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THE PRESIDENCY

No. 1459 15 December 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 29 of 2004: National Small Business Amendment Act, 2004.

DIE PRESIDENSIE

No. 1459 15 Desember 2004

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 29 van 2004: Nasionale Kleinsake-wysigingswet, 2004.



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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 11 December 2004.)

ACT

To amend the National Small Business Act, 1996, so as to repeal all provisions pertaining to Ntsika Enterprise Promotion Agency; to provide for the establishment of the Small Enterprise Development Agency; to make provision for the incorporation of the Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institution into the Agency to be established; to provide for the necessary transitional arrangements to this effect; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 102 of 1996, as amended by section 1 of Act 26 of 2003

1. Section 1 of the National Small Business Act, 1996 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “Agency” of the following definition:
“**Agency**” means the **[Ntsika] Small Enterprise [Promotion] Development Agency** established by section 9;”
- (b) by the substitution for the definition of “Chief Executive Officer” of the following definition:
“**Chief Executive Officer**” means the Chief Executive Officer of the Agency appointed **[as contemplated]** in terms of section **[11(1)(b)] 13H;**”;
- (c) by the deletion of the definition of “constitution of the Agency;”;
- (d) by the insertion after the definition of “National Small Business Support Strategy” of the following definition:
“**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;”
- (e) by the substitution for the definition of “small business” of the following definition:
“**small [business] enterprise**” means a separate and distinct business entity, together with its branches or subsidiaries, if any, 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

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui weglatings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 11 Desember 2004.)

WET

Tot wysiging van die Nasionale Kleinsakewet, 1996, ten einde alle bepalings met betrekking tot die Ntsika-ondernemingbevorderingsagentskap te herroep; voorsiening te maak vir die instelling van die Kleinondernemingsontwikkelingsagentskap; voorsiening te maak vir die inlywing van die Ntsika-ondernemingbevorderingsagentskap, die “National Manufacturing Advisory Centre” en enige ander aangewese instelling by die Agentskap wat ingestel staan te word; voorsiening te maak vir die nodige oorgangsbepalings tot hierdie effek; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 102 van 1996, soos gewysig deur artikel 1 van Wet 26 van 2003

1. Artikel 1 van die Nasionale Kleinsakewet, 1996 (hierna die Hoofwet genoem), 5
word hierby gewysig deur—

- (a) die omskrywing van “Agentskap” deur die volgende omskrywing te vervang: 5
“‘**Agentskap**’ die [Ntsika-ondernemingbevorderingsagentskap] Klein-
ondernemingsontwikkelingsagentskap ingestel by artikel 9;”;
- (b) die omskrywing van “Hoof- Uitvoerende Beamppte” deur die volgende 10
omskrywing te vervang:
“‘**Hoof- Uitvoerende Beamppte**’ die Hoof- Uitvoerende Beamppte van
die Agentskap aangestel [soos beoog in] ingevolge artikel [11(1)(b)]
13H;”;
- (c) die omskrywing van “kleinsaak” deur die volgende omskrywing te vervang: 15
“‘[**kleinsaak**] kleinonderneming’ ’n afsonderlike en bepaalde sake-
entiteit, saam met sy takke of ondergeskiktes, indien enige, en ook
koöperatiewe ondernemings [en nie-regeringsorganisasies], wat deur
een eienaar of meer bestuur word [en wat, saam met sy takke of
20
ondergeskiktes, indien enige], oorwegend bedryf word in ’n sektor of
subsektor van die ekonomie vermeld in kolom 1 van die Bylae en [wat]
as ’n mikro-, ’n baie klein-, ’n klein- of ’n medium-onderneming
geklassifiseer kan word deur aan die maatstawwe vermeld in kolom 3,
4 en 5 van die Bylae [teenoor die kleinste toepaslike grootte of klas,
25
vermeld in kolom 2 van die Bylae,] te voldoen;”;

- [**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**];”;
- (f) by the substitution for the definition of “small business organisation” of the following definition: 5
 “‘**small [business] enterprise organisation**’ means any entity, whether or not incorporated or registered under any law, [**which consists**] consisting mainly of persons carrying on small [**business**] enterprise concerns in any economic sector[, or **which has been**] and established for the purpose of promoting the interests of or representing small [**business**] enterprise concerns, and includes any federation consisting wholly or partly of such association, and [**also**] any branch of such organisation;”;
- (g) by the insertion after the definition of “this Act” of the following definition: 15
 “‘**Trust**’ means the National Manufacturing Advisory Centre Trust, incorporated into the Agency in terms of section 17 of this Act.”.

Substitution of Chapter 3 of Act 102 of 1996

2. The following Chapter is hereby substituted for Chapter 3 of the principal Act:

“CHAPTER 3 20

Small Enterprise Development Agency

Establishment of Small Enterprise Development Agency

9. (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. 25

(3) The Agency acts through its Board.

Objectives of Agency

9A. The objectives of the Agency are to—

- (a) design and implement development support programmes; 30
 (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— 35
 (i) service providers to support small enterprises; and
 (ii) small enterprises to compete successfully domestically and internationally.

Functions of Agency

10. (1) The Agency must—

- (a) implement the policy of the national government for small enterprise development; 40
 (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; 45
 (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; 50
 (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;

- (d) die omskrywing van “kleinsakeorganisasie” deur die volgende omskrywing te vervang:
- “**[kleinsakeorganisasie]** kleinondernemingsorganisasie’ enige entiteit, hetsy ingevolge enige wet ingelyf of geregistreer al dan nie, wat wesenlik bestaan uit persone wat **[kleinsakeondernemings]** klein- 5
 ondernemings in enige ekonomiese sektor bedryf, [of wat] en ingestel is vir die doel om die belange van **[kleinsakeondernemings]** klein-
 ondernemings te bevorder of sodanige ondernemings te verteenwoordig, en [ook] enige federasie wat geheel of gedeeltelik uit sodanige assosiasie bestaan, en ook enige tak van sodanige organisasie;”;
- (e) die omskrywing van “konstitusie van die Agentskap” te skrap;
- (f) die volgende omskrywing na die omskrywing van “Nasionale Koördineerder” in te voeg:
- “**‘Ntsika’** die Ntsika-ondernemingbevorderingsagentskap ingestel by die Nasionale Kleinsakewet, 1996 (Wet No. 102 van 1996), en ingelyf 15
 ingevolge artikel 17 van hierdie Wet;”; en
- (g) die volgende omskrywing na die omskrywing van “regulasie” in te voeg:
- “**‘Trust’** die “National Manufacturing Advisory Centre Trust”, by die Agentskap ingelyf ingevolge artikel 17 van hierdie Wet;”.

Vervanging van Hoofstuk 3 van Wet 102 van 1996 20

2. Hoofstuk 3 van die Hoofwet word hierby deur die volgende hoofstuk vervang:

“HOOFSTUK 3

Kleinondernemingsontwikkelingsagentskap

Instelling van Kleinondernemingsontwikkelingsagentskap

9. (1) Die Kleinondernemingsontwikkelingsagentskap word hierby as ’n 25
 regspersoon ingestel.

(2) Die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), is op die Agentskap van toepassing.

(3) Die Agentskap handel deur sy Direksie.

Oogmerke van Agentskap 30

9A. Die oogmerke van die Agentskap is om—

- (a) ontwikkelingsondersteuningsprogramme te ontwerp en te implementeer;
- (b) ’n dienslewingsnetwerk te bevorder wat die bydrae van klein- 35
 ondernemings tot die Suid-Afrikaanse ekonomie verhoog, en ekonomiese groei, werkverskaffing en gelykheid bevorder; en
- (c) in die algemeen, die kapasiteit van—
- (i) diensverskaffers om kleinondernemings te ondersteun, te versterk; en
- (ii) kleinondernemings om suksesvol binnelands en internasionaal 40
 mee te ding, te versterk.

Werksaamhede van Agentskap

10. (1) Die Agentskap moet—

- (a) die beleid van die nasionale regering vir ontwikkeling van klein- 45
 ondernemings implementeer;
- (b) ’n standaard nasionale lewingsnetwerk ontwerp en implementeer wat eenvormig regdeur die Republiek moet toepassing vind ten opsigte van kleinondernemingsontwikkeling, en wat alle kleinonderneming-ondersteuningsagentskappe wat deur die regering befonds word, regdeur alle sferes van regering integreer; 50
- (c) kleinondernemingsontwikkelingsondersteuningsprogramme ontwerp en implementeer ten einde—

- (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; 5
 - (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; 10
 - (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 15
 - (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. 20
- (2) The Agency may—
- (a) institute and conduct civil proceedings in all matters relating to its functions;
 - (b) enter into contracts; 25
 - (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; 30
 - (f) do all that is necessary and convenient to be done for or in connection with the performance of its functions.

Constitution of Board and appointment of members of Board

- 11.** (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. 35
- (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. 40
- (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. 45
- (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. 50
- (6) The Board must include—
- (a) members who have experience in business;
 - (b) members who on account of their training or experience— 55
 - (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. 60
- (8) All members of the Board other than the Chief Executive Officer are appointed as part-time members.

- (i) die bou van volhoubare en mededingende ondernemings te fasiliteer;
- (ii) die bevordering van entrepreneurskap te fasiliteer;
- (iii) die skepping van 'n bemagtigende funksioneringsomgewing vir kleinondernemings te fasiliteer; 5
- (iv) toegang vir kleinondernemings tot nie-finansiële hulpbronne, kapasiteitsboudienste, produkte en dienste te fasiliteer;
- (v) toegang tot internasionale en nasionale markte vir produkte en dienste van kleinondernemings te fasiliteer;
- (vi) vennootskappe regdeur alle regeringsfere, die privaatsektor en tersaaklike belanghebbendes, wat die Agentskap kan bystaan om sy oogmerke te bereik, te fasiliteer, ontwikkel, koördineer en kweek; 10
- (vii) 'n dienslewingsnetwerk te bevorder om toegang en uitreiking na ontwikkelingsondersteuning vir kleinondernemings te fasiliteer; 15
- (viii) navorsing rakende kleinondernemingsondersteuningsprogramme te fasiliteer en koördineer;
- (ix) advies, inligting, ontleding en ondersteuning in die implementering van 'n Kleinondernemingsontwikkelingsbeleid te voorsien; 20
- (x) op versoek van die Direkteur-generaal, ondersoek in te stel na, advies en kommentaar te lewer op die effek van bestaande en voorgestelde wetgewing aangaande kleinondernemings en om daarvoor aan die Direkteur-generaal verslag te doen; 25
- (xi) die begrip van die publiek betreffende die bydrae van kleinondernemings tot binnelandse ekonomiese groei, werkskepping en algemene welsyn te verbeter; en
- (d) provinsiale strukture instel om die doeltreffende implementering van sy funksies soos in hierdie artikel omskryf, te verseker. 30
- (2) Die Agentskap kan—
- (a) siviele gedinge in alle aangeleenthede met betrekking tot sy werksaamhede instel en behartig;
- (b) kontrakte sluit;
- (c) bates bekom, hou en vervreem; 35
- (d) enige aanleg, masjinerie, toerusting of goedere van die Agentskap wat nie onmiddellik vir die doeleindes van die Agentskap benodig word nie, verhuur of huur;
- (e) geld wat nie onmiddellik vir die doeleindes van die Agentskap benodig word nie, belê op enige wyse wat met gesonde handelspraktyk bestaanbaar is; 40
- (f) alles doen wat nodig en gerieflik is vir en in verband met die uitvoering van sy werksaamhede.

Samestelling van Direksie en aanstelling van lede van Direksie

11. (1) Die Direksie moet verseker dat die werksaamhede van die Agentskap uitgevoer word en dat die oogmerke van die Agentskap sodoende bereik word. 45
- (2) Die Minister moet die nie-uitvoerende lede van die Direksie aanstel.
- (3) Vir die doeleindes van die aanstelling van die lede van die Direksie in subartikel (2) bedoel, moet die Minister, deur die media en by kennisgewing in die *Staatskoerant*, nominasies van persone as kandidate vir sodanige aanstelling vra. 50
- (4) By die aanstelling van die lede van die Direksie, moet die Minister verseker dat die Direksie 'n breë deursnit van die bevolking van Suid-Afrika verteenwoordig en persone insluit wat die Suid-Afrikaanse gemeenskap reflekteer met besondere verwysing na ras, geslag, gestremdheid, geografiese verspreiding en organisasies in landelike gebiede gesetel. 55
- (5) Die Direksie bestaan uit nie minder nie as sewe, en nie meer nie as 15 lede van wie— 60
- (a) een 'n nie-uitvoerende Voorsitter moet wees;

Terms of office of non-executive members of Board**12. (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; 5
- (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. 10

(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. 15

Remuneration and allowances of members of Board

13. (1) The Minister must, with the concurrence of the Minister of Finance, determine the remuneration and allowances of members of the Board. 20

(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. 25

Conflict of interest

13A. (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. 30

(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. 35

(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 40
- (b) take part in any decision of the Board with regard to that matter. 45

Resignation of members of Board

13B. A member may resign from the Board by notice, in writing, to the Minister. 50

Termination of appointment of members of Board

13C. (1) The Minister may, in consultation with the Board, terminate the appointment of a member—

- (a) for misconduct; 55
- (b) whose estate is sequestrated or where he or she has entered into a composition with his or her creditors; 60
- (c) who, without reasonable excuse, fails to comply with section 13A; 65
- (d) where the performance of the member has been unsatisfactory or ineffective for a significant period of time; 70
- (e) who has been convicted of an offence of which dishonesty is an element, and sentenced to imprisonment without option of a fine; 75
- (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 80

- (b) een 'n Adjunkvoorsitter moet wees; en
- (c) die Hoof- Uitvoerende Beampte, uit hoofde van sy of haar amp, 'n uitvoerende direkteur moet wees.
- (6) Die Direksie moet lede insluit wat—
- (a) besigheidsondervinding het; 5
- (b) op grond van hul opleiding of ondervinding—
- (i) kundig is oor handel, nywerheid, finansies of die ekonomie;
- (ii) oor regs kennis beskik;
- (iii) kundig is in die bestuur van 'n kleinonderneming.
- (7) Die Minister kan enige ander kriteria ten opsigte van die aanstelling van lede voorskryf. 10
- (8) Alle lede van die Direksie behalwe die Hoof- Uitvoerende Beampte word as deelydse lede aangestel.

Ampstermyne van nie-uitvoerende lede van Direksie

- 12.** (1) 'n Nie-uitvoerende lid van die Direksie— 15
- (a) beklee sy of haar amp vir 'n tydperk van drie jaar wat die Minister kan verleng vir verdere tydperke van drie jaar elk of die korter tydperke wat die Minister bepaal;
- (b) dien op die bedinge en voorwaardes deur die Minister bepaal en in die aanstellingsbrief van die lid gespesifiseer; en 20
- (c) kan bedank deur drie maande skriftelike kennis aan die Minister te gee of soos in die aanstellingsbrief uiteengesit.
- (2) Indien 'n lid van die Direksie te sterwe kom, bedank of sy of haar aanstelling ingevolge artikel 13C beëindig word voor die verstryking van die tydperk waarvoor hy of sy aangestel is, kan die Minister, behoudens die bepalinge van artikels 11(2) en (4), 'n persoon aanstel om die vakature te vul vir die onverstreke gedeelte van die tydperk waarvoor sodanige lid aangestel is. 25

Vergoeding en toelaes van lede van Direksie

- 13.** (1) Die Minister moet, met die instemming van die Minister van Finansies, die vergoeding en toelaes van lede van die Direksie bepaal. 30
- (2) Lede in subartikel (1) bedoel wat in die diens van die Staat is, mag nie bykomende vergoeding of toelaes vir diens in die Direksie ontvang nie, maar kan vergoed word vir uitgawes aangegaan in die uitvoering van hul werksaamhede ingevolge hierdie Wet. 35

Botsing van belang

- 13A.** (1) 'n Lid mag nie betrokke raak by enige betaalde indiensneming of by enige ander aktiwiteit wat bots met die behoorlike uitvoering van sy of haar werksaamhede as 'n lid nie.
- (2) 'n Lid wat 'n regstreekse of onregstreekse geldelike belang of enige ander belang het in 'n aangeleentheid wat deur die Direksie oorweeg word, moet sonder versuim nadat die relevante feite tot die lid se kennis gekom het, die aard van die belang by 'n vergadering van die Direksie openbaar.
- (3) 'n Openbaarmaking ingevolge subartikel (2) moet in die notule van die vergadering aangeteken word en die lid mag nie, tensy die Direksie andersins bepaal— 45
- (a) teenwoordig wees tydens enige beraadslaging van die Direksie met betrekking tot daardie aangeleentheid nie; of
- (b) deelneem aan enige besluit van die Direksie met betrekking tot daardie aangeleentheid nie. 50

Bedanking van lede van Direksie

- 13B.** 'n Lid kan uit die Direksie bedank by skriftelike kennisgewing aan die Minister.

- (g) if 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. 5

Meetings of Board

- 13D.** (1) The Board must hold at least six meetings per year.
- (2) The Chairperson—
- (a) may convene a special meeting of the Board; and 10
- (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. 15
- (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. 20
- (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— 25
- (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: 30
- 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.

Conduct of meetings

- 13E.** (1) The Board may determine rules of procedure for the conduct of its business at meetings. 35
- (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. 40
- (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— 45
- (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. 50
- (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.

Beëindiging van aanstelling van lede van Direksie

13C. (1) Die Minister kan, in oorleg met die Direksie, die aanstelling beëindig van 'n lid—

- (a) weens wangedrag;
- (b) wie se boedel gesekwestreer is of waar hy of sy 'n akkoord met sy of haar skuldeisers aangegaan het; 5
- (c) wat, sonder redelike verskoning, versuim om aan artikel 13A te voldoen;
- (d) waar die prestasie van die lid vir 'n beduidende tydperk onbevredigend of ondoeltreffend was; 10
- (e) wat skuldig bevind is aan 'n misdryf waarvan oneerlikheid 'n element is, en gevonnissen is tot gevangenisstraf sonder die keuse van 'n boete;
- (f) indien hy of sy verswak raak tot die mate dat hy of sy nie in staat is om sy of haar pligte as 'n lid van die Direksie te verrig nie; of
- (g) indien hy of sy versuim om drie opeenvolgende direksievergaderings by te woon sonder 'n geldige verduideliking vir sy of haar versuim om dit te doen. 15

(2) Indien die prestasie van die Direksie vir 'n beduidende tydperk onbevredigend of ondoeltreffend was, kan die Minister die aanstelling van alle lede beëindig. 20

Vergaderings van Direksie

13D. (1) Die Direksie moet minstens ses vergaderings per jaar hou.

(2) Die Voorsitter—

- (a) kan 'n spesiale vergadering van die Direksie byeenroep; en
- (b) moet sodanige vergadering byeenroep binne 14 dae na ontvangs van 'n skriftelike versoek deur minstens een derde van die lede van die Direksie onderteken. 25

(3) Die Minister kan te eniger tyd 'n vergadering van die Direksie versoek indien die nodigheid ontstaan.

(4) Die Voorsitter sit voor by alle vergaderings waar hy of sy teenwoordig is. 30

(5) Waar die Voorsitter nie by 'n vergadering teenwoordig is nie, sit die Adjunkvoorsitter voor of, indien die Adjunkvoorsitter nie teenwoordig is nie, moet die lede teenwoordig uit hul geledere 'n lid aanstel om by die vergadering voor te sit. 35

(6) By 'n vergadering vorm twee derdes van die lede 'n kworum.

(7) 'n Besluit van die meerderheid van die lede by 'n vergadering teenwoordig maak 'n besluit van die Direksie uit en in die geval van 'n staking van stemme moet die Voorsitter 'n beslissende stem bykomend tot sy of haar beraadslagende stem hê. 40

(8) 'n Besluit deur die Direksie geneem of 'n handeling kragtens daardie besluit uitgevoer, is nie ongeldig nie slegs as gevolg van—

- (a) enige onreëlmatigheid in die aanstelling van 'n lid;
- (b) 'n vakature in die Direksie; of
- (c) die feit dat enige persoon wat nie bevoeg is om as 'n lid te sit nie, 'n vergadering bygewoon het op die tydstip toe die besluit geneem is: 45

Met dien verstande dat sodanige besluit geneem is deur 'n meerderheid van die Direksielede op die tydstip teenwoordig en bevoeg om by te woon, en daardie lede op die tydstip 'n kworum gevorm het.

Lei van vergaderings 50

13E. (1) Die Direksie kan prosedurereëls vir die voer van sy verrigtinge by vergaderings bepaal.

(2) 'n Notule van verrigtinge van elke vergadering van die Direksie moet aangeteken word en ingeskryf word in 'n boek wat vir daardie doel gehou word. 55

(3) Die notule van die verrigtinge van elke vergadering moet by die volgende vergadering van die Direksie voorgelê word en, indien

Resolution without meeting

13F. (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.

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(2) Such a resolution is regarded to have been adopted on a day determined in accordance with the procedure contemplated in subsection (1).

Directives issued by Minister

13G. (1) The Minister may give the Board written directives regarding the performance of its functions.

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(2) The directives contemplated in subsection (1) may not be inconsistent with this Act.

Chief Executive Officer

13H. (1) The Minister must, on the recommendation of the Board, appoint a Chief Executive Officer.

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(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.

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(4) The Chief Executive Officer manages the Agency subject to the control and directions of the Board.

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(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.

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(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.

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(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.

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(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

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(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.

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(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.

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goedkeur as korrek, deur die handtekening van die Voorsitter bevestig word.

(4) Die Hoof- Uitvoerende Beampte moet, op versoek van die Direksie, 'n vergadering van die Direksie bywoon, maar die Hoof- Uitvoerende Beampte is nie geregtig om te stem nie.

(5) Die Direksie kan—

(a) lede toelaat om aan 'n bepaalde vergadering deel te neem deur telefoon, geslotekringtelevisie of enige ander wyse van kommunikasie, en 'n lid wat so deelneem, word geag by die vergadering teenwoordig te wees;

(b) 'n persoon uitnooi om 'n vergadering by te woon ten einde advies of inligting oor enige aangeleentheid te verskaf.

(6) Die Direksie moet ten minste een maal 'n jaar raadplegende vergaderings hou met belanghebbendes, begunstigdes en provinsiale verteenwoordigers om die aktiwiteite en prestasie van die Agentskap te bespreek.

Besluit sonder vergaderings

13F. (1) Indien die Direksie so bepaal, word dit geag dat 'n besluit by 'n vergadering van die Direksie geneem is indien, sonder vergadering, twee derdes of meer lede instemming aandui ooreenkomstig 'n prosedure voorheen deur die Direksie bepaal.

(2) Sodanige besluit word geag aanvaar te gewees het op 'n dag bepaal ooreenkomstig die prosedure in subartikel (1) beoog.

Riglyne deur Minister uitgereik

13G. (1) Die Minister kan aan die Direksie skriftelike riglyne met betrekking tot die uitvoering van sy werksaamhede uitreik.

(2) Die riglyne in subartikel (1) beoog, mag nie onbestaanbaar met hierdie Wet wees nie.

Hoof- Uitvoerende Beampte

13H. (1) Die Minister moet, op die aanbeveling van die Direksie, 'n Hoof- Uitvoerende Beampte aanstel.

(2) Behoudens hierdie hoofstuk beklee 'n persoon ingevolge subartikel (1) aangestel sy of haar amp vir 'n tydperk van hoogstens vyf jaar soos in die aanstellingsbrief bepaal, en is benoembaar vir heraanstelling.

(3) Die Hoof- Uitvoerende Beampte beklee sy of haar amp op die bedinge en voorwaardes, met inbegrip van vergoeding en toelaes, wat die Minister, in oorleg met die Minister van Finansies en op die aanbeveling van die Direksie, skriftelik bepaal.

(4) Die Hoof- Uitvoerende Beampte bestuur die Agentskap behoudens die beheer en opdragte van die Direksie.

(5) Enigiets gedoen namens, of ten behoeve van, die Agentskap deur die Hoof- Uitvoerende Beampte word geag deur die Agentskap gedoen te gewees het, met die voorbehoud dat sodanige optrede regmatig en ooreenkomstig die opdragte van die Direksie is.

(6) Die Hoof- Uitvoerende Beampte is verantwoordelik vir die bestuur van die personeel van die Agentskap.

(7) Die Hoof- Uitvoerende Beampte kan enige bevoegdheid of enige plig aan 'n werknemer van die Agentskap delegeer of toewys, met inbegrip van 'n bevoegdheid aan hom of haar gedelegeer of 'n plig aan hom of haar toegewys deur die Direksie tensy die Direksie in sy skriftelike delegasie of toewysing aan die Hoof- Uitvoerende Beampte sodanige verdere delegasie of toewysing uitdruklik verbied.

(8) 'n Delegasie of toewysing ingevolge subartikel (7) verhoed nie die Hoof- Uitvoerende Beampte om die gedelegeerde bevoegdheid uit te oefen of die toegewese plig uit te voer nie.

(9) Die Hoof- Uitvoerende Beampte kan 'n delegasie of toewysing deur hom of haar gedoen, terugtrek of wysig.

Staff of Agency

14. (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.

Finances of Agency

15. (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.

Business plan

16. (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.

Restriction of use of name

16A. (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,

(10) Die Hoof- Uitvoerende Beampte kan, ten behoeve van die Agentskap, met 'n Staatsowerheid of ander liggaam ooreenkom—

- (a) dat die dienste van beamptes of werknemers van die Staat of die ander liggaam vir die doeleindes van die Agentskap beskikbaar gestel word; of
- (b) dat die dienste van 'n beampte beskikbaar gestel word vir die doeleindes van die Staat of enige ander liggaam.

(11) 'n Hoof- Uitvoerende Beampte mag nie betrokke raak by enige betaalde indiensneming buite die werksaamhede van die amp sonder vooraf goedkeuring van die Direksie nie.

(12) Die Hoof- Uitvoerende Beampte kan bedank by skriftelike kennisgewing aan die Minister en by die aanvaarding van sodanige bedanking hou die Hoof- Uitvoerende Beampte op om 'n lid te wees van die Direksie of enige ander liggaam waaarop hy of sy die Agentskap verteenwoordig het.

(13) Indien die Hoof- Uitvoerende Beampte te sterwe kom, bedank of uit sy of haar amp onthef word voor die verstryking van die tydperk waarvoor hy of sy aangestel is, kan die Minister, op aanbeveling van die Direksie, 'n persoon aanstel om die vakature te vul vir die onverstreke gedeelte van die tydperk waarvoor hy of sy aangestel is.

Personeel van Agentskap

14. (1) Die Hoof- Uitvoerende Beampte kan, op die bedinge en voorwaardes wat die Direksie bepaal, personeel van die Agentskap aanstel om die Agentskap in staat te stel om sy werksaamhede uit te voer.

(2) Die Agentskap moet uit sy fondse die vergoeding, toelaes, subsidies en ander voordele wat die Minister, in oorleg met die Minister van Finansies, bepaal aan die Hoof- Uitvoerende Beampte en werknemers betaal.

(3) Ondanks enigiets tot die teendeel in enige reg vervat, kan die Hoof- Uitvoerende Beampte, ooreenkomstig 'n ooreenkoms tussen die Departement van Handel en Nywerheid en die Agentskap, enige persoon wat 'n beampte of werknemer van die Departement van Handel en Nywerheid is, permanent na die Agentskap oorplaas ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), met die instemming van sodanige persoon.

(4) Die Hoof- Uitvoerende Beampte moet, alvorens ingevolge subartikel (2) of (3) opgetree word, die Minister se goedkeuring verkry.

Finansies van Agentskap

15. (1) Die fondse van die Agentskap bestaan uit—

- (a) geld deur die Parlement bewillig;
- (b) toekennings, skenkings en bemakings aan die Agentskap gedoen;
- (c) geld wat regmatig deur die Agentskap uit enige ander bron verkry word.

(2) Alle gelde deur die Agentskap ontvang, moet inbetaal word in 'n bankrekening in die naam van die Agentskap by 'n bank ingestel kragtens die Bankwet, 1990 (Wet No. 94 van 1990), of 'n onderlinge bank ingestel kragtens die Wet op Onderlinge Banke, 1993 (Wet No. 124 van 1993).

(3) Die Direksie kan, tot 'n bedrag van tyd tot tyd deur die Minister, in oorleg met die Minister van Finansies, goedgekeur, te eniger tyd korttermynlenings aangaan by wyse van oortrekking van sy rekening by 'n bank of andersins, om enige toevallige tekorte wat mag ontstaan, aan te vul.

(4) Die boekjaar van die Agentskap begin op 1 April en eindig op 31 Maart van die volgende jaar.

(5) Die Hoof- Uitvoerende Beampte is die rekenpligtige beampte van die Agentskap.

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.

Designated institutions

16B. (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

Besigheidsplan

16. (1) Die Agentskap moet, minstens 90 dae voor die aanvang van elke boekjaar, 'n besigheidsplan voorberei vir goedkeuring deur die Minister.

(2) Die besigheidsplan moet—

- (a) 'n verklaring insluit wat die kort- en mediumtermyn operasionele en besigheidsoogmerke van die Agentskap vir minstens vyf jaar uiteensit; 5
- (b) die strategieë en beleide omskryf wat die owerheid beplan om aan te neem ten einde sy oogmerke te bereik;
- (c) 'n bedryfsplan, 'n finansiële plan, 'n mensehulpbron- en prestasiebestuursplan asook prestasie-aanduidings insluit vir doeleindes van monitering en beoordeling; en 10
- (d) 'n verslag insluit oor die raadpleging in artikel 13E(6) bedoel en die aanbevelings wat uit sodanige raadplegings voortvloei.

(3) Die finansiële plan moet beramings van uitgawes en inkomste vir die volgende boekjaar insluit. 15

(4) Die Agentskap kan, met die goedkeuring van die Minister, die besigheidsplan wysig.

(5) Die goedkeuring van die Minister in subartikel (1) of (4) beoog, neem 'n aanvang aan die begin van die betrokke boekjaar. 20

Beperking op gebruik van naam

16A. (1) 'n Persoon mag nie—

- (a) sy of haar sake of besigheid behartig of sy of haar nering of beroep dryf nie; 25
- (b) kragtens enige reg geregistreer of gelisensieer word nie; of
- (c) valslik voorgee om ten behoeve van die Agentskap op te tree nie, onder 'n naam wat die woorde “Kleinondernemingsontwikkelingsagentskap”, die vertaling daarvan in enige ander amptelike taal, of die afkorting daarvan, “SEDA”, bevat nie.

(2) Enige persoon wat subartikel (1) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk wat nie vyf jaar oorskry nie, of met beide 'n boete en sodanige gevangenisstraf. 30

Aangewese instellings

16B. (1) Die Minister kan, by kennisgewing in die *Staatskoerant*, ander instellings met oogmerke en funksies gelyksoortig aan dié van die Agentskap aanwys om by die Agentskap ingelyf te word. 35

(2) Wanneer die Minister ingevolge subartikel (1) optree, moet hy of sy, met die goedkeuring van die Minister van Finansies, 'n ooreenkoms aangaan met die uitvoerende owerheid van die aangewese instelling in subartikel (1) beoog om te verseker dat die bates, verpligtinge, regte en aanspreeklikhede van die betrokke aangewese instelling, met inbegrip van die onbestede balans van bewilligings, goedkeurings, toewysings en ander fondse verkry, gehou of gebruik in verband met die bevordering van die oogmerke en werksaamhede van sodanige aangewese instelling, na die Agentskap oorgaan. 40 45

(3) Die Minister moet, deur die media en by kennisgewing in die *Staatskoerant*, sy of haar voorneme om 'n instelling in subartikel (1) beoog aan te wys, publiseer.

(4) Alvorens 'n ooreenkoms in subartikel (2) beoog aangegaan word, moet die Minister met al die relevante belanghebbendes oorleg pleeg. 50

(5) Na die sluiting van 'n ooreenkoms ingevolge subartikel (1) word enigiets gedoen deur of ten behoeve van die aangewese instelling in subartikel (1) beoog, geag deur die Agentskap gedoen te gewees het.

(6) 'n Persoon in diens van die aangewese instelling in subartikel (1) beoog moet onmiddellik na die sluiting van 'n ooreenkoms in subartikel (2) bedoel na die Agentskap oorgeplaas word ooreenkomstig die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en enige toepaslike kollektiewe onderhandelingsooreenkoms met georganiseerde arbeid. 55

(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). 5

(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 10

(b) on, or after, the transfer date must be conducted by or against the Agency.

Transitional Provisions

Incorporation of institutions

17. Ntsika and the Trust must be incorporated into the Agency. 15

Appointment of provisional Chief Executive Officer

17A. 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. 20

Transfer of staff

17B. (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. 25

(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. 30

(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. 35

(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. 40

Assets, liabilities and funds

17C. (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; 45

(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. 50

(c) On receipt of the notification contemplated in paragraph (b)—

(7) Die vergoeding en ander bedinge en diensvoorwaardes van 'n persoon ingevolge subartikel (6) oorgeplaas, mag nie minder gunstig wees nie as die vergoeding, bedinge en voorwaardes wat onmiddellik voor sy of haar oorplasing op daardie persoon van toepassing was nie en hy of sy bly geregtig op alle regte, voordele, met inbegrip van pensioenvoordele, en voorregte waarop hy of sy onmiddellik voor sodanige oorplasing geregtig was. 5

(8) 'n Persoon wat na die Agentskap oorgeplaas is ingevolge subartikel (6) bly onderhewig aan enige besluit, verrigtinge, bevele en opdragte wat onmiddellik voor sy of haar oorplasing op daardie persoon van toepassing was, in die mate waartoe dit van toepassing bly. 10

(9) Enige verrigtinge teen sodanige persoon wat hangende was onmiddellik voor sy of haar oorplasing moet afgehandel word asof daardie persoon nie oorgeplaas is nie. 15

(10) By die toepassing van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), moet dit geag word dat geen verandering van werkgewer plaasgevind het nie wanneer 'n persoon in subartikel (6) beoog diens by die Agentskap aanvaar. 20

(11) So gou doenlik na die sluit van die ooreenkoms in subartikel (2) beoog— 25

(a) moet die uitvoerende owerheid van die betrokke aangewese instelling alle nodige stappe doen om die instelling te likwideer;

(b) moet die Registrateur van Maatskappye, die Meester van die Hoë Hof of enige ander toepaslike reguleringsliggaam die betrokke instelling deregistreer; en 30

(c) moet die Registrateur van Aktes die nodige inskrywings en endossemente aanbring in enige register of dokument in die registrasiekantoor, of dokumente aan die Registrateur voorgelê. 35

(12) Oordragkoste, seëlregte, fooie of belasting hoef nie by die toepassing van subartikel (11) betaal te word nie. 40

(13) Enige litigasie wat spruit uit 'n skuldoorsaak in verband met die bates, regte, verpligtinge of aanspreeklikhede aan die Agentskap oorgedra ingevolge subartikel (2), wat ontstaan het—

(a) voor die datum van oordrag moet deur of teen die betrokke aangewese instelling gevoer word; en 45

(b) op, of na, die datum van oordrag moet deur of teen die Agentskap gevoer word. 50

Oorgangsbepalings

Inlywing van instellings

17. Ntsika en die Trust moet by die Agentskap ingelyf word. 40

Aanstelling van voorlopige Hoof- Uitvoerende Beampte

17A. Die Minister kan, vir doeleindes van die oprigting van die Agentskap, 'n voorlopige Hoof- Uitvoerende Beampte aanstel sonder enige aanbeveling van die Direksie op die bedinge en voorwaardes, met inbegrip van vergoeding en toelaes, wat die Minister skriftelik bepaal. 45

Oorplasing van personeel

17B. (1) 'n Persoon wat onmiddellik voor die inwerkingtreeding van hierdie Wet in diens van Ntsika of die Trust is, moet na die Agentskap oorgeplaas word ooreenkomstig die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en enige toepaslike kollektiewe onderhandelingsooreenkoms met georganiseerde arbeid. 50

(2) Die vergoeding en ander bedinge en diensvoorwaardes van 'n persoon ingevolge subartikel (1) oorgeplaas, mag nie minder gunstig wees nie as die vergoeding, bedinge en voorwaardes wat onmiddellik voor sy of haar oorplasing van toepassing was nie en hy of sy bly geregtig op alle 55

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- (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.”

Amendment of section 20 of Act 102 of 1996

3. Section 20 of the principal Act is hereby amended by—

- (a) the insertion of the following paragraph after paragraph (a):
 “(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;” and
 (b) the substitution for paragraph (b) of the following paragraph:
 “(b) generally, any other ancillary or incidental administrative or procedural matter which may be necessary or expedient to prescribe **[in order to achieve the objects of this Act]** for the proper implementation or administration of this Act.”

Substitution of long title of Act 102 of 1996

4. The following long title is hereby substituted for the long title of the principal Act:
 “To provide for the establishment of the Advisory Body and the **[Ntsika] Small Enterprise [Promotion] Development Agency**; to provide guidelines for organs of state in order to promote small business in the Republic; and to provide for matters incidental thereto.”

regte, voordele, met inbegrip van pensioenvoordele, en voorregte waarop hy of sy onmiddellik voor sodanige oorplasing geregtig was.

(3) 'n Persoon wat na die Agentskap oorgeplaas is ingevolge subartikel (1) bly onderhewig aan enige besluite, verrigtinge, bevele en opdragte wat onmiddellik voor sy of haar oorplasing op daardie persoon van toepassing was, in die mate waartoe dit van toepassing bly.

(4) Enige verrigtinge teen sodanige persoon wat hangende was onmiddellik voor sy of haar oorplasing moet afgehandel word asof daardie persoon nie oorgeplaas is nie

(5) By die toepassing van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), word geag dat geen verandering van werkgewer plaasgevind het nie wanneer 'n persoon in subartikel (6) beoog diens by die Agentskap aanvaar.

Bates, verpligtinge en fondse

17C. (1) (a) Op die datum van inwerkingtreding van hierdie Wet word— 15

(i) alle bates, verpligtinge, regte en aanspreeklikhede van Ntsika, met inbegrip van die onbestede balans van bewilligings, goedkeurings, toewysings en ander fondse verkry, gehou of gebruik in verband met die bevordering van sy oogmerke en werksaamhede, aan die Agentskap oorgedra. 20

(ii) enigiets gedoen deur of ten behoeve van Ntsika geag deur die Agentskap gedoen te gewees het, behoudens hierdie Wet.

(b) Die Direkteur-generaal moet, so go doenlik na die inwerkingtreding van hierdie Wet, die Direksie van Ntsika en die Registrateur van Aktes skriftelik van die bepalings van hierdie artikel in kennis stel. 25

(c) By ontvangs van die kennisgewing in paragraaf (b) beoog, moet—

(i) die Direksie van Ntsika alle nodige stappe neem om Ntsika te likwideer; en

(ii) die Registrateur van Aktes die nodige inskrywings en endossemente aanbring in enige register of dokument in die registrasiekantoor, of dokumente aan die Registrateur voorgelê. 30

(2) Oordragkoste, seëlregte, fooie of belasting hoef nie by die toepassing van subartikel (1) betaal te word nie.

(3) (a) So gou doenlik na die inwerkingtreding van hierdie Wet moet die Minister 'n ooreenkoms aangaan met die Trustees van die Trust om te verseker dat alle bates, verpligtinge, regte en aanspreeklikhede van die Trust, met inbegrip van die onbestede balans van bewilligings, goedkeurings, toewysings en ander fondse verkry, gehou of gebruik in verband met die bevordering van sy oogmerke en werksaamhede, na die Agentskap oorgaan. 35 40

(b) Enigiets na die sluiting van 'n ooreenkoms in paragraaf (a) beoog deur of ten behoeve van die Trust gedoen, word geag deur die Agentskap gedoen te gewees het, behoudens hierdie Wet.

(c) So go doenlik na die sluiting van die ooreenkoms in paragraaf (a) beoog, moet— 45

(i) die Trustees van die Trust die Trust beëindig;

(ii) die Meester van die Hoë Hof die Trust deregistreer; en

(iii) die Registrateur van Aktes die nodige inskrywings en endossemente aanbring in enige register of dokument in die registrasiekantoor, of dokumente aan die Registrateur voorgelê. 50

(4) Oordragkoste, seëlregte, fooie of belasting hoef nie by die toepassing van subartikel (11) betaal te word nie.

(5) Enige litigasie wat spruit uit 'n skuldoorsaak in verband met die bates, regte, verpligtinge of aanspreeklikhede aan die Agentskap oorgedra ingevolge subartikel (1) of (3), wat ontstaan het— 55

(a) voor die datum van oordrag moet deur of teen die betrokke ingelyfde instelling gevoer word; en

(b) op, of na, die datum van oordrag moet deur of teen die Agentskap gevoer word.”

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Substitution of short title of Act 102 of 1996

5. The following short title is hereby substituted for the short title and commencement of the principal Act:

“22. This Act is called the National Small **[Business]** Enterprise Act, 1996, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.”. 5

Substitution of expression in Act 102 of 1996

6. The principal Act is hereby amended by the substitution for the expression “small business”, wherever it occurs, of the expression “small enterprise”.

Short title

10

7. This Act is called the National Small Business Amendment Act, 2004.

Wysiging van artikel 20 van Wet 102 van 1996**3. Artikel 20 van die Hoofwet word hierby gewysig deur—**

(a) die volgende paragraaf na paragraaf (i) in te voeg en paragraaf “(i)” na paragraaf “(a)” te hernoem:

“(aA) (i) die wyse waarop ’n instelling by die Agentskap ingelyf kan word; 5

(ii) die kriteria vir aanstelling van lede van die Direksie;

(iii) die ontwerp en implementering van finansiële ondersteuningsprogramme vir kleinondernemings ten einde—

(aa) toegang tot finansiering vir kleinondernemings en kleinondernemingsorganisasies te fasiliteer; 10

(bb) toegang tot finansiering vir diensverskaffers aan kleinondernemings en kleinondernemingsorganisasies te fasiliteer;” en

(b) paragraaf (ii) deur die volgende paragraaf te vervang: 15

“[(ii)] (b) oor die algemeen, enige ander aanvullende of toevallige administratiewe of prosedurele aangeleentheid wat nodig of dienstig is om voor te skryf [ten einde die oogmerke van hierdie Wet te bereik] vir die behoorlike toepassing of administrasie van hierdie Wet.”. 20

Vervanging van lang titel van Wet 102 van 1996**4. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:**

“Om voorsiening te maak vir die instelling van die Adviesliggaam en die [Ntsika-ondernemingontwikkelingsagentskap] Kleinondernemingsontwikkelingsagentskap; om riglyne vir staatsorgane te verskaf ten einde kleinsake in die Republiek te bevorder; en om voorsiening te maak vir angeleenthede wat daarmee in verband staan.”. 25

Vervanging van kort titel van Wet 102 van 1996

5. Die kort titel en inwerkingtreding van die Hoofwet word hierby deur die volgende kort titel vervang: 30

“**22.** Hierdie Wet heet die Nasionale [Kleinsakewet] Kleinondernemingswet, 1996, en tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.”.

Vervanging van uitdrukking in Wet 102 van 1996

6. Die Hoofwet word hierby gewysig deur die uitdrukking “kleinsaak”, waar dit ook al voorkom, deur die uitdrukking “kleinonderneming” te vervang. 35

Kort titel

7. Hierdie Wet heet die Nasionale Kleinsakewysigingswet, 2004.

