

South Africa

National Small Enterprise Act, 1996

Act 102 of 1996

Legislation as at 15 December 2004

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National Small Enterprise Act, 1996

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South Africa

National Small Enterprise Act, 1996

Act 102 of 1996

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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 from 15 December 2004.]

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

[Amended by National Small Business Amendment Act, 2004 (Act 29 of 2004) on 15 December 2004]

[short title, previously National Small Business Act, substituted by section 5 of Act 29 of 2004]

[Afrikaans text signed by the President.]

ACT

To provide for the establishment of the Advisory Body and the Small Enterprise Development Agency; to provide guidelines for organs of state in order to promote small enterprise in the Republic; and to provide for matters incidental thereto.

[long title substituted by section 8 of Act 26 of 2003 and section 4 of Act 29 of 2004 and amended by section 6 of Act 29 of 2004]

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 Small Enterprise Development Agency established by section 9;

[definition of "Agency" substituted by section 1(a) of Act 29 of 2004]

"**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 in terms of section 13H;

[definition of "Chief Executive Officer" substituted by section 1(b) of Act 29 of 2004]

"**constitution of the Agency**" *[definition of "constitution of the Agency" deleted by section 1(c) of Act 29 of 2004]*

"**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 Enterprise Support Strategy" means the national policy in respect of small enterprise 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 Enterprise in South Africa (Notice No. 213 of 1995, published in *Gazette* No. 16317 of 28 March 1995);

[definition of "National Small Business Support Strategy" amended by section 6 of [Act 29 of 2004](#)]

"Ntsika" means the Ntsika Enterprise Promotion Agency established by the National Small Business Act, 1996 (Act No. 102 of 1996), and incorporated in terms of section 17 of this Act;

[definition of "Ntsika" inserted by section 1(d) of [Act 29 of 2004](#)]

"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 enterprise;

[definition of "service provider" amended by section 6 of [Act 29 of 2004](#)]

"small enterprise" means a separate and distinct business entity, together with its branches or subsidiaries, if any, including co-operative enterprises, managed by one owner or more predominantly carried on in any sector or subsector of the economy mentioned in column 1 of the Schedule and 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;

[definition of "small enterprise", previously "small business", substituted by section 1(e) of [Act 29 of 2004](#) and by section 6 of [Act 29 of 2004](#)]

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

[definition of "small enterprise organisation", previously "small business enterprise organisation", substituted by section 1(f) of [Act 29 of 2004](#)]

"this Act" includes the regulations.

"Trust" means the National Manufacturing Advisory Centre Trust, incorporated into the Agency in terms of section 17 of this Act.

[definition of "Trust" added by section 1(g) of [Act 29 of 2004](#)]

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 enterprise as contemplated in the National Strategy for the Development and Promotion of Small Enterprise in South Africa referred to in the definition of "National Small Enterprise Support Strategy" in [section 1](#).

[section 2 amended by section 6 of [Act 29 of 2004](#)]

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 enterprise;
[subparagraph (ii) amended by section 6 of [Act 29 of 2004](#)]
 - (iii) national standards pertaining to small enterprise development and regulation;
[subparagraph (iii) amended by section 6 of [Act 29 of 2004](#)]
 - (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 enterprise into value chains;
[subparagraph (vi) amended by section 6 of [Act 29 of 2004](#)]
 - (vii) constraints affecting the viability of the small enterprise community;
[subparagraph (vii) amended by section 6 of [Act 29 of 2004](#)]
 - (viii) methods to liaise with the small enterprise community to identify their needs;
[subparagraph (viii) amended by section 6 of [Act 29 of 2004](#)]
 - (ix) methods to monitor and influence the provision of support services to the small enterprise sector; and
[subparagraph (ix) amended by section 6 of [Act 29 of 2004](#)]
 - (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

Small Enterprise Development Agency

9. Establishment of Small Enterprise Development Agency

- (1) The Small Enterprise Development Agency is hereby established as a juristic person.
- (2) The Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), applies to the Agency.
- (3) The Agency acts through its Board.

9A. Objectives of Agency

The objectives of the Agency are to—

- (a) design and implement development support programmes;
- (b) promote a service delivery network that increases the contribution of small enterprises to the South African economy, and promotes economic growth, job creation and equity; and
- (c) generally, strengthen the capacity of—
 - (i) service providers to support small enterprises; and
 - (ii) small enterprises to compete successfully domestically and internationally.

[section 9A inserted by section 2 of [Act 29 of 2004](#)]

10. Functions of Agency

- (1) The Agency must—
 - (a) implement the policy of the national government for small enterprise development;
 - (b) design and implement a standard national delivery network that must uniformly apply throughout the Republic in respect of small enterprise development, integrating all government-funded small enterprise support agencies across all spheres of government;
 - (c) design and implement small enterprise development support programmes in order to—
 - (i) facilitate the building of sustainable and competitive enterprises;
 - (ii) facilitate the promotion of entrepreneurship;
 - (iii) facilitate the creation of an enabling operating environment for small enterprises;

- (iv) facilitate access by small enterprises to non-financial resources, capacity-building services, products and services;
 - (iv) facilitate access by small enterprises to non-financial resources, capacity-building services, products and services;
 - (v) facilitate international and national market access for products and services of small enterprises;
 - (vi) facilitate, develop, co-ordinate and foster partnerships across all spheres of government, the private sector and relevant stakeholders that may assist the Agency to achieve its objectives;
 - (vii) promote a service delivery network to facilitate access and outreach to development support for small enterprises;
 - (viii) facilitate and co-ordinate research relating to small enterprise support programmes;
 - (ix) provide advice, information, analysis and support in the implementation of a Small Enterprise Development Policy;
 - (x) at the request of the Director-General, investigate, advise on and comment on the effect of existing and proposed legislation on small enterprises and to report to the Director-General thereon; and
 - (xi) improve the understanding of the public regarding the contribution of small enterprises to domestic economic growth, job creation and general welfare;
 - (d) establish provincial structures to ensure the effective implementation of its functions as defined in this section.
- (2) The Agency may—
- (a) institute and conduct civil proceedings in all matters relating to its functions;
 - (b) enter into contracts;
 - (c) acquire, hold and dispose of assets;
 - (d) let or hire any plant, machinery, equipment or goods of the Agency not immediately required for the purposes of the Agency;
 - (e) invest money not immediately required for the purposes of the Agency in any manner that is consistent with sound commercial practice;
 - (f) do all that is necessary and convenient to be done for or in connection with the performance of its functions.

11. **Constitution of Board and appointment of members of Board**

- (1) The Board must ensure that the functions of the Agency are performed and that in so doing the objectives of the Agency are achieved.
- (2) The Minister must appoint the non-executive members of the Board.
- (3) For the purpose of the appointment of the members of the Board referred to in subsection (2), the Minister must, through the media and by notice in the *Gazette*, invite nominations of persons as candidates for such appointment.
- (4) In appointing the members of the Board, the Minister must ensure that the Board represents a broad cross-section of the population of South Africa and comprises persons who reflect the South African society with special attention to race, gender, disability, geographical spread and organisations based in rural areas.

- (5) The Board consists of not less than seven and not more than 15 members of whom—
 - (a) one must be a non-executive Chairperson;
 - (b) one must be a Deputy Chairperson; and
 - (c) the Chief Executive Officer, by virtue of his or her office, must be an executive director.
- (6) The Board must include—
 - (a) members who have experience in business;
 - (b) members who on account of their training or experience—
 - (i) are knowledgeable about trade, industry, finance or the economy;
 - (ii) have legal knowledge;
 - (iii) are knowledgeable in the management of a small enterprise.
- (7) The Minister may prescribe any other criteria in respect of the appointment of members.
- (8) All members of the Board other than the Chief Executive Officer are appointed as part-time members.

12. Terms of office of non-executive members of Board

- (1) A non-executive member of the Board—
 - (a) holds office for a period of three years which the Minister may extend for further periods of three years each or such shorter periods as the Minister may determine;
 - (b) serves on the terms and conditions determined by the Minister and specified in the letter of appointment of the member; and
 - (c) may resign by giving three months' written notice to the Minister or as stipulated in the letter of appointment.
- (2) If a member of the Board dies, resigns or his or her appointment is terminated in terms of [section 13C](#) before the expiration of the period for which he or she was appointed, the Minister may, subject to the provisions of [section 11\(2\)](#) and (4), appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

13. Remuneration and allowances of members of Board

- (1) The Minister must, with the concurrence of the Minister of Finance, determine the remuneration and allowances of members of the Board.
- (2) Members referred to in subsection (1) 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 terms of this Act.

13A. Conflict of interest

- (1) A member may not engage in any paid employment or any other activity that conflicts with the proper performance of his or her functions as a member.
- (2) A member who has a direct or indirect pecuniary interest or any other interest in a matter being considered by the Board must, without delay after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (3) A disclosure in terms of subsection (2) must be recorded in the minutes of the meeting and the member may not, unless the Board otherwise determines—
 - (a) be present during any deliberation of the Board with regard to that matter; or
 - (b) take part in any decision of the Board with regard to that matter.

[section 13A inserted by section 2 of [Act 29 of 2004](#)]

13B. Resignation of members of Board

A member may resign from the Board by notice, in writing, to the Minister.

[section 13B inserted by section 2 of [Act 29 of 2004](#)]

13C. Termination of appointment of members of Board

- (1) The Minister may, in consultation with the Board, terminate the appointment of a member—
 - (a) for misconduct;
 - (b) whose estate is sequestrated or where he or she has entered into a composition with his or her creditors;
 - (c) who, without reasonable excuse, fails to comply with [section 13A](#);
 - (d) where the performance of the member has been unsatisfactory or ineffective for a significant period of time;
 - (e) who has been convicted of an offence of which dishonesty is an element, and sentenced to imprisonment without option of a fine;
 - (f) if he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the Board; or
 - (g) a member of the Board fails to attend three consecutive meetings of the Board without having a valid explanation for his or her failure to do so.
- (2) If the performance of the Board has been unsatisfactory or ineffective for a significant period of time, the Minister may terminate the appointment of all members.

[section 13C inserted by section 2 of [Act 29 of 2004](#)]

13D. Meetings of Board

- (1) The Board must hold at least six meetings per year.
- (2) The Chairperson—
 - (a) may convene a special meeting of the Board; and
 - (b) must convene such a meeting within 14 days of receipt of a written request signed by at least one third of the members of the Board.
- (3) The Minister may request a meeting with the Board at any time should a need arise.
- (4) The Chairperson presides at all meetings at which he or she is present.
- (5) Where the Chairperson is not present at a meeting the Deputy Chairperson presides or, if the Deputy Chairperson is not present, the members present must appoint from amongst themselves a member to preside at the meeting.
- (6) At a meeting, two thirds of the members constitute a quorum.

- (7) A decision of the majority of the members present at any meeting constitutes a decision of the Board and in the event of an equality of votes, the Chairperson must have a casting vote in addition to his or her deliberative vote.
- (8) A decision taken by the Board or an act performed under that decision is not invalid merely by reason of—
 - (a) any irregularity in the appointment of a member;
 - (b) a vacancy on the Board; or
 - (c) the fact that any person, not entitled to sit as a member, sat at a meeting at the time when the decision was taken:

Provided that such decision was taken by a majority of the Board members present at the time and entitled to sit, and those members at the time constituted a quorum.

[section 13D inserted by section 2 of [Act 29 of 2004](#)]

13E. Conduct of meetings

- (1) The Board may determine rules of procedure for the conduct of its business at meetings.
- (2) Minutes of proceedings of every meeting of the Board must be recorded and entered in a book kept for that purpose.
- (3) Minutes of the proceedings of each meeting must be submitted at the next meeting of the Board and, if passed as correct, must be confirmed by the signature of the Chairperson.
- (4) The Chief Executive Officer must, at the request of the Board, attend a meeting of the Board, but the Chief Executive Officer is not entitled to vote.
- (5) The Board may—
 - (a) permit members to participate in a particular meeting by telephone, closed-circuit television or any other means of communication, and a member who so participates is regarded as being present at the meeting;
 - (b) invite a person to attend a meeting for the purpose of advising or informing it on any matter.
- (6) The Board must at least once a year hold consultative meetings with stakeholders, beneficiaries and provincial representatives to discuss the activities and performance of the Agency.

[section 13E inserted by section 2 of [Act 29 of 2004](#)]

13F. Resolution without meeting

- (1) Where the Board so determines, a resolution is regarded to have been passed at a meeting of the Board if, without meeting, two thirds or more members indicate agreement in accordance with a procedure previously determined by the Board.
- (2) Such a resolution is regarded to have been adopted on a day determined in accordance with the procedure contemplated in subsection (1).

[section 13F inserted by section 2 of [Act 29 of 2004](#)]

13G. Directives issued by Minister

- (1) The Minister may give the Board written directives regarding the performance of its functions.
- (2) The directives contemplated in subsection (1) may not be inconsistent with this Act.

[section 13G inserted by section 2 of [Act 29 of 2004](#)]

13H. Chief Executive Officer

- (1) The Minister must, on the recommendation of the Board, appoint a Chief Executive Officer.
- (2) Subject to this chapter, a person appointed in terms of subsection (1) holds office for a period not exceeding five years as specified in the letter of appointment, and is eligible for reappointment.
- (3) The Chief Executive Officer holds office on such terms and conditions including remuneration and allowances as the Minister, in consultation with the Minister of Finance and on the recommendation of the Board, may determine in writing.
- (4) The Chief Executive Officer manages the Agency subject to the control and directions of the Board.
- (5) Anything done in the name of, or on behalf of, the Agency by the Chief Executive Officer is regarded as having been done by the Agency, provided such actions are lawful and in accordance with the directions of the Board.
- (6) The Chief Executive Officer is responsible for the management of the staff of the Agency.
- (7) The Chief Executive Officer may delegate any power or assign any duty to an employee of the Agency, including a power delegated to him or her or a duty assigned to him or her by the Board unless the Board in its written delegation or assignment to the Chief Executive Officer expressly prohibits such further delegation or assignment.
- (8) A delegation or assignment in terms of subsection (7) does not prevent the Chief Executive Officer from exercising the delegated power or performing the assigned duty.
- (9) The Chief Executive Officer may withdraw or amend a delegation or assignment made by him or her.
- (10) The Chief Executive Officer may, on behalf of the Agency, arrange with a State authority or another body—
 - (a) for the services of officers or employees of the State or the other body to be made available for the purposes of the Agency; or
 - (b) for the services of an officer to be made available for the purposes of the State or any other body.
- (11) A Chief Executive Officer may not engage in any paid employment outside the functions of the office without prior approval of the Board.
- (12) The Chief Executive Officer may resign by notice in writing to the Minister and on the acceptance of such resignation the Chief Executive Officer ceases to be a member of the Board or any other body on which he or she represented the Agency.
- (13) If the Chief Executive Officer dies, resigns or is relieved from office before the expiration of the period for which he or she was appointed, the Minister may, on recommendation by the Board, appoint a person to fill the vacancy for the unexpired portion of the period for which he or she was appointed.

[section 13H inserted by section 2 of [Act 29 of 2004](#)]

14. Staff of Agency

- (1) The Chief Executive Officer may, on such terms and conditions as the Board may determine, appoint staff of the Agency to enable the Agency to perform its functions.
- (2) The Agency must pay the Chief Executive Officer and employees out of its funds such remuneration, allowances, subsidies and other benefits as the Minister may, in consultation with the Minister of Finance, determine.

- (3) Despite anything to the contrary in any law contained, the Chief Executive Officer may, in accordance with an agreement between the Department of Trade and Industry and the Agency, transfer permanently to the Agency any person who is an officer or employee of the Department of Trade and Industry in terms of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), with the concurrence of such person.
- (4) The Chief Executive Officer must, before acting in terms of subsection (2) or (3), obtain the Minister's approval.

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.
- (2) All monies received by the Agency must be deposited into 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 Board may, up to an amount approved from time to time by the Minister in consultation with the Minister of Finance, raise short-term loans at any time by way of overdrawing its account with a bank or otherwise, to meet any casual deficits that may arise.
- (4) The financial year of the Agency begins on 1 April and ends on 31 March of the following year.
- (5) The Chief Executive Officer is the accounting officer of the Agency.

16. Business plan

- (1) The Agency must, at least 90 days before the beginning of each financial year, prepare a business plan to be approved by the Minister.
- (2) The business plan must—
 - (a) include a statement setting out the short and medium term operational and business objectives of the Agency for at least five years;
 - (b) outline the strategies and policies that the authority intends to adopt in order to achieve its objectives;
 - (c) include an operational plan, a financial plan, a human resources and performance management plan as well as performance indicators for purposes of monitoring and evaluation; and
 - (d) include a report on the consultation contemplated in [section 13E\(6\)](#) and the recommendations resulting from such consultations.
- (3) The financial plan must include estimates of expenditure and revenue for the following financial year.
- (4) The Agency may, with the approval of the Minister, amend the business plan.
- (5) The approval of the Minister contemplated in subsection (1) or (4) has effect from the beginning of the financial year in question.

16A. Restriction of use of name

- (1) A person may not—
 - (a) conduct his or her or its affairs or business or carry on his or her or its occupation or trade;
 - (b) be registered or licensed under any law; or
 - (c) falsely claim to be acting on behalf of the Agency, under a name containing the words "Small Enterprise Development Agency", the translation thereof in any other official language, or the abbreviation, "SEDA", thereof.
- (2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

[*section 16A inserted by section 2 of [Act 29 of 2004](#)*]

16B. Designated institutions

- (1) The Minister may, by notice in the *Gazette*, designate other institutions whose objectives and functions are similar to those of the Agency, to be incorporated into the Agency.
- (2) Whenever the Minister acts in terms of subsection (1), he or she must, with the approval of the Minister of Finance, enter into an agreement with the executive authority of the designated institution contemplated in subsection (1) to ensure that the assets, liabilities, rights and obligations of the designated institution in question, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the furtherance of the objectives and functions of such designated institution, pass to the Agency.
- (3) The Minister must, through the media and by notice in the *Gazette*, publish his or her intention to designate an institution contemplated in subsection (1).
- (4) Prior to entering into an agreement contemplated in subsection (2) the Minister must consult with all the relevant stakeholders.
- (5) After the conclusion of an agreement in terms of subsection (1) anything done by or on behalf of the designated institution contemplated in subsection (1) is deemed to have been done by the Agency.
- (6) A person employed by the designated institution contemplated in subsection (1) must immediately after the conclusion of an agreement referred to in subsection (2) be transferred to the Agency in accordance with the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)), and any applicable collective bargaining agreement with organised labour.
- (7) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (6) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.
- (8) A person transferred to the Agency in terms of subsection (6) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.
- (9) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

- (10) For the purposes of the Income Tax Act, 1962 ([Act No. 58 of 1962](#)), no change of employer must be regarded as having taken place when a person contemplated in subsection (6) takes up employment at the Agency.
- (11) As soon as practical after the conclusion of the agreement contemplated in subsection (2)—
 - (a) the executive authority of the designated institution in question must take all steps necessary to liquidate the institution;
 - (b) the Registrar of Companies, the Master of the High Court or any other applicable regulatory body must deregister the institution in question; and
 - (c) the Registrar of Deeds must make the necessary entries and endorsements on any register or document in the registration office, or documents submitted to that Registrar.
- (12) Transfer duties, stamp duties, fees or taxes need not be paid for the purposes of subsection (11).
- (13) Any litigation resulting from a cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection (2) which arose—
 - (a) before the transfer date must be conducted by or against the designated institution in question; and
 - (b) on, or after, the transfer date must be conducted by or against the Agency.

[section 16B inserted by section 2 of [Act 29 of 2004](#)]

Transitional Provisions

17. Incorporation of institutions

Ntsika and the Trust must be incorporated into the Agency.

17A. Appointment of provisional Chief Executive Officer

The Minister may, for the purposes of setting up the Agency, appoint a provisional Chief Executive Officer without any recommendation by the Board on such terms and conditions, including remuneration and allowances, as the Minister may determine in writing.

[section 17A inserted by section 2 of [Act 29 of 2004](#)]

17B. Transfer of staff

- (1) A person who is employed by Ntsika or the Trust immediately before the commencement of this Act must be transferred to the Agency in accordance with the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)), and any applicable collective bargaining agreement with organised labour.
- (2) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.
- (3) A person transferred to the Agency in terms of subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.
- (4) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

- (5) For the purposes of the Income Tax Act, 1962 ([Act No. 58 of 1962](#)), no change of employer must be regarded as having taken place when a person contemplated in subsection (1) takes up employment at the Agency.

[section 17B inserted by section 2 of [Act 29 of 2004](#)]

17C. Assets, liabilities and funds

- (1) (a) On the date of commencement of this Act—
- (i) all assets, liabilities, rights and obligations of Ntsika, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the furtherance of its objectives and functions, pass to the Agency;
 - (ii) anything done by or on behalf of Ntsika is deemed to have been done by the Agency, subject to this Act.
- (b) The Director-General must, in writing, as soon as practical after the coming into operation of this Act, notify the Board of Ntsika and the Registrar of Deeds of the provisions of this section.
- (c) On receipt of the notification contemplated in paragraph (b)—
- (i) the Board of Ntsika must take all steps necessary to liquidate Ntsika; and
 - (ii) the Registrar of Deeds must make the necessary entries and endorsements on any register or document in the registration office, or documents submitted to that Registrar.
- (2) Transfer duties, stamp duties, fees or taxes need not be paid for the purposes of subsection (1).
- (3) (a) As soon as practical after the coming into operation of this Act, the Minister must enter into an agreement with the Trustees of the Trust to ensure that all assets, liabilities, rights and obligations of the Trust, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the furtherance of its objectives and functions, pass to the Agency.
- (b) Anything done after the conclusion of the agreement contemplated in paragraph (a) by or on behalf of the Trust is deemed to have been done by the Agency, subject to this Act.
- (c) As soon as practical after the conclusion of the agreement contemplated in paragraph (a)—
- (i) the Trustees of the Trust must terminate the Trust;
 - (ii) the Master of the High Court must deregister the Trust; and
 - (iii) the Registrar of Deeds must make the necessary entries and endorsements on any register or document in the registration office, or documents submitted to that Registrar.
- (4) Transfer duties, stamp duties, fees or taxes need not be paid for the purposes of subsection (3).
- (5) Any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection (1) or (3) which arose—
- (a) before the transfer date must be conducted by or against the incorporated institution in question; and
 - (b) on or after the transfer date must be conducted by or against the Agency.

[section 17C inserted by section 2 of [Act 29 of 2004](#)]

[Chapter 3 amended by sections 3, 4 and 5 of [Act 26 of 2003](#) and substituted by section 2 of [Act 29 of 2004](#)]

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 enterprise and the National Small Enterprise Support Strategy.

[subsection (1) amended by section 6 of [Act 29 of 2004](#)]

- (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 enterprise;
 - (c) co-ordination between organs of state in order to promote the consistent application of the National Small Enterprise Support Strategy;
 - (d) procedures for consultation with small enterprise organisations, trade unions and other representative organisations;
 - (e) the review of the effect of existing legislation on small enterprise and the National Small Enterprise Support Strategy.

[subsection (2) amended by section 6 of [Act 29 of 2004](#)]

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

[subsection (3) amended by section 6 of [Act 29 of 2004](#)]

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 Enterprise, 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 Enterprise 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 enterprise sector;

- (c) an outline of new developments and trends in regard to the small enterprise sector in South Africa;
- (d) reports on the growth and decline of small enterprise according to sector, size and region;
- (e) a statistical analysis of the contribution of the small enterprise sector to the economy, to export promotion, to rural development and to the level of incorporation of marginalised groups into the economy.

[subsection (3) amended by section 6 of [Act 29 of 2004](#)]

- (4) The Director-General must submit the Annual Review of Small Enterprise 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](#) and amended by section 6 of [Act 29 of 2004](#)]

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;
 - (aA) (i) the manner in which an institution may be incorporated into the Agency;
 - (ii) the criteria for appointment of members of the Board;
 - (iii) the design and implementation of small enterprise financial support programmes in order to—
 - (aa) facilitate access to finance by small enterprises and small enterprise organisations;
 - (bb) facilitate access to finance by service providers to small enterprises and small enterprise organisations;
- (b) generally, any other ancillary or incidental administrative or procedural matter which may be necessary or expedient to prescribe for the proper implementation or administration of this Act.

[paragraph (aA) inserted by section 3(a) of [Act 29 of 2004](#)]

[paragraph (b) substituted by section 3(b) of [Act 29 of 2004](#)]

- (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 enterprise, and any other matter which could have an effect on the functionality of the Schedule.

[subsection (2) amended by section 6 of [Act 29 of 2004](#)]

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 Enterprise Act, 1996, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

[section 22 substituted by section 5 of [Act 29 of 2004](#)]

Schedule

[See definition of “small enterprise” 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](#) and amended by section 6 of [Act 29 of 2004](#)]