

PRESIDENT'S OFFICE

No. 1901. 27 November 1996

NO. 102 OF 1996: NATIONAL SMALL BUSINESS ACT, 1996.

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

ACT

To provide for the establishment of the National Small Business Council and the Ntsika Enterprise Promotion Agency; and to provide guidelines for organs of state in order to promote small business in the Republic; and to provide for matters incidental thereto.

(Afrikaans text signed by the President.)

(Assented to 12 November 1996.)

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

CHAPTER I

Definitions

1. In this Act, unless the context otherwise indicates-

- (i) "Agency" means the Ntsika Enterprise Promotion Agency established by section 9; (i)
- (ii) "Board" means the Board of Directors of the Agency contemplated in section 11; (iii)
- (iii) "Chief Executive Officer" means the Chief Executive Officer of the Agency appointed as contemplated in section 11 (1)(b); (vi)
- (iv) "constitution of the Agency" means the constitution of the Agency contemplated in section 13 and adopted in terms of section 16(1); (ix)
- (v) "constitution of the Council" means the constitution of the Council contemplated in section 4 and adopted as contemplated in section 8(3); (x)
- (vi) "Council" means the National Small Business Council established by section 2; (xv)
- (vii) "Director-General" means the Director-General of the Department of Trade and Industry, or an officer of that Department designated by that Director-General; (iv)

(viii) "Minister" means the Minister of Trade and Industry; (xi)

(ix) "National Coordinator" means the National Coordinator of the Council appointed as contemplated in section 6(1); (xiii)

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

(xi) "prescribed" means prescribed by regulation; (xvii)

(xii) "provincial council" means a provincial small business council for small business established under the constitution of the Council; (xiv)

(xiii) "regulation" means any regulation made under this Act; (xvi)

(xiv) "service provider" means any public or private entity providing support services to small business; (ii)

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

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

(xvii) "this Act" includes the regulations. (v)

CHAPTER 2

National Small Business Council

Establishment of National Small Business Council

2. The National Small Business Council is hereby established as a juristic person.

Functions of Council

3. (1) The functions of the Council are to-

(a) represent and promote the interests of small business, with emphasis on those entities contemplated in the National Small Business Support Strategy; and

(b) advise the national, provincial and local spheres of government on social and economic policy that promotes the development of small business;

(2) The Council may exercise such powers and must perform such duties as are reasonably necessary for or incidental to the performance of the functions mentioned in subsection (1).

(3) The Council must perform its functions in accordance with this Act and its constitution.

Constitution of Council

4. Subject to this Act and the National Small Business Support Strategy, the constitution of the Council must, among others, provide for-

(a) the composition of the Council consisting of-

(i) 18 members of which each provincial council elects two members from their number; and

(ii) if the members referred to in sub paragraph (i) so elect, five members appointed in an expert or representative capacity;

(b) a provincial council for each province consisting of members elected by small business organisations that meet the criteria set out in the constitution;

(c) subject to this Act, and in order to achieve the objects contemplated in section 3, the powers and duties of the Council and the provincial councils;

(d) criteria for the appointment and procedures for the election of the members referred to in paragraphs (a) and (b);

(e) the appointment of any alternate member to act during the absence or incapacity of a member of the Council or a provincial council;

(f) the election of office bearers of the Council and provincial councils, their functions, and the circumstances and manner in which they may be removed from office;

(g) a two year tenure for members of the Council and provincial councils;

- (h) the circumstances and manner in which membership of the Council and provincial councils may be terminated and procedures for the filling of vacancies;
- (i) the establishment and functioning of committees, including a management committee for the Council and provincial councils;
- (j) the co-opting as a member of any person to assist the Council, a provincial council or any committee in the consideration of any particular matter;
- (k) the rules for the convening and conducting of meetings of the Council and provincial councils, including the quorum required for and the minutes to be kept of those meetings;
- (l) the voting rights of the different members and the manner in which decisions are to be taken by the Council and provincial councils;
- (m) the provision of administrative personnel employed by the Council to assist provincial councils in the performance of their functions;
- (n) subject to section 7(2), the banking and investment of funds by the Council and provincial councils;
- (o) the determination through arbitration of any dispute concerning the interpretation or application of the constitution of the Council;
- (p) the delegation of powers and assignment of duties to members, committees and employees, provided that-
 - (i) the Council or a provincial council may not be divested of any power or duty by virtue of the delegation or assignment; and
 - (ii) the Council or a provincial council, as the case may be, may vary or set aside any decision made under any delegation or in terms of any assignment;
- (q) a procedure for amending the constitution of the Council.

Remuneration of members, alternate members and co-opted members of Council and provincial councils

5. (1) The Minister, with the concurrence of the Minister of Finance, determines the salaries, allowances and conditions of service of members, alternate members and co-opted members of the Council and provincial councils who are not in the full-time service of the State.

(2) The salaries, allowances and conditions of service of the persons referred to in subsection (1) may differ according to the different offices held by them, the different functions performed by them, or whether they serve in a full-time or part-time capacity.

(3) Persons referred to in subsection (1) who are in the service of the State may not receive additional remuneration for serving on the Council or any provincial council, but may be reimbursed for expenses incurred in the performance of their functions in such last-mentioned service.

Staff of Council

6. (1) Work incidental to the performance of the functions of the Council is performed by a National Coordinator, who must be appointed by the Minister, after consultation with the Council.

(2) The National Coordinator may be assisted by-

(a) persons appointed by the Council;

(b) officers in the public service seconded to the service of the Council in terms of any law regulating such secondment.

(3) The conditions of service, remuneration and service benefits of the National Coordinator and the personnel appointed by the Council must be determined by the Council, with the concurrence of the Minister and the Minister of Finance.

(4) If the National Coordinator is for any reason unable to perform his or her functions, the Council may designate a person in its service to act as national coordinator until the National Coordinator is able to resume office.

Finances of Council

7. (1) The funds of the Council consist of-

(a) money appropriated by Parliament;

(b) grants, donations and bequests made to the Council;

(c) money lawfully obtained by the Council from any other source, but loans raised by the Council are subject to approval of both the Minister and the Minister of Finance.

(2) All money received by the Council must be deposited in a banking account in the name of the Council with a bank established under the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank established under the Mutual Banks Act, 1993 (Act No. 124 of 1993).

(3) The financial year of the Council begins on 1 April and ends on 31 March of the following year.

(4) The National Coordinator is the accounting officer of the Council and must ensure that-

(a) proper record of all the financial transactions, assets and liabilities of the Council are kept; and

(b) as soon as possible, but not later than three months after the end of a financial year, accounts reflecting the income and expenditure of the Council and a balance sheet of the assets and liabilities of the Council as at the end of that financial year are prepared.

(5) The accounts and balance sheet referred to in subsection (4)(b) must be audited by the Auditor-General.

Transitional provisions in respect of Council

8. (1) For the purposes of this section, but subject to this Act, the council of the "National Small Business Council", an association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and with the registration number of 96/08177/08, is deemed to constitute the Council.

(2) The Director-General must-

(a) as soon as practicable convene a meeting of the Council;

(b) determine the procedures for the meeting; and

(c) chair that meeting.

(3) The purpose of the meeting and any subsequent meeting which may be necessary is to define a procedure for the adoption of the constitution by a representative body as contemplated in section 4(a)(i).

(4) On the adoption of the constitution of the Council-

(a) all assets, liabilities, rights and obligations of the association referred to in subsection (1) pass to the Council; and

(b) anything done by or on behalf of the said association is deemed to have been done by the Council, subject to this Act.

(5) The Director-General must as soon as practicable after the adoption of the constitution of the Council in writing notify the Registrar of Companies and the Registrar of Deeds thereof and of the relevant provisions of this section.

(6) On receipt of the notification contemplated in subsection (5)-

(a) the Registrar of Companies must deregister the association referred to in subsection (1); and

(b) the Registrar of Deeds must make the necessary entries and endorsements in respect of any register and document in the registration office, or document submitted to that Registrar.

(7) No transfer duties, stamp duties, fees or taxes have to be paid for the purposes of this section.

(8) The Council constituted as contemplated in subsection (1) dissolves immediately before the first meeting of the Council constituted as contemplated in section 4(a)(i).

(9) The first meeting referred to in subsection (8) must be held within one year after the commencement of this Act.

CHAPTER 3

Ntsika Enterprise Promotion Agency

Establishment of Ntsika Enterprise Promotion Agency

9. The Ntsika Enterprise Promotion Agency is hereby established as a juristic person.

Functions of Agency

10. (1) The main functions of the Agency are-

(a) to expand, coordinate and monitor the provision of training, advice, counselling and any other non-financial services to small business in accordance with the National Small Business Support Strategy;

(b) to provide financial support to service providers that provide the services contemplated in paragraph (a);

(c) to consult with any organ of government, the Council or a service provider in order to-

(i) facilitate the provision of business advice and counselling services to small business;

(ii) facilitate access by small business to raw material and other products;

(iii) facilitate international and national market access for products and services of small business; and

(iv) generally, strengthen the capacity of-

- (aa) service providers to support small business; and
 - (bb) small business to compete successfully in the economy; and
 - (d) to formulate and coordinate a national programme of policy research, collection and dissemination of information concerning small business.
- (2) Other functions of the Agency are-
- (a) to investigate, at the request of the Director-General, the effect of existing and proposed legislation on small business, and to report to the Director-General thereon;
 - (b) to provide information and analysis on the implementation of the National Small Business Support Strategy to organs of government-
 - (c) to make recommendations to organs of government on existing and proposed policy affecting small business; and
 - (d) to improve the general understanding of the public regarding small business' contribution to the South African economic growth, job creation and welfare.
- (3) The Agency must perform its functions in accordance with this Act and its constitution.

Board of Directors of Agency

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

(c) have experience of matters connected with, and of problems experienced by, small business or any small business enterprise; and

(d) comply with other criteria which the Minister may prescribe.

(3) (a) The Minister must, by notice in the Gazette and in two newspapers which have general circulation throughout the national territory, invite nominations for directors to the Board referred to in subsection (1)(a) and (b).

(b) The directors referred to in subsection (1)(a) and (b) must be appointed by the Minister from nominations received from small business organisations, service providers and any other person involved in small business promotion and support.

(c) The Minister may, in terms of the criteria referred to in subsection (2), appoint persons-

(i) other than those nominated, if sufficient persons who meet the criteria are not nominated; or

(ii) if there are insufficient nominations lodged within the period specified in the notice.

(4) For each director of the Board, other than the Chairperson and the Chief Executive Officer, the Minister may appoint an alternate director, who may attend and vote at meetings of the Board on behalf of a director if that director is unable to attend.

(5) All members of the Board, except the Chief Executive Officer, must serve in a part-time capacity.

(6) (a) The Minister, with the concurrence of the Minister of Finance, determines the remuneration and allowances of directors, alternate directors and co-opted directors of the Board who are not in the full-time service of the State.

(b) Persons referred to in paragraph (a) who are in the service of the State may not receive additional remuneration or allowances for serving on the Board, but may be reimbursed for expenses incurred in the performance of their functions in such last-mentioned service.

Rights and responsibilities of Board

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

Constitution of Agency

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

- (a) the appointment of the additional directors of the Board referred to in section 11(1)(c);
- (b) the tenure of directors of the Board;
- (c) the circumstances and manner in which directorship is terminated and the procedures for replacing directors.
- (d) the election of office-bearers, their functions, and the circumstances and manner in which they may be removed from office;
- (e) the rules for the convening and conducting of meetings of the Board, including the quorum required for and the minutes to be kept of those meetings;
- (f) the voting rights of the different directors and the manner in which decisions are to be made;
- (g) the establishment of any division of the Agency to perform specialised functions;
- (h) the establishment and functioning of committees, including a management committee;
- (i) the co-opting as a member of any person to assist the Agency or any committee in the consideration of any particular matter;
- (j) the preparation by the Board, for approval by the Minister, of an annual business plan in terms of which the activities of the Agency is annually planned;
- (k) subject to section 15(2), the banking and investment of funds by the Board;
- (l) provisions to regulate the manner in which, and procedures whereby, expertise from any person is obtained in order to further the objects of the Agency;
- (m) the determination through arbitration of any dispute concerning the interpretation of the constitution of the Agency;
- (n) the delegation of powers and assignment of duties to directors, committees and employees, provided that the Board may-
 - (i) not be divested of any power or duty by virtue of the delegation or assignment; and
 - (ii) vary or set aside any decision made under any delegation or in terms of any assignment;
- (o) a procedure for amending the constitution.

Staff of Agency

14. (1) Work incidental to the performance of the functions of the Agency is performed by a Chief Executive Officer appointed as contemplated in section 11(1)(b).

(2) The Chief Executive Officer may be assisted by-

(a) persons appointed by the Board;

(b) officers in the public service seconded to the service of the Agency in terms of any law regulating such secondment.

(3) The conditions of service, remuneration and service benefits of the Chief Executive Officer and the personnel appointed by the Board must be determined by the Board, with the concurrence of the Minister and the Minister of Finance.

(4) If the Chief Executive Officer is for any reason unable to perform his or her functions, the Board may designate a person in the service of the Agency to act as chief executive officer until the Chief Executive Officer is able to resume office.

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, but loans raised by the Agency are subject to approval of both the Minister and the Minister of Finance.

(2) All money received by the Agency must be deposited in a banking account in the name of the Agency with a bank established under the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank established under the Mutual Banks Act, 1993 (Act No. 124 of 1993).

(3) The financial year of the Agency begins on 1 April and ends on 31 March of the following year.

(4) The Chief Executive Officer is the accounting officer of the Agency and must ensure that-

(a) proper record of all the financial transactions, assets and liabilities of the Agency are kept; and

(b) as soon as possible, but not later than three months after the end of a financial

year, accounts reflecting the income and expenditure of the Agency and a balance sheet of the assets and liabilities of the Agency as at the end of that financial year are prepared.

(5) The accounts and balance sheet referred to in subsection (4)(b) must be audited by the Auditor-General.

Drafting and adoption of constitution of Agency

16. (1) The Director-General must as soon as practicable after the appointment of the directors of the Agency contemplated in section II (1)(a) and (b), and thereafter as often as may be necessary, convene a meeting of those directors in order to draft and adopt the constitution of the Agency.

(2) The Director-General must determine the procedures for the meeting contemplated in subsection (1) and must chair that meeting.

Transitional provisions in respect of Agency

17. (1) On the adoption of the constitution of the Agency in terms of section 16(1)-

(a) all assets, liabilities, rights and obligations of "Ntsika Enterprise Promotion Agency", an association incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and with the registration number of 95/02675/08, pass to the Agency; and

(b) anything done by or on behalf of the said association is deemed to have been done by the Agency, subject to this Act.

(2) The Director-General must as soon as practicable after the adoption of the constitution of the Agency in writing notify the Registrar of Companies and the Registrar of Deeds thereof and of the provisions of this section.

(3) On receipt of the notification contemplated in subsection (2)-

(a) the Registrar of Companies must deregister the association referred to in subsection (1); and

(b) the Registrar of Deeds must make the necessary entries and endorsements in respect of any register and document in the registration office, or document submitted to that Registrar.

(4) No transfer duties, stamp duties, fees or taxes have to be paid for the purposes of this section.

CHAPTER 4

General Provisions

Determination of guidelines

18. (1) The Minister may, by notice in the Gazette, publish guidelines for organs of state in national, provincial and local spheres of government to promote small business and the National Small Business Support Strategy.

(2) The guidelines referred to in subsection (1) may include guidelines on-

(a) procedures for consultation with the Department of Trade and Industry on all proposed legislation identified by the Minister under subsection (3);

(b) the assessment of the effect and application of legislation on small business;

(c) coordination between organs of state in order to promote the consistent application of the National Small Business Support Strategy;

(d) procedures for consultation with small business organisations, trade unions and other representative organisations;

(e) the review of the effect of existing legislation on small business and the National Small Business Support Strategy.

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

Reports

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

(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 Council and the Agency must furnish the Minister with any such other reports as the Minister may request.

(3) Entities designated by the Director-General, must in cooperation with the Director-General annually compile a review, called the Annual Review of Small Business, which must cover areas defined by the Minister or the Director-General, and areas including-

(a) particulars of the work performed by the Agency and Council and of progress achieved in furtherance of the objects of the National Small Business Support Strategy;

(b) summaries of any findings or recommendations of the Director-General in respect of legislation, proposed legislation and administrative practices which restrict the small business sector;

(c) an outline of new developments and trends in regard to the small business sector in South Africa;

(d) reports on the growth and decline of small business according to sector, size and region;

(e) a statistical analysis of the contribution of the small business sector to the economy, to export promotion, to rural development and to the level of incorporation of marginalised groups into the economy.

(3) The Director-General must submit the Annual Review of Small Business to the Minister before the end of February of each year and the Minister must table it in Parliament.

Regulations and amendment of Schedule

20. (1) The Minister may make regulations regarding-

(a) any matter which in terms of this Act is required or permitted to be prescribed; and

(b) generally, any other matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) The Minister may, in order to achieve the objects of this Act, by notice in the Gazette amend the Schedule to account for inflation, macro-economic shifts in the economy, any legislation affecting small business, and any other matter which could have an effect on the functionality of the Schedule.

Repeal of laws

21. (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.

Short title and commencement

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

SCHEDULE

(See definition of "small business" in section 1)

Sector or sub-sectors in accordance with the Standard Industrial Classification	Size or class	Total full-time equivalent of paid employees <i>Less than:</i>	Total annual turnover <i>Less than:</i>	Total gross asset value (fixed property excluded) <i>Less than:</i>
Agriculture	Medium Small Very small Micro	100 50 10 5	R 4.00 m R 2.00 m R 0.40 m R 0.15 m	R 4.00 m R 2.00 m R 0.40 m R 0.10 m
Mining and Quarrying	Medium Small Very small Micro	200 50 20 5	R30.00 m R 7.50 m R 3.00 m R 0.15 m	R18.00 m R 4.50 m R 1.80 m R 0.10 m
Manufacturing	Medium Small Very small Micro	200 50 20 5	R40.00 m R10.00 m R 4.00 m R 0.15 m	R15.00 m R 3.75 m R 1.50 m R 0.10 m
Electricity, Gas and Water	Medium Small Very small Micro	200 50 20 5	R40.00 m R10.00 m R 4.00 m R 0.15 m	R15.00 m R 3.75 m R 1.50 m R 0.10 m
Construction	Medium Small Very small Micro	200 50 20 5	R20.00 m R 5.00 m R 2.00 m R 0.15 m	R 4.00 m R 1.00 m R 0.40 m R 0.10 m
Retail and Motor Trade and Repair Services	Medium Small Very small Micro	100 50 10 5	R30.00 m R15.00 m R 3.00 m R 0.15 m	R 5.00 m R 2.50 m R 0.50 m R 0.10 m
Wholesale Trade, Commercial Agents and Allied Services	Medium Small Very small Micro	100 50 10 5	R50.00 m R25.00 m R 5.00 m R 0.15 m	R 8.00 m R 4.00 m R 0.50 m R 0.10 m
Catering, Accommodation and	Medium Small	100 50	R10.00 m R 5.00 m	R 2.00 m R 1.00 m

other Trade	Very small	10	R 1.00 m	R 0.20 m
	Micro	5	R 0.15 m	R 0.10 m
Transport, Storage and Communications	Medium	100	R20.00 m	R 5.00 m
	Small	50	R10.00 m	R 2.50 m
	Very small	10	R 2.00 m	R 0.50 m
	Micro	5	R 0.15 m	R 0.10 m
Finance and Business Services	Medium	100	R20.00 m	R 4.00 m
	Small	50	R10.00 m	R 2.00 m
	Very small	10	R 2.00 m	R 0.40 m
	Micro	5	R 0.15 m	R 0.10 m
Community, Social and Personal Services	Medium	100	R10.00 m	R 5.00 m
	Small	50	R 5.00 m	R 2.50 m
	Very small	10	R 1.00 m	R 0.50 m
	Micro	5	R 0.15 m	R 0.10 m