Business Support Strategy**" means the national policy in respect of small business support as published by the Minister in the *Gazette*, and includes the policy as stated in the White Paper on National Strategy for the Development and Promotion of Small Business in South Africa (Notice No. 213 of 1995, published in *Gazette* No. 16317 of 28 March 1995);

"**prescribed**" means prescribed by regulation;

"**provincial council**" [definition of "provincial council" deleted by section 1 of [Act 26 of 2003](#)]

"**regulation**" means any regulation made under this Act;

"**service provider**" means any public or private entity providing support services to small business;

"**small business**" means a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or subsector of the economy mentioned in column 1 of the Schedule and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule;

"**small business organisation**" means any entity, whether or not incorporated or registered under any law, which consists mainly of persons carrying on small business concerns in any economic sector, or which has been established for the purpose of promoting the interests of or representing small business concerns, and includes any federation consisting wholly or partly of such association, and also any branch of such organisation;

"**this Act**" includes the regulations.

## Chapter 2

### Minister's power to facilitate and establish Advisory Body

#### 2. Minister's power to facilitate and establish Advisory Body

The Minister must, within a reasonable time, facilitate a process aimed at the establishment of an Advisory Body to represent and promote the interests of small business as contemplated in the National Strategy for the Development and Promotion of Small Business in South Africa referred to in the definition of "National Small Business Support Strategy" in [section 1](#).

#### 3. Minister's duty to determine Constitution of Advisory Body

- (1) The Minister must through an open and transparent process of consultation determine a constitution for the Advisory Body referred to in [section 2](#).
- (2) The constitution of the Advisory Body must—
  - (a) in general provide for—
    - (i) the composition of the Advisory Body;
    - (ii) the quorum and meetings of the Advisory Body;
    - (iii) the procedure for the functioning of the Advisory Body;
    - (iv) interaction with Parliament, the Department of Trade and Industry and statutory bodies; and
    - (v) any other matter that may be necessary to facilitate the proceedings, activities or business of the Advisory Body; and
  - (b) specifically require the Advisory Body to advise the Minister on—
    - (i) strategies to address identified market failures affecting the sector;
    - (ii) the impact of current and new legislation on small business;
    - (iii) national standards pertaining to small business development and regulation;

- (iv) measures to ensure the creation of physical business infrastructure through viable business sites;
- (v) the development of skills in all aspects of running a business;
- (vi) steps to be taken to create access for small business into value chains;
- (vii) constraints affecting the viability of the small business community;
- (viii) methods to liaise with the small business community to identify their needs;
- (ix) methods to monitor and influence the provision of support services to the small business sector; and
- (x) any other matter that the Minister may deem appropriate.

4. \*\*\*

*[section 4 deleted by section 2 of [Act 26 of 2003](#)]*

5. \*\*\*

*[section 5 deleted by section 2 of [Act 26 of 2003](#)]*

6. \*\*\*

*[section 6 deleted by section 2 of [Act 26 of 2003](#)]*

7. \*\*\*

*[section 7 deleted by section 2 of [Act 26 of 2003](#)]*

8. \*\*\*

*[section 8 deleted by section 2 of [Act 26 of 2003](#)]*

*[Chapter 2 substituted by section 2 of [Act 26 of 2003](#)]*

## Chapter 3 Ntsika Enterprise Promotion Agency

### 9. Establishment of Ntsika Enterprise Promotion Agency

- (1) The Ntsika Enterprise Promotion Agency is hereby established as a juristic person.  
*[subsection (1), previously unnumbered, renumbered by section 3 of [Act 26 of 2003](#)]*
- (2) The Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), applies to the Agency.  
*[subsection (2) added by section 3 of [Act 26 of 2003](#)]*

### 10. Functions of Agency

- (1) The main functions of the Agency are—
  - (a) to expand, co-ordinate and monitor the provision of training, advice and counselling to small business in accordance with the National Small Business Support Strategy;  
*[paragraph (a) substituted by section 4(a) of [Act 26 of 2003](#)]*

- (b) to provide financial support to service providers that provide the services contemplated in paragraph (a);
  - (c) to consult with any organ of government, the Advisory Body or a service provider in order to—
    - (i) facilitate the provision of business advice and counselling services to small business;
    - (ii) facilitate access by small business to raw material and other products;
    - (iii) facilitate international and national market access for products and services of small business; and
    - (iv) generally, strengthen the capacity of—
      - (aa) service providers to support small business; and
      - (bb) small business to compete successfully in the economy; and

*[paragraph (c) amended by section 4(b) of [Act 26 of 2003](#)]*
  - (d) to facilitate and co-ordinate research relating to support programmes by the Agency.

*[paragraph (d) substituted by section 4(c) of [Act 26 of 2003](#)]*
- (2) Other functions of the Agency are—
- (a) to investigate, at the request of the Director-General, the effect of existing and proposed legislation on small business, and to report to the Director-General thereon;
  - (b) to provide information and analysis on the implementation of the National Small Business Support Strategy to organs of government; and
- [paragraph (b) amended by section 4(d) of [Act 26 of 2003](#)]*
- (c) *[paragraph (c) deleted by section 4(d) of [Act 26 of 2003](#)]*
  - (d) to improve the general understanding of the public regarding small business' contribution to the South African economic growth, job creation and welfare.
- (3) The Agency must perform its functions in accordance with this Act and its constitution.

## 11. Board of Directors of Agency

- (1) The Agency is managed and controlled by a Board of Directors consisting of—
  - (a) no fewer than seven, and no more than 15 persons, appointed by the Minister;
  - (b) the Chief Executive Officer appointed by the Minister on the recommendation of the Board; and
  - (c) if the Board so elects, no more than five persons, appointed by the Board in an expert or representative capacity.
- (2) The directors of the Board must be persons who—
  - (a) have experience in business or administration; or
  - (b) on account of their training or experience—
    - (i) are knowledgeable about trade, industry, finance or the economy; or
    - (ii) have legal knowledge of matters pertaining to small business; or
  - (c) have experience of matters connected with, and of problems experienced by, small business or any small business enterprise; and

- (d) comply with other criteria which the Minister may prescribe.
- (3) (a) The Minister must, by notice in two newspapers which have general circulation throughout the national territory of the Republic, invite nominations for directors to the Board referred to in subsection (1)(a) and (b).  
*[paragraph (a) substituted by section 5(a) of [Act 26 of 2003](#)]*
- (b) The directors referred to in subsection (1)(a) and (b) must be appointed by the Minister from nominations received from small business organisations, service providers and any other person involved in small business promotion and support.
- (c) The Minister may, in terms of the criteria referred to in subsection (2), appoint persons—
  - (i) other than those nominated, if sufficient persons who meet the criteria are not nominated; or
  - (ii) if there are insufficient nominations lodged within the period specified in the notice.
- (4) *[subsection (4) deleted by section 5(b) of [Act 26 of 2003](#)]*
- (5) All members of the Board, except the Chief Executive Officer, must serve in a part-time capacity.
- (6) (a) The Minister, with the concurrence of the Minister of Finance, determines the remuneration and allowances of directors who are not in the full-time service of the State.  
*[paragraph (a) substituted by section 5(c) of [Act 26 of 2003](#)]*
- (b) Persons referred to in paragraph (a) who are in the service of the State may not receive additional remuneration or allowances for serving on the Board, but may be reimbursed for expenses incurred in the performance of their functions in such last-mentioned service.

## 12. Rights and responsibilities of Board

The Board will have all of the rights and responsibilities consistent with those which are normally accorded to a board of directors in terms of the Companies Act, 1973 ([Act No. 61 of 1973](#)), and that are consistent with this Act.

## 13. **Constitution** of Agency

Subject to this Act and the National Small Business Support Strategy, the constitution of the Agency must, among others, provide for—

- (a) the appointment of the additional directors of the Board referred to in [section 11\(1\)\(c\)](#);
- (b) the tenure of directors of the Board;
- (c) the circumstances and manner in which directorship is terminated and the procedures for replacing directors.
- (d) the election of office-bearers, their functions, and the circumstances and manner in which they may be removed from office;
- (e) the rules for the convening and conducting of meetings of the Board, including the quorum required for and the minutes to be kept of those meetings;
- (f) the voting rights of the different directors and the manner in which decisions are to be made;
- (g) the establishment of any division of the Agency to perform specialised functions;
- (h) the establishment and functioning of committees, including a management committee;
- (i) the co-opting as a member of any person to assist the Agency or any committee in the consideration of any particular matter;

- (j) the preparation by the Board, for approval by the Minister, of an annual business plan in terms of which the activities of the Agency is annually planned;
- (k) subject to [section 15\(2\)](#), the banking and investment of funds by the Board;
- (l) provisions to regulate the manner in which, and procedures whereby, expertise from any person is obtained in order to further the objects of the Agency;
- (m) the determination through arbitration of any dispute concerning the interpretation of the constitution of the Agency;
- (n) the delegation of powers and assignment of duties to directors, committees and employees, provided that the Board may—
  - (i) not be divested of any power or duty by virtue of the delegation or assignment; and
  - (ii) vary or set aside any decision made under any delegation or in terms of any assignment;
- (o) a procedure for amending the constitution.

#### 14. Staff of Agency

- (1) Work incidental to the performance of the functions of the Agency is performed by a Chief Executive Officer appointed as contemplated in [section 11\(1\)\(b\)](#).
- (2) The Chief Executive Officer may be assisted by—
  - (a) persons appointed by the Board;
  - (b) officers in the public service seconded to the service of the Agency in terms of any law regulating such secondment.
- (3) The conditions of service, remuneration and service benefits of the Chief Executive Officer and the personnel appointed by the Board must be determined by the Board, with the concurrence of the Minister and the Minister of Finance.
- (4) If the Chief Executive Officer is for any reason unable to perform, his or her functions, the Board may designate a person in the service of the Agency to act as chief executive officer until the Chief Executive Officer is able to resume office.

#### 15. Finances of Agency

- (1) The funds of the Agency consist of—
  - (a) money appropriated by Parliament;
  - (b) grants, donations and bequests made to the Agency;
  - (c) money lawfully obtained by the Agency from any other source, but loans raised by the Agency are subject to approval of both the Minister and the Minister of Finance.
- (2) All money received by the Agency must be deposited in a banking account in the name of the Agency with a bank established under the Banks Act, 1990 ([Act No. 94 of 1990](#)), or a mutual bank established under the Mutual Banks Act, 1993 ([Act No. 124 of 1993](#)).
- (3) The financial year of the Agency begins on 1 April and ends on 31 March of the following year.
- (4) The Chief Executive Officer is the accounting officer of the Agency and must ensure that—
  - (a) proper record of all the financial transactions, assets and liabilities of the Agency are kept; and



- (b) as soon as possible, but not later than three months after the end of a financial year, accounts reflecting the income and expenditure of the Agency and a balance sheet of the assets and liabilities of the Agency as at the end of that financial year are prepared.
- (5) The accounts and balance sheet referred to in subsection (4)(b) must be audited by the Auditor-General.

## 16. Drafting and adoption of constitution of Agency

- (1) The Director-General must as soon as practicable after the appointment of the directors of the Agency contemplated in [section 11\(1\)\(a\)](#) and (b), and thereafter as often as may be necessary, convene a meeting of those directors in order to draft and adopt the constitution of the Agency.
- (2) The Director-General must determine the procedures for the meeting contemplated in subsection (1) and must chair that meeting.

## 17. Transitional provisions in respect of Agency

- (1) On the adoption of the constitution of the Agency in terms of [section 16\(1\)](#)—
  - (a) all assets, liabilities, rights and obligations of "Ntsika Enterprise Promotion Agency", an association incorporated under section 21 of the Companies Act, 1973 ([Act No. 61 of 1973](#)), and with the registration number of 95/02675/08, pass to the Agency; and
  - (b) anything done by or on behalf of the said association is deemed to have been done by the Agency, subject to this Act.
- (2) The Director-General must as soon as practicable after the adoption of the constitution of the Agency in writing notify the Registrar of Companies and the Registrar of Deeds thereof and of the provisions of this section.
- (3) On receipt of the notification contemplated in subsection (2)—
  - (a) the Registrar of Companies must deregister the association referred to in subsection (1); and
  - (b) the Registrar of Deeds must make the necessary entries and endorsements in respect of any register and document in the registration office, or document submitted to that Registrar.
- (4) No transfer duties, stamp duties, fees or taxes have to be paid for the purposes of this section.

## Chapter 4 General provisions

## 18. Determination of guidelines

- (1) The Minister may, by notice in the *Gazette*, publish guidelines for organs of state in national, provincial and local spheres of government to promote small business and the National Small Business Support Strategy.
- (2) The guidelines referred to in subsection (1) may include guidelines on—
  - (a) procedures for consultation with the Department of Trade and Industry on all proposed legislation identified by the Minister under subsection (3);
  - (b) the assessment of the effect and application of legislation on small business;
  - (c) co-ordination between organs of state in order to promote the consistent application of the National Small Business Support Strategy;
  - (d) procedures for consultation with small business organisations, trade unions and other representative organisations;

- (e) the review of the effect of existing legislation on small business and the National Small Business Support Strategy.
- (3) The Minister may, by notice in the *Gazette*, identify the type of legislation that may have an effect on small business and the National Small Business Support Strategy and in respect of which the consultations contemplated in subsection (2)(a) and (d) may be conducted.

## 19. Reports

- (1) (a) As soon as practicable after the end of every financial year the Advisory Body and the Agency must each compile a report on their respective activities during that year.

*[paragraph (a) substituted by section 6(a) of [Act 26 of 2003](#)]*

- (b) These reports, the respective constitutions, as well as the respective audited annual financial statements, must be submitted to the Minister, who must table them in Parliament.
- (2) The Advisory Body and the Agency must furnish the Minister with any such other reports as the Minister may request.

*[subsection (2) substituted by section 6(b) of [Act 26 of 2003](#)]*

- (3) Entities designated by the Director-General, must in co-operation with the Director-General, annually compile a review, called the Annual Review of Small Business, which must cover areas defined by the Minister or the Director-General, and areas including—
    - (a) particulars of the work performed by the Agency and Advisory Body and of progress achieved in furtherance of the objects of the National Small Business Support Strategy;
- [paragraph (a) substituted by section 6(c) of [Act 26 of 2003](#)]*
- (b) summaries of any findings or recommendations of the Director-General in respect of legislation, proposed legislation and administrative practices which restrict the small business sector;
  - (c) an outline of new developments and trends in regard to the small business sector in South Africa;
  - (d) reports on the growth and decline of small business according to sector, size and region;
  - (e) a statistical analysis of the contribution of the small business sector to the economy, to export promotion, to rural development and to the level of incorporation of marginalised groups into the economy.
  - (4) The Director-General must submit the Annual Review of Small Business to the Minister before the end of June each year and the Minister must table it in Parliament.

*[subsection (4), previously incorrectly numbered (3), substituted by section 6(d) of [Act 26 of 2003](#)]*

## 20. Regulations and amendment of Schedule

- (1) The Minister may make regulations regarding—
  - (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) generally, any other matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) The Minister may, in order to achieve the objects of this Act, by notice in the *Gazette* amend the Schedule to account for inflation, macro-economic shifts in the economy, any legislation affecting small business, and any other matter which could have an effect on the functionality of the Schedule.

## 21. Repeal of laws

- (1) Subject to subsection (2), the Small Business Development Act, 1981 ([Act No. 112 of 1981](#)), the Small Business Development Amendment Act, 1984 ([Act No. 54 of 1984](#)), and the Small Business Development Amendment Act, 1990 ([Act No. 16 of 1990](#)), are hereby repealed.
- (2) Section 2A of the Small Business Development Act, 1981, remains in force until a date determined by the Minister by notice in the *Gazette*, which date shall not be earlier than 12 months after the date of commencement of this Act.

## 22. Short title and commencement

This Act is called the National Small Business Act, 1996, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## Schedule

*[See definition of “small business” in section 1]*

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or sub-sectors in accordance with the Standard Industrial Classification	Size of class	Total full-time equivalent of paid employees	Total turn-over	Total gross asset value (fixed property excluded)
Agriculture	Medium	100	R 5m	R 5m
	Small	50	R 3m	R 3m
	Very small	10	R 0.50m	R 0.50 m
	Micro	5	R 0.20m	R 0.10m
Mining and quarrying	Medium	200	R 39m	R 23m
	Small	50	R 10m	R 6m
	Very small	20	R 4m	R 2m
	Micro	5	R 0.20m	R 0.10m
Manufacturing	Medium	200	R 51m	R 19m
	Small	50	R 13m	R 5m
	Very small	20	R 5m	R 2m
	Micro	5	R 0.20m	R 0.10m
Electricity, gas and water	Medium	200	R 51m	R 19m
	Small	50	R 13m	R 5m
	Very small	20	R 5.10m	R 1.90m
	Micro	5	R 0.20m	R 0.10m

Construction	Medium	200	R 26m	R 5m
	Small	50	R 6m	R 1m
	Very small	20	R 3m	R 0.50m
	Micro	5	R 0.20m	R 0.10m
Retail and motor trade and repair services	Medium	200	R 39m	R 6m
	Small	50	R 19m	R 3m
	Very small	10	R 4m	R 0.60m
	Micro	5	R 0.20m	R 0.10m
Whole trade, commercial agents and allied services	Medium	200	R 64m	R 10m
	Small	50	R 32m	R 5m
	Very small	20	R 6m	R 0.60m
	Micro	5	R 0.20m	R 0.10m
Catering, accommodation and other trade	Medium	200	R 13m	R 3m
	Small	50	R 6m	R 1m
	Very small	20	R 5.10m	R 1.90m
	Micro	5	R 0.20m	R 0.10m
Transport, storage and communications	Medium	200	R 26m	R 6m
	Small	50	R 13m	R 3m
	Very small	20	R 3m	R 0.60m
	Micro	5	R 0.20m	R 0.10m

Finance and business services	Medium	200	R 26m	R 5m
	Small	50	R 13m	R 3m
	Very small	20	R 3m	R 0.50m
	Micro	5	R 0.20m	R 0.10m
Community, social and personal services	Medium	200	R 13m	R 6m
	Small	50	R 6m	R 3m
	Very small	20	R 1m	R 0.60m
	Micro	5	R 0.20m	R 0.10m

*[Schedule substituted by section 7 of [Act 26 of 2003](#)]*