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## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

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### DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

NO. 4560

28 March 2024

### NATIONAL SMALL ENTERPRISE ACT, 1996 (NO. 102 OF 1996) AS AMENDED

#### DRAFT

#### ADVISORY BODY CONSTITUTION

I, Ms S Ndabeni-Abrahams, Minister of Small Business Development, hereby publish the draft constitution for the Advisory Body, which according to the provisions of Chapter 2 of the National Small Enterprise Act, 1996 (No. 102 of 1996) as amended will serve as an open and transparent process of consultation to determine the constitution for the Advisory Body through wide public participation.

2. The Advisory Body will also subsume the responsibilities of the functions of the Co-operatives Advisory Council as provided for in Chapter 12 of the Co-operatives Amendment Act, 2013 (No. 6 of 2013).

3. Furthermore, members of the public are notified that comments should be submitted to Ms Sylvia Mabusela at [SMabusela@dsbd.gov.za](mailto:SMabusela@dsbd.gov.za) or submitted by hand to the SMME Policy & Oversight Directorate, Department of Small Business Development, 77 Meintjies Street, Sunnyside, Pretoria, within 20 (twenty) days of publication of this notice

4. Enquiries can be directed to Mr Tshepo Lebaea on [TLebaea@dsbd.gov.za](mailto:TLebaea@dsbd.gov.za)



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**Ms S Ndabeni-Abrahams (MP)**  
**MINISTER OF SMALL BUSINESS DEVELOPMENT**  
DATE: ..... / ..... / 2024...



## REPUBLIC OF SOUTH AFRICA

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### 1. INTRODUCTION

- 1.1 The White Paper on National Strategy for the Development and Promotion of Small Business in South Africa (White Paper, 1995) as the founding policy on small enterprise development, identified that small enterprises are not a homogeneous business community, but are represented by a diverse group of enterprises with varying interests, ambitions, and influence. The White Paper further articulated the intent and need for the establishment of a structure that would represent the national “voice” of small enterprise interests and concerns. The White Paper together with the National Integrated Small Enterprise Development (NISED) Strategic Framework assented to by Cabinet on 2 November 2022 and published in the Government Gazette no 48063 on 17 February 2023 as the as the National Small Business Support Strategy forms the national policy in respect of small enterprise support, i.e., as per the National Small Enterprise Act, 1996, no. 102 of 1996, as amended (hereon further referred to as the National Small Enterprise Act).
- 1.2 The National Small Enterprise Act, Act 102 of 1996 as amended, (hereon further referred to as the Small Enterprise Act) prescribes that the Minister facilitates a process aimed at the establishment of the Advisory Body to represent and promote the interests of small enterprises as contemplated in the White Paper, 1995. Small Enterprise is defined in the Act as a separate and distinct business entity, together with its branches or subsidiaries, if any, including co-operative enterprises, managed by one owner or more predominantly carried on in any sector or subsector of the economy mentioned in column 1 of the

schedule and classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule.

- 1.3 Co-operatives Act, 2005 (No. 14 of 2005) as amended (hereon further referred to as Co-operatives Act) also provides for the establishment and Advisory Council to advise the Minister generally on the development of co-operatives and make recommendations on policy, the application of provisions in the Act, the publication of regulations, the provision of support programmes and any matter referred to the Council by the Minister.
- 1.4 Given the similarity in functions, Cabinet endorsed rationalization of the number of public entities and because the definition for small enterprise includes co-operative enterprises it was decided to establish a single Advisory Body that will represent small enterprises, including co-operative enterprises.
- 1.5 The National Small Enterprise Act requires the Minister to, through an open and transparent process, determine the Constitution for the Advisory Body. The establishment of the Advisory Body will be guided by the provisions in both the National Small Enterprise as well as the Co-operatives Amendment Act.
- 1.6 The Constitution of the Advisory Body must, in general, provide for -:
  - a) the composition of the Advisory Body.
  - b) the quorum and meetings of the Advisory Body.
  - c) the procedure for the functioning of the Advisory Body.
  - d) interaction with Parliament, the Department of Small Business Development (DSBD) and statutory bodies.
  - e) any other matter that may be necessary to facilitate the proceedings, activities or business of the Advisory Body.

## **2. CONSTITUTION OF THE ADVISORY BODY**

The Advisory Body shall be established to advise the Minister and fulfil its role and responsibility as provisioned for in the Act.

### **3 MANDATE OF THE ADVISORY BODY**

The mandate of the Advisory Body is to represent and promote the interest of small enterprises, including co-operatives, as contemplated in the National Small Enterprise Act, 1996 (No. 102 of 1996) as amended as well as the Co-operatives Act, 2005 (No. 14 of 2005) as amended.

### **4. FUNCTIONS OF THE ADVISORY BODY**

4.1 The Advisory Body shall advise the Minister on:

- a) Strategies, policies, or programme interventions to address identified market failures affecting the sector;
- b) The impact of current and new legislation on small enterprises, including co-operatives;
- c) National standards pertaining to small enterprise and co-operative development and regulation;
- d) Measures to ensure the creation of physical business infrastructure through viable business sites;
- e) The development of skills in all aspects of running a business;
- f) Steps to be taken to create access for small enterprises and co-operatives into value chains;
- g) Constraints affecting the viability of the small enterprise and co-operative community;
- h) Methods to liaise with the small enterprise and co-operative community to identify their needs.
- i) Methods to monitor and influence the provision of support services to the small enterprise and co-operative sector;
- j) Through consultation with representative industry bodies at provincial and national level each year identify the top 10 barriers in terms of (b) and (c) that impact on the effective and efficient operation of small enterprises and co-operatives to be submitted

to the red tape reduction office at the Presidency as priority barriers to be addressed;  
and

k) Any other matter that the Minister may deem appropriate

## **5 COMPOSITION OF THE ADVISORY BODY**

5.1 The Advisory Body will consist of a chairperson and a minimum of seven (7) members, and a maximum of ten (10) members. Members including the chairperson will not be representatives of departments from national, provincial or local spheres of government or their entities.

5.2 The nominated members may include, but not limited to, person(s) with expertise and experience in the following areas:

a) Enterprise and Supplier Development

b) Small Enterprise Finance

c) Market Access

d) Small Enterprise Policy and Programme Interventions

e) Sectoral Expertise from the seven (7) priority sectors of the SA industrial strategy

f) Product Certification and/or Product Qualification

g) Market access development

h) Entrepreneurship development

i) Expert in small enterprise research

5.3 The Minister may appoint a maximum of 2 members outside the stipulated nomination process to the Advisory Body establishment to ensure wider representability. The two appointees of the Minister must be within the maximum of 10 members and subject to section 5.1 above.

5.4 The term of office of members will be three (3) years and members may serve a maximum of two (2) consecutive terms.

- 5.5 A member that wants to terminate its membership must give one month's written notice to the Minister unless the Minister approves a shorter period.
- 5.5 A member of the Advisory Body holds the office for a period of three years. The member may at the end of his / her term of office be reappointed for one additional term only.
- 5.6 Reappointment of members will be considered and confirmed by the Minister for the period of a second term or any other term thereafter of a member. This and all other appointments will be published on the Department of Small Business Development website.

## **6. DISQUALIFICATION OF ADVISORY BODY MEMBERS**

- 6.1 A person may not be appointed or continue as an Advisory Body member if such person:
- a) is an unrehabilitated insolvent.
  - b) is of unsound mind, or is subject to an order of a competent court declaring such person to be mentally ill or mentally disordered; or
  - c) has at any time been removed from the office of trust on account of misconduct.
  - d) has a criminal record.
  - e) has been convicted for sexual offense or has a restraining order granted against him/her on the basis of gender-based violence.
  - f) has not attended at least three consecutive meetings with valid reason/s explaining lack of attendance in a given financial year.
  - g) Resigns from the office of the Advisory Body. Resignations and/or expulsions will be published on the Department of Small Business Development website.

## **7. FILLING OF VACANCIES OF ADVISORY BODY**

- 7.1 When an Advisory Body member, serving on the basis of a nomination from a nominating institution, vacates an office of the Advisory Body before the end of term of that Advisory Body, the nominating institution shall nominate a substitute.

7.2 The Minister may appoint a substitute member in place of a disqualified member as stipulated by conditions set out in section 6.1 above. This and other appointments will be published on the Department of Small Business Development website, with indication of processes followed aligned to the Constitution.

## **8. QUORUM OF THE ADVISORY BODY**

8.1 The quorum of meetings of the Advisory Body shall be 50% plus one of the appointed members in each meeting.

## **9. PROCEDURE FOR THE FUNCTIONING OF THE ADVISORY BODY**

9.1 The Advisory Body will facilitate two (2) meetings in a given financial year. The Minister may request the Advisory Body to convene additional meetings at her discretion.

9.2 Meetings of the Advisory Body will be facilitated as following:

9.2.1 The Minister shall designate one member as a chairperson of the Advisory Body as per section 5.1 above, who shall chair all meetings of the Advisory Body.

9.2.2 In the absence of the Chairperson, the Advisory Body meeting shall nominate a member to chair the said Advisory Body meeting.

9.2.3 The Advisory Body shall sit six times a year as per section 9.1 above and any other meetings of the Advisory Body must be sanctioned by the Minister.

9.2.4 The quorum for the Advisory Body meeting will consist of fifty percent (50%) plus one member in any given meeting as per section 8.1 above.

9.2.5 Members will be expected to prepare a working document or proposal and submit to the chairperson. This proposal will be supported by evidence pertaining to the topic or agenda of the Advisory Body.

9.2.6 Members will present the working document or proposal to the meeting for inputs, recommendations and/or approval. Inputs, recommendations and/or approvals will be presented to the Minister by the chairperson.

- 9.2.7 The Minister may, when such a need arises, call a special Advisory Body meeting to discuss any issue relevant to the functions of the Advisory Body.
- 9.2.8 The venue of Advisory Body meetings will be determined from time-to-time by the Secretariat in consultation with the chairperson of the Advisory Body.
- 9.2.9 The DSBD shall provide secretariat support for the Advisory Body
- 9.2.10 The Secretariat shall be responsible for the administration and budget of the Advisory Body.
- 9.2.11 The DSBD will provide budget support for the Advisory Body
- 9.2.12 Statutory relations - Advisory Body members will be remunerated in line with the Remuneration Policy compliant with National Treasury Regulations.

## **10. REMUNERATION OF MEMBERS**

- 10.1 Members will be remunerated in accordance with the Remuneration Policy of the Advisory Body in accordance with National Treasury guidelines on Remuneration Framework for Members of Statutory Bodies and will consider the following.
- 10.2 The Remuneration Policy will include, but not be limited to the following:
  - 10.2.1 Sitting Fee
  - 10.2.2 Preparation Fee
  - 10.2.3 Travel and unavoidable stay-over time where applicable
  - 10.2.4 Any other qualifying service carried out in accordance with Constitutional provisions.
  - 10.2.5 The above remuneration package will be determined by the DSBD in consultation and concurrence with National Treasury.
  - 10.2.6 The Remuneration Policy will take effect once approved by the Minister.

## **11. POWERS OF THE ADVISORY BODY**

The Advisory Body is empowered by the Act to advise the Minister.



## **12. AMENDMENTS**

Amendment to the Constitution will be done by the Minister.

## **13. INTERACTION WITH PARLIAMENT**

Interaction with Parliament will be facilitated through the Parliamentary Liaison Officer of the Department of Small Business Development with concurrence from Minister on matters representing the interests of small enterprises.

## **14. REPORTING OF THE ADVISORY BODY**

14.1. The Advisory Body must submit to the Minister an annual report within five (5) months of the end of each financial year which must include:

- a) particulars of the work of the Advisory Body and of advice provided to the Minister in as per legislative provisions
- b) appropriate financial information relating to the Advisory Body.
- c) such other information as may be prescribed or requested by the Minister.

14.2 The Minister must table a copy of the annual report contemplated in subsection (1) of the Act in Parliament and other strategic institutions such as the National Planning Commission to ensure that the that small enterprises, including co-operatives, are centre in governments social and economic planning.

14.3 The above-mentioned report will be published on the DSDB website once ratified by Parliament.