

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 26926 of 25 October 2004)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 23—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.

BILL

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 “Board” of the following definition: 10
“ ‘**Board**’ means the Board of Directors of the Agency contemplated in section **[11]** 12;”;
- (c) by the substitution for the definition of “Chief Executive Officer” of the following definition:
“ ‘**Chief Executive Officer**’ means the Chief Executive Officer of the 15
Agency appointed **[as contemplated]** in terms of section **[11(1)(b)]** 22;”;
- (d) by the deletion of the definition of “constitution of the Agency;”;
- (e) by the insertion after the definition of “National Small Business Support Strategy” of the following definition: 20
“ ‘**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 29 of this Act;”;
- (f) by the substitution for the definition of “small business” of the following definition: 25
“ ‘**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]**, man-

- aged 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];”;** 5
- (g) by the substitution for the definition of “small business organisation” of the following definition: 10
- “ ‘**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 15 wholly or partly of such association, and **[also]** any branch of such organisation;”;
- (h) by the insertion after the definition of “this Act” of the following definition: 20
- “ ‘**Trust**’ means the National Manufacturing Advisory Centre Trust, incorporated into the Agency in terms of section 29 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

Small Enterprise Development Agency

Establishment of Small Enterprise Development Agency 25

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.

(3) The Agency acts through its Board. 30

Objectives of Agency

9A. The objectives of the Agency are to—

- (a) design and implement development support programmes;
- (b) promote a service delivery network that increases the contribution of small enterprises to the South African economy; and
- (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 40

10. (1) The Agency must—

- (a) implement any policy of the national government for small enterprise development;
- (b) design and implement small enterprise development support programmes in order to— 45
 - (i) facilitate the building of sustainable and competitive enterprises;
 - (ii) facilitate the promotion of entrepreneurship;
 - (iii) facilitate the creation of an enabling operating environment for small enterprises; 50
 - (iv) facilitate access by small enterprises to non-financial resources, capacity-building services, products and services;

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

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.
- (2) The Minister must appoint the non-executive members of the Board.
- (3) For the purpose of the appointment of the members of the Board referred to in subsection (2), the Minister must, through the media and by notice in the *Gazette*, invite nominations of persons as candidates for such appointment.
- (4) In appointing the members of the Board, the Minister must ensure that the Board represents a broad cross-section of the population of South Africa and comprises persons who reflect the South African society with special attention to race, gender, disability, geographical spread and organisations based in rural areas.
- (5) The Board consists of not less than seven and not more than 15 members of whom—
- (a) one must be a non-executive Chairperson;
 - (b) one must be a Deputy Chairperson; and
 - (c) the Chief Executive Officer, by virtue of his or her office, must be an executive director.
- (6) Members of the Board must—
- (a) have experience in either business or administration; or
 - (b) on account of their training or experience—
 - (i) be knowledgeable about trade, industry, finance or the economy; or
 - (ii) have legal knowledge of matters pertaining to small enterprises; or
 - (iii) have experience in the day-to-day operations of a small enterprise; or
 - (c) comply with any other criteria which the Minister may prescribe.
- (7) All members of the Board other than the Chief Executive Officer are appointed as part-time members.

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;
- (b) serves on the terms and conditions determined by the Minister and specified in the letter of appointment of the member; and
- (c) may resign by giving three months' written notice to the Minister or as stipulated in the letter of appointment.

(2) If a member of the Board dies, resigns or his or her appointment is terminated in terms of section 17 before the expiration of the period for which he or she was appointed, the Minister may, subject to the provisions of section 12(2) and (4), appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

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.

(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.

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.

(2) A member who has a direct or indirect pecuniary interest or any other interest in a matter being considered by the Board must, without delay after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(3) A disclosure in terms of subsection (2) must be recorded in the minutes of the meeting and the member may not, unless the Board otherwise determines—

- (a) be present during any deliberation of the Board with regard to that matter; or
- (b) take part in any decision of the Board with regard to that matter.

Resignation of members of Board

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

Termination of appointment of members of Board

13C. (1) The Minister may, on the recommendation of the Board, terminate the appointment of a member—

- (a) for misconduct;
- (b) whose estate is sequestrated or where he or she has entered into a composition with his or her creditors;
- (c) who, without reasonable excuse, fails to comply with section 15;
- (d) where the performance of the member has been unsatisfactory or ineffective for a significant period of time;
- (e) who has been convicted of an offence of which dishonesty is an element, and sentenced to imprisonment without option of a fine; or
- (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.

(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.

Meetings of Board

- 13D.** (1) The Board must hold at least six meetings per year. 5
- (2) The Chairperson—
- (a) may convene a special meeting of the Board; and
 - (b) must convene such a meeting within 14 days of receipt of a written request signed by at least one third of the members of the Board. 10
- (3) The Minister may request a meeting with the Board at any time should a need arise.
- (4) The Chairperson presides at all meetings at which he or she is present.
- (5) Where the Chairperson is not present at a meeting the Deputy Chairperson presides or, if the Deputy Chairperson is not present, the members present must appoint from amongst themselves a member to preside at the meeting. 15
- (6) At a meeting, two thirds of the members present constitute a quorum.
- (7) A decision of the majority of the members present at any meeting constitutes a decision of the Board and in the event of an equality of votes, the Chairperson must have a casting vote in addition to his or her deliberative vote. 20
- (8) A decision taken by the Board or an act performed under that decision is not invalid merely by reason of—
- (a) any irregularity in the appointment of a member;
 - (b) a vacancy on the Board; or
 - (c) the fact that any person, not entitled to sit as a member, sat at a meeting at the time when the decision was taken: 25
- 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. 30

Conduct of meetings

- 13E.** (1) The Board may determine rules of procedure for the conduct of its business at meetings.
- (2) Minutes of proceedings of every meeting of the Board must be recorded and entered in a book kept for that purpose. 35
- (3) Minutes of the proceedings of each meeting must be submitted at the next meeting of the Board and, if passed as correct, must be confirmed by the signature of the Chairperson.
- (4) The Chief Executive Officer must, at the request of the Board, attend a meeting of the Board, but the Chief Executive Officer is not entitled to vote. 40
- (5) The Board may—
- (a) permit members to participate in a particular meeting by telephone, closed-circuit television or any other means of communication, and a member who so participates is regarded as being present at the meeting; 45
 - (b) invite a person to attend a meeting for the purpose of advising or informing it on any matter.

Resolution without meetings

- 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. 50
- (2) Such a resolution is regarded to have been adopted on a day determined in accordance with the procedure contemplated in subsection (1). 55

Directives issued by Minister

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

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

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Chief Executive Officer

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

(2) Subject to this chapter, a person appointed in terms of subsection (1) holds office for a period not exceeding three years as specified in the letter of appointment, and is eligible for reappointment.

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(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.

(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.

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(6) The Chief Executive Officer is responsible for the management of the staff of the Agency.

(7) The Chief Executive Officer may delegate any power or assign any duty to an employee of the Agency, including a power delegated to him or her or a duty assigned to him or her by the Board unless the Board in its written delegation or assignment to the Chief Executive Officer expressly prohibits such further delegation or assignment.

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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.

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(9) The Chief Executive Officer may withdraw or amend a delegation or assignment made by him or her.

(10) The Chief Executive Officer may, on behalf of the Agency, arrange with a State authority or another body—

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- (a) for the services of officers or employees of the State or the other body to be made available for the purposes of the Agency; or
- (b) for the services of an officer to be made available for the purposes of the State or any other body.

(11) A Chief Executive Officer may not engage in any paid employment outside the functions of the office without prior approval of the Board.

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(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 such member was appointed.

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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.

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(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; and
- (c) include an operational plan, a financial plan, a human resources plan as well as performance indicators.

(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, 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, or to both a fine and imprisonment.

Limitation of liability

16B. Neither the Minister, nor the Agency nor any of its employees, are liable in respect of anything done or omitted in good faith in the exercise of a power or performance of a duty in terms of this Act, or in respect of anything that may result therefrom.

Designated institutions

16C. (1) The Minister may, by notice in the *Gazette*, designate other institutions whose objectives and functions are similar to those of the Agency, to be incorporated into the Agency.

(2) Whenever the Minister acts in terms of subsection (1), he or she must, with the approval of the Minister of Finance, enter into an agreement with the executive authority of the designated institution contemplated in subsection (1) to ensure that the assets, liabilities, rights and obligations of the designated institution in question, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the furtherance of the objectives and functions of such designated institution, pass to the Agency.

(3) The Minister must, through the media and by notice in the *Gazette*, publish his or her intention to designate an institution contemplated in subsection (1) .

(4) Prior to entering into an agreement contemplated in subsection (2) the Minister must consult with all the relevant stakeholders.

(5) After the conclusion of an agreement in terms of subsection (1) anything done by or on behalf of the designated institution contemplated in subsection (1) is deemed to have been done by the Agency.

(6) A person employed by the designated institution contemplated in subsection (1) must immediately after the conclusion of an agreement referred to in subsection (2) be transferred to the Agency in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour.

(7) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (6) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.

(8) A person transferred to the Agency in terms of subsection (6) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.

(9) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

(10) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person contemplated in subsection (6) takes up employment at the Agency.

(11) As soon as practical after the conclusion of the agreement contemplated in subsection (2)—

- (a) the executive authority of the designated institution in question must take all steps necessary to liquidate the institution;
- (b) The Registrar of Companies, the Master of the High Court or any other applicable regulatory body must deregister the institution in question; and
- (c) the Registrar of Deeds must make the necessary entries and endorsements on any register or document in the registration office, or documents submitted to that Registrar.

(12) Transfer duties, stamp duties, fees or taxes need not be paid for the purposes of subsection (11).

(13) Any litigation resulting from a cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection (2) which arose—

- (a) before the transfer date must be conducted by or against the designated institution in question; and
- (b) on, or after, the transfer date must be conducted by or against the Agency.

Transitional Provisions

Incorporation of institutions

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

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.

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.

(2) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.

(3) A person transferred to the Agency in terms of subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.

(4) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

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

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;

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

(b) The Director-General must, in writing, as soon as practical after the coming into operation of this Act, notify the Board of Ntsika and the Registrar of Deeds of the provisions of this section.

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

(i) the Board of Ntsika must take all steps necessary to liquidate Ntsika; and

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

(2) Transfer duties, stamp duties, fees or taxes need not be paid for the purposes of subsection (1).

(3) (a) As soon as practical after the coming into operation of this Act, the Minister must enter into an agreement with the Trustees of the Trust to ensure that all assets, liabilities, rights and obligations of the Trust, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the furtherance of its objectives and functions, pass to the Agency.

(b) Anything done after the conclusion of the agreement contemplated in paragraph (a) by or on behalf of the Trust is deemed to have been done by the Agency, subject to this Act.

(c) As soon as practical after the conclusion of the agreement contemplated in paragraph (a)—

- (i) the Trustees of the Trust must terminate the Trust;
- (ii) the Master of the High Court must deregister the Trust; and
- (iii) the Registrar of Deeds must make the necessary entries and endorsements on any register or document in the registration office, or documents submitted to that Registrar.

(4) Transfer duties, stamp duties, fees or taxes need not be paid for the purposes of subsection (3).

(5) Any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection 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.”.

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*.”.

Short title

6. This Act is called the National Small Business Amendment Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL SMALL BUSINESS AMENDMENT BILL, 2004

1. BACKGROUND

1.1 The National Small Business Act, 1996 (Act No. 102 of 1996), (“the principal Act”) provides for the establishment of the Ntsika Enterprise Promotion Agency (“Ntsika”). Ntsika’s objectives are to formulate and co-ordinate a national programme of policy research and collection and dissemination of information concerning small business; facilitate the strengthening of small business service providers; channel finance to small business service providers to deliver accredited services; and facilitate increased demand-side interventions.

1.2 The CSIR and The National Productivity Institute established the National Manufacturing Advisory Centre Trust (“NAMAC Trust”) in 1997 to focus on SMEs in the manufacturing sector with similar objectives as Ntsika.

1.3 By implementing small enterprise development support through the above institutions, the following problems were demonstrated, namely that—

- 1.3.1 the generic approach towards small business development proved ineffective, which suggested the need for differentiated services and instruments and delivery concepts to be adapted to the different segments of small, medium and micro-enterprises;
- 1.3.2 the co-ordination function of the Department of Trade and Industry through its Center for the Promotion of Small Business was ineffective and required championing;
- 1.3.3 support institutions and programmes that proliferated across government required consolidation and newly formed institutions that had limited operational capacity and outreach but important implementation lessons were learned (examples of these are Ntsika and Khula Enterprise Finance Limited);
- 1.3.4 widespread regional and local differences in policy absorption called for a more bottom-up approach;
- 1.3.5 special attention must be given to the promotion of entrepreneurship through basic formal and technical education;
- 1.3.6 business associations were required to play a more significant role in the support process;
- 1.3.7 service delivery was duplicated through the different networks to small enterprises; and
- 1.3.8 small business activities of other government departments are not necessarily co-ordinated into the integrated small business strategy.

1.4 In response to the abovementioned challenges, a new approach to the implementation of small enterprise development is required. The recommended approach, after considering various options, is to establish a new agency as a public entity that will address the above challenges. Institutions with similar objectives and overlapping functions will be incorporated into this new agency. This will result in the following benefits, namely:

- 1.4.1 Reduced costs in service delivery;
- 1.4.2 leverage in the money spent by the Department of Trade and Industry in development with partners in the service delivery chain;
- 1.4.3 duplication in service delivery will be eliminated;
- 1.4.4 improved access by implementing access points in local communities;
- 1.4.5 improved outreach by establishing access points in areas close to small enterprises; and
- 1.4.6 improved impact through the establishment of service delivery networks made up of all relevant stakeholders.

2. OBJECTS OF BILL

The principal objects of the amendments to the principal Act proposed in the Bill are:

- (a) to substitute chapter 3 of the principal Act and to establish a new Agency, the Small Enterprise Development Agency;
- (b) to incorporate Ntsika and the NAMAC Trust into the new Agency; and

- (c) to enable the Minister to incorporate institutions with similar objectives and functions.

3. CONSULTATION

The following stakeholders were consulted and were in support of the proposed amendments:

- A range of small enterprises and service providers in the different Provinces
- Board of Ntsika
- Board of Trustees of NAMAC
- Department of Provincial and Local Government
- General Managers of provincial Manufacturing Advisory Centres
- MINMEC
- National Treasury
- Provincial Governments

4. FINANCIAL IMPLICATIONS FOR STATE

As the Department of Trade and Industry has made the necessary budget allocations for Ntsika and NAMAC, there will be no additional financial implications.

5. 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.