

REPUBLIC OF SOUTH AFRICA

NATIONAL SMALL BUSINESS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 24628 of 27 March 2003) (The English text is the
official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 20—2003]

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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.

BILL

To amend the National Small Business Act, 1996, so as to repeal all provisions pertaining to the National Small Business Council; to empower the Minister to consult persons representing the interests of small business; to make the Public Finance Management Act, 1999, applicable to the Agency; to make further provision in respect of the functions of the Agency; to do away with the requirement of calling for nominations for directors of the Board by notice in the *Gazette*; to repeal the provisions pertaining to alternate directors; and to substitute the Schedule to that Act, in order to reflect the current economic position; 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

1. Section 1 of the National Small Business Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the deletion of the definitions of “constitution of the Council”, “Council”, “National Co-ordinator” and “provincial council”. 5

Substitution of Chapter 2 of Act 102 of 1996

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

“CHAPTER 2

Minister’s power to consult small business 10

Minister’s power to consult small business

2. If the Minister is satisfied that any group or body fairly represents the interests of the small business community the Minister may consult such group or body in order to give effect to the objectives of the National Small Business Support Strategy.”. 15

Amendment of section 9 of Act 102 of 1996

3. Section 9 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Agency.”.

Amendment of section 10 of Act 102 of 1996

4. Section 10 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
 “(a) to expand, co-ordinate and monitor the provision of training, advice and counselling **[and any other non-financial services]** to small business in accordance with the National Small Business Support Strategy;”; 10
 - (b) by the substitution in subsection (1) (c) for the words preceding subparagraph (i) of the following words:
 “to consult with any organ of government**[, the Council]** or a service provider in order to—”; 15
 - (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 15
 “**(d) to facilitate and co-ordinate research relating to support programmes by the Agency.**”; and
 - (d) by the addition in subsection (2) to paragraph (b) of the word “and” and the deletion of paragraph (c). 20

Amendment of section 11 of Act 102 of 1996

5. Section 11 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 25
 “(a) The Minister must, by notice in **[the Gazette and in]** two newspapers which have general circulation throughout the national territory of the Republic, invite nominations for directors to the Board referred to in subsection (1)(a) and (b).”; 30
 - (b) by the deletion of subsection (4); and
 - (c) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 30
 “(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.”. 35

Amendment of section 19 of Act 102 of 1996

6. Section 19 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40
 “(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]** its activities during that year.”; 45
 - (b) by the substitution for subsection (2) of the following subsection:
 “(2) The **[Council and the]** Agency must furnish the Minister with any such other reports as the Minister may request.”; 45
 - (c) by the substitution in subsection (3) for paragraph (a) of the following subsection: 50
 “(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;”; and 50
 - (d) by the substitution for the second subsection (3) of the following subsection:
 “**[(3)] (4)** The Director-General must submit the Annual Review of Small Business to the Minister before the end of **[February]** June of each year and the Minister must table it in Parliament.”.

Substitution of Schedule to Act 102 of 1996

7. The Schedule to this Act is hereby substituted for the Schedule to the principal Act.

Substitution of long title of Act 102 of 1996

8. The following long title is hereby substituted for the long title to the principal 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.”. 5

Short title

9. This Act is called the National Small Business Amendment Act, 2003. 10

SCHEDULE**“SCHEDULE***(See definition of ‘small business’ in section 1)*

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or subsector in accordance with the Standard Industrial Classification	Size of class	The total full-time equivalent of paid employees	Total turn-over	Total gross asset value (fixed property excluded)
Agriculture	Medium	100	R5m	R5m
	Small	50	R3m	R3m
	Very Small	10	R0.50m	R0.50m
	Micro	5	R0.20m	R0.10m
Mining and Quarrying	Medium	200	R39m	R23m
	Small	50	R10m	R6m
	Very Small	20	R4m	R2m
	Micro	5	R0.20m	R0.10m
Manufacturing	Medium	200	R51m	R19m
	Small	50	R13m	R5m
	Very Small	20	R5m	R2m
	Micro	5	R0.20m	R0.10m
Electricity, Gas and Water	Medium	200	R51m	R19m
	Small	50	R13m	R5m
	Very Small	20	R5.10m	R1.90m
	Micro	5	R0.20m	R0.10m
Construction	Medium	200	R26m	R5m
	Small	50	R6m	R1m
	Very Small	20	R3m	R0.50m
	Micro	5	R0.20m	R0.10m
Retail and Motor Trade and Repair Services	Medium	200	R39m	R6m
	Small	50	R19m	R3m
	Very Small	20	R4m	R0.60m
	Micro	5	R0.20m	R0.10m
Wholesale Trade, Commercial Agents and Allied Services	Medium	200	R64m	R10m
	Small	50	R32m	R5m
	Very Small	20	R6m	R0.60m
	Micro	5	R0.20m	R0.10m
Catering, Accommodation and other Trade	Medium	200	R13m	R3m
	Small	50	R6m	R1m
	Very Small	20	R5.10m	R1.90m
	Micro	5	R0.20m	R0.10m

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or subsector in accordance with the Standard Industrial Classification	Size of class	The total full-time equivalent of paid employees	Total turn-over	Total gross asset value (fixed property excluded)
Transport, Storage and Communications	Medium	200	R26m	R6m
	Small	50	R13m	R3m
	Very Small	20	R3m	R0.60m
	Micro	5	R0.20m	R0.10m
Finance and Business Services	Medium	200	R26m	R5m
	Small	50	R13m	R3m
	Very Small	20	R3m	R0.50m
	Micro	5	R0.20m	R0.10m
Community, Social and Personal Services	Medium	200	R13m	R6m
	Small	50	R6m	R3m
	Very Small	20	R1m	R0.60m
	Micro	5	R0.20m	R0.10m”.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL SMALL BUSINESS AMENDMENT BILL, 2003

1. The National Small Business Act, 1996 (Act No. 102 of 1996) (“the Act”), provides for the establishment of the Ntsika Enterprise Promotion Agency (“Ntsika”) and the National Small Business Council (“the Council”). Ntsika provides for non-financial support services to small business and the Council has acted as an advocacy body. The experience gained by the administration of the Act has brought to light various problems in the Act that need to be addressed.

2. Chapter 2 of the Act provides for the establishment of the Council. The Council has been liquidated since 1998. It is therefore necessary to remove the provisions relating to the Council in the Act since the council is *de facto* no longer in existence. It is, however, proposed that the Minister be empowered to consult persons representing the interests of small business in order to give effect to the objectives of the National Small Business Support Strategy.

3. Chapter 3 of the Act provides for the establishment of Ntsika. It is proposed that the Public Finance Management Act, 1999 (Act No. 1 of 1999), be made applicable to Ntsika. There is an overlapping of functions between Ntsika and the Department of Trade and Industry (“the Department”). In section 10(1)(a) provision is made for Ntsika to be involved in certain “other non-financial services”. This provision gives a broad and open-ended mandate to Ntsika and leads to a lack of strategic focus in respect of the core functions of Ntsika. It is proposed that the expression “other non-financial services” be deleted. Section 10(1)(d) provides that Ntsika may undertake both policy-related and programme-related research. Policy formulation and management are the responsibilities of the Department. It is proposed that paragraph (d) be amended in order to eliminate duplication.

4. Section 11(3)(a) of the Act requires the Minister to invite nominations for directors to the Board of Ntsika by notice in the *Gazette* and in two newspapers that have general circulation throughout the national territory. The most practical approach to inviting nominees to the Board would be by advertising in media that reaches all parts of the country. The requirement of publishing a notice in the *Gazette* has in practice proved to be a cumbersome process and it is proposed that the requirement of publishing a notice in the *Gazette* be omitted. Section 11(4) of the Act provides for the appointment of alternate directors. This provision tends to dilute the commitment of directors and also affects the consistency of decisions taken by the Board of Directors. It is proposed that all provisions pertaining to alternate directors be deleted.

5. The Director-General must submit the Annual Review of Small Business to the Minister before the end of February of each year in terms of section 19(4) of the Act. Experience gained in compiling previous reviews has shown that most statistics and information needed for the review are not available before the end of February. It is proposed that the date of submission be changed to the end of June.

6. The definition of “small business” is enhanced by information contained in the Schedule to the Act. However, the values reflected in the Schedule have become outdated due to fluctuations in the value of the rand. It is proposed that the Schedule be amended to reflect the current rand value.

7. CONSULTATION

Consultative workshops were conducted throughout the provinces with the various stakeholders. These included provincial SMME desks, business chambers, service providers, small business organisations, Ntsika, Khula Finance Limited, the Industrial Development Corporation, the South African Bureau of Standards and the National Manufacturing Advisory Centre. They were in support of the proposed amendments.

8. FINANCIAL IMPLICATIONS FOR STATE

None.

9. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.