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No. 50965

THE PRESIDENCY

No. 5049 **23 July 2024**

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

Act No. 21 of 2024: National Small Enterprise Amendment Act, 2024

DIE PRESIDENSIE

No. 5049 **23 Julie 2024**

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

No. 21 van 2024: Nasionale Kleinondernemings-Wysigingswet, 2024

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 18 July 2024)

ACT

To amend the National Small Enterprise Act, 1996, in order to amend, delete, insert and to substitute certain definitions; to provide for the report of the Advisory Body; to provide for the establishment of the Small Enterprise Development Finance Agency; to provide for the functions of the Agency; to ensure the provision of financial and non-financial support services to small enterprises; to promote the development of sustainable and responsible co-operative banking; to provide for the establishment of the Office of the Small Enterprise Ombud Service; to enable an equitable trading environment for small enterprises through the provision of affordable and effective access to justice; to empower the Minister to declare certain practices in relation to small enterprises to be prohibited as unfair trading practices; to provide for the transitional arrangements necessitated by the establishment of the Agency; to effect consequential or necessary amendments to the Co-operative Banks Act, 2007, and to the Co-operatives Act, 2005; 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 and section 1 of Act 29 of 2004

1. Section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996) 5
(hereinafter referred to as the “principal” Act), is hereby amended—
- (a) by the substitution for the words preceding the definition of “Agency” of the following words:
 “(1) In this Act, unless the context indicates otherwise—”;
- (b) by the substitution for the definition of “Agency” of the following definition: 10
 “‘**Agency**’ means the Small Enterprise Development Finance Agency SOC Limited established in terms of section 9;”;
- (c) by the insertion after the definition of “Agency” of the following definition: 15
 “‘**Auditor-General**’ means the person appointed as Auditor-General in terms of section 193(4) of the Constitution;”;
- (d) by the substitution for the definition of “Board” of the following definition:
 “‘**Board**’ means the Board of Directors of the Agency established in terms of section 16;”;

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vetdruk tussen vierkantige hakies dui skrapings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 18 Julie 2024)

WET

Tot wysiging van die Nasionale Kleinondernemingswet, 1996, ten einde sekere woordskrywings te wysig, te skrap, in te voeg en te vervang; voorsiening te maak vir die verslag van die Adviesliggaam; voorsiening te maak vir die stigting van die Finansieringsagentskap vir Kleinondernemingsontwikkeling; voorsiening te maak vir die werksaamhede van die Agentskap; voorsiening te maak vir die verskaffing van finansiële en nie-finansiële ondersteuningsdienste aan klein ondernemings; die ontwikkeling van volhoubare en verantwoordelike koöperatiewe bankwese te bevorder; voorsiening te maak vir die instelling van die Kantoor van die Kleinondernemingsombudsiens; 'n gelyke handelsomgewing vir klein ondernemings moontlik te maak deur bekostigbare en doeltreffende toegang tot geregtigheid te voorsien; die Minister te bemagtig om sekere praktyke met betrekking tot klein ondernemings as onbillike handelspraktyke verbode te verklaar; voorsiening te maak vir die oorgangsmaatreëls wat deur die stigting van die Agentskap genoodsaak word; gevolglike of nodige wysigings aan die isiXhosa-weergawe van die “Co-operative Banks Act, 2007” en aan die XiTsonga-weergawe van die “Co-operatives Act, 2005”, aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 102 of 1996, soos gewysig deur artikel 1 van Wet 26 van 2003 en artikel 1 van Wet 29 van 2004

1. Artikel 1 van die Nasionale Kleinondernemingswet, 1996 (Wet No. 102 van 1996) 5
(hierna die “Hoofwet” genoem), word hierby gewysig—
- (a) deur die woorde wat die omskrywing van “Agentskap” voorafgaan deur die 5
volgende woorde te vervang:
“(1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—”;
- (b) deur die omskrywing van “Agentskap” deur die volgende omskrywing te 10
vervang:
“**‘Agentskap’** die Finansieringsagentskap vir Kleinondernemings-
ontwikkeling MIS Beperk ingevolge artikel 9 gestig;”;
- (c) deur die omskrywing van “Direksie” deur die volgende omskrywing te 15
vervang:
“**‘Direksie’** die Direksie van die Agentskap ingevolge artikel 16
gestig;”;
- (d) deur die volgende omskrywing na die omskrywing van “Direksie” in te voeg:
“**‘direkteur’** die persoon wat ingevolge artikel 17N aangestel is;”;

- (e) by the deletion of the definition of “Chief Executive Officer”;
- (f) by the insertion after the definition of “Chief Executive Officer” of the following definitions:
- “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008); 5
- “**complainant**” means a small enterprise or small enterprise organisation;
- “**complaint**” means any complaint lodged, as contemplated in Chapter 3A, by a small enterprise or small enterprise organisation against—
- (a) another small enterprise or small enterprise organisation;
- (b) a large enterprise that does not fall within the meaning of ‘small enterprise’; or 10
- (c) an organ of state as defined in section 239 of the Constitution, in relation to the interpretation of the terms of an agreement for the procurement of goods or services or the late or non-payment of amounts due and payable to the small enterprise, where the complaint is not a complaint that falls under the jurisdiction of an ombud, as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);”;
- (g) by the insertion after the definition of “constitution of the Council” of the following definitions: 20
- “**co-operative enterprises**” include a co-operative, a co-operative bank and a co-operative financial institution, as defined in the Co-operative Banks Act, 2007 (Act No. 40 of 2007);
- “**development support**” includes both financial and non-financial support; 25
- “**director**” means the person appointed in terms of section 17N;”;
- (h) by the substitution for the definition of “Director-General” of the following definition: 30
- “**Director-General**” means the Director-General of the Department [of Trade and Industry, or an officer of that Department designated by that Director-General] responsible for small business development;”;
- (i) by the substitution for the definition of “Minister” of the following definition: 35
- “**Minister**” means the Minister [of Trade and Industry] responsible for small business development;”;
- (j) by the insertion after the definition of “Ntsika” of the following definitions: 35
- “**Office**” means the Office of the Small Enterprise Ombud Service established by section 17D;
- “**Ombud**” means the Ombud appointed in terms of section 17F;”;
- (k) by the insertion after the definition of “prescribed” of the following definition: 40
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;
- (l) by the substitution for the definition of “small enterprise” of the following definition: 45
- “**small enterprise**” means a separate and distinct business entity, together with its branches or subsidiaries, if any, including a co-operative, co-operative financial institution, or a co-operative bank, carried on in any sector or sub-sector of the economy classified as a micro, small or medium enterprise which satisfies the prescribed criteria;”;
- (m) by the insertion after the definition of “Trust” of the following definition: 50
- “**Unfair Trading Practice**” means a practice contemplated in section 17Y;”;
- (n) by the addition of the following subsection: 55
- “(2) Unless the context indicates otherwise, a word or phrase defined in the Companies Act, the Co-operatives Act, 2005 (Act No. 14 of 2005), the Co-operative Banks Act, 2007 (Act No. 40 of 2007), or the Public Finance Management Act, has the same meaning in this Act.”.

- (e) deur die omskrywing van “Direkteur-generaal” deur die volgende omskrywing te vervang:
 “**‘Direkteur-generaal’** die Direkteur-generaal van die Departement [van Handel en Nywerheid, of beampte van daardie Departement **deur daardie Direkteur-generaal aangewys**] verantwoordelik vir kleinondernemingsontwikkeling”; 5
- (f) deur die omskrywing van “Hoof- Uitvoerende Beampte” te skrap;
- (g) deur die volgende omskrywings na die omskrywing van “Hoof- Uitvoerende Beampte” in te voeg:
 “**‘Kantoor’** die Kantoor van die Kleinondernemingsombudspersoon 10
 by artikel 17D ingestel;
‘klaer’ ’n klein onderneming of kleinondernemingsorganisasie;
‘klagte’ enige klagte ingedien, soos in Hoofstuk 3A beoog, deur ’n klein onderneming of kleinondernemingsorganisasie, teen—
 (a) ’n ander klein onderneming of kleinondernemingsorganisasie; 15
 (b) ’n groot onderneming wat nie onder die betekenis van ‘klein onderneming’ val nie; of
 (c) ’n staatsorgaan soos omskryf in artikel 239 van die Grondwet, met betrekking tot ’n ooreenkoms vir die verkryging van goedere of dienste of die laat of nie-betaling van bedrae verskuldig en betaalbaar aan die klein onderneming, waar die klagte nie ’n klagte is wat onder die jurisdiksie van ’n ombudspersoon val nie, soos omskryf in artikel 1(1) van die ‘Financial Sector Regulation Act, 2017’ (Wet No. 9 van 2017);” 20
- (h) deur die omskrywing van “kleinonderneming” deur die volgende omskrywing te vervang: 25
 “**‘klein onderneming’** ’n aparte en bepaalde sake-entiteit, saam met sy takke of filiale, indien enige, en ook ’n koöperasie, koöperatiewe finansiële instelling, of koöperatiewe bank, wat in enige sektor of subsektor van die ekonomie bedryf word, wat as ’n mikro, klein of medium onderneming geklassifiseer is, wat aan die voorgeskrewe maatstawwe voldoen;” 30
- (i) deur die volgende omskrywing na die omskrywing van “kleinondernemingsorganisasie” in te voeg:
 “**‘koöperatiewe ondernemings’** ook ’n koöperasie, ’n koöperatiewe bank en ’n koöperatiewe finansiële instelling, soos omskryf in die ‘Co-operative Banks Act, 2007’ (Wet No. 40 van 2007);” 35
- (j) deur die volgende omskrywings na die omskrywing van “kleinonderneming organisasie” Beampte” in te voeg:
 “**‘Maatskappywet’** die Maatskappywet, 2008 (Wet No. 71 van 2008);” 40
- (k) deur die omskrywing van “Minister” deur die volgende omskrywing te vervang:
 “**‘Minister’** die Minister [van Handel en Nywerheid] verantwoordelik vir ontwikkeling van klein ondernemings”;
- (l) deur die volgende omskrywings na die omskrywing van “Ntsika” in te voeg: 45
 “**‘Ombudspersoon’** die Ombudspersoon ingevolge artikel 17F aangestel;
‘Onbillike Handelspraktyk’ ’n praktyk in artikel 17Y beoog;
‘Ouditeur-generaal’ die persoon wat ingevolge artikel 193(4) van die Grondwet as Ouditeur-generaal aangestel is; 50
‘ontwikkelingsondersteuning’ sluit beide finansiële asook nie-finansiële ondersteuning in;”
- (m) deur die volgende omskrywing na die omskrywing van “voorgeskryf” in te voeg:
 “**‘Wet op Openbare Finansiële Bestuur’** die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);” en 55
- (n) deur die volgende subartikel by te voeg:
 “(2) Tensy dit uit die samehang anders blyk, het ’n woord of frase wat in die Maatskappywet, die ‘Co-operatives Act, 2005’ (Wet No. 14 van 2005), die ‘Co-operative Banks Act, 2007’ (Wet No. 40 van 2007), of die Wet op Openbare Finansiële Bestuur, omskryf is, dieselfde betekenis in hierdie Wet.” 60

Insertion of section 1A in Act 102 of 1996

2. The following section is hereby inserted after section 1 of the principal Act:

“Application of Act

1A. (1) In the event of a conflict between the provisions of this Act and the Public Finance Management Act, the provisions of the latter Act prevail. 5
 (2) In the event of a conflict between the provisions of this Act and the Companies Act, the Co-operatives Act, 2005 or the Co-operative Banks Act, 2007, the provisions of this Act prevail.”

Insertion of section 4 in Act 102 of 1996

3. The following section is hereby inserted after section 3 of the principal Act: 10

“Report of Advisory Body

4. (1) The Advisory Body must submit to the Minister an annual report within five 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 terms of section 3(2)(b) in furtherance of the objects of the National Small Business Support Strategy; 15
 (b) financial statements relating to the Advisory Body; and
 (c) such other information as may be prescribed.
 (2) The Minister must table a copy of the annual report contemplated in subsection (1) in Parliament. 20
 (3) The Minister may request the Advisory Body to provide any other information as may be necessary.”

Substitution of Chapter 3 of Act 102 of 1996

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

“Chapter 3 25**Small Enterprise Development Finance Agency****Establishment and shareholder of Agency**

9. (1) Upon the coming into effect of this section, the Minister must ensure that the necessary steps are taken for the incorporation of the Agency as a company contemplated in subsection (2). 30
 (2) The Companies and Intellectual Property Commission must—
 (a) register the Memorandum of Incorporation and incorporate the Agency under the name “Small Enterprise Development Finance Agency SOC Limited” with the State as the shareholder; and 35
 (b) issue to that entity the necessary documents to enable it to conduct business as a corporate entity.
 (3) The Minister is the sole representative of the shareholder.
 (4) The Agency acts through its Board.
 (5) The Public Finance Management Act and the Companies Act apply to the operations of the Agency. 40

Objectives of Agency

10. The objectives of the Agency are to—
 (a) design and implement development support programmes for small enterprises; 45
 (b) promote a service delivery network that increases the contribution of small enterprises to the South African economy, and enhances

Invoeging van artikel 1A in Wet 102 van 1996

2. Die volgende artikel word hierby na artikel 1 in die Hoofwet ingevoeg:

“Toepassing van Wet

1A. (1) Waar teenstrydigheid bestaan tussen die bepalings van hierdie Wet en die Wet op Openbare Finansiële Bestuur, geld die bepalings van die laasgenoemde Wet. 5

(2) Waar teenstrydigheid bestaan tussen die bepalings van hierdie Wet, die Maatskappywet, die ‘Co-operatives Act, 2005’, of die ‘Co-operative Banks Act, 2007’, geld die bepalings van hierdie Wet.”

Invoeging van artikel 4 in Wet 102 van 1996

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3. Die volgende artikel word hierby na artikel 3 van die Hoofwet ingevoeg:

“Verslag van Adviesliggaam

4. (1) Die Adviesliggaam moet ’n jaarverslag aan die Minister voorlê binne vyf maande sedert die einde van elke boekjaar, wat moet insluit— 15

(a) besonderhede van die werk van die Adviesliggaam en van advies aan die Minister gegee ingevolge artikel 3(2)(b) ter bevordering van die oogmerke van die Nasionale Ondersteuningstrategie vir Klein Ondernemings;

(b) finansiële state met betrekking tot die Raadgewende Liggaam; en 20

(c) sodanige ander inligting wat voorgeskryf kan word.

(2) Die Minister moet ’n afskrif van die jaarverslag beoog in subartikel (1) in die Parlement ter tafel lê.

(3) Die Minister kan versoek dat die Adviesliggaam enige ander inligting verstrek, soos nodig mag mees.”

Vervanging van Hoofstuk 3 van Wet 102 van 1996

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

“Hoofstuk 3**Finansieringsagentskap vir Kleinondernemingsontwikkeling****Stigting en aandeelhouer van Agentskap**

9. (1) By die inwerkingtreeding van hierdie artikel, moet die Minister verseker dat die nodige stappe gedoen word vir die inlywing van die Agentskap as ’n maatskappy in subartikel (2) beoog. 30

(2) Die Kommissie vir Maatskappye en Intellektuele Eiendom moet— 35

(a) die Akte van Inlywing registreer en die Agentskap inlyf onder die naam “Small Enterprise Development Finance Agency SOC Limited” met die Staat as die aandeelhouer; en

(b) die nodige dokumente aan daardie entiteit uitreik om hom in staat te stel om besigheid as ’n korporatiewe entiteit te bedryf.

(3) Die Minister is die enigste verteenwoordiger van die aandeelhouer.

(4) Die Agentskap tree deur sy Direksie op. 40

(5) Die Wet op Openbare Finansiële Bestuur en die Maatskappywet is van toepassing op die bedrywighede van die Agentskap.

Oogmerke van Agentskap

10. Die oogmerke van die Agentskap is om—

(a) ontwikkelingsondersteuningsprogramme vir klein ondernemings te ontwerp en in werking te stel; 45

(b) ’n dienslewingsnetwerk te bevorder wat die bydrae van klein ondernemings tot die Suid-Afrikaanse ekonomie verhoog, en

- economic growth, job creation and equity to historically disadvantaged communities;
- (c) support, promote and develop co-operative banks and co-operative financial institutions; and
- (d) generally, strengthen the capacity of— 5
- (i) service providers to support small enterprises; and
 - (ii) small enterprises to compete successfully domestically and internationally.

Shareholder powers and duties

11. (1) Subject to this section and section 12, the Minister must exercise all the rights and duties of a shareholder under the Companies Act in relation to the Agency in order to promote and support the functions of the Agency and to report annually on the developmental impact and material risks of its investment in the Agency. 10

(2) Notwithstanding the Companies Act, the Minister may only— 15

- (a) subject to subsection (3), appoint the directors to the Board of the Agency in terms of section 68 of the Companies Act on the recommendations of the Board after a transparent appointment process conducted by it;
- (b) remove directors in terms of sections 69 and 71 of the Companies Act if the director— 20
- (i) is in breach of the director's fiduciary duties; or
 - (ii) is unable to perform the functions of a director adequately or competently; and
- (c) determine the remuneration of directors in accordance with the best market practice and in accordance with applicable guidelines. 25

(3) Notwithstanding subsection (2)(a), the Minister may, on good grounds, apply to the High Court for an order to appoint a director not recommended by the Board in terms of that subsection.

(4) The Board must submit an annual corporate plan to the Minister for approval, which includes— 30

- (a) the Agency's strategic objectives, business strategies and outcomes;
- (b) performance measures and key indicators for assessing its performance in delivering the desired objectives, strategies and outcomes;
- (c) the investment and financing programmes, including any borrowing plan, and the underlying assumptions for those programmes;
- (d) the strategies for managing financial and non-financial risk;
- (e) particulars relating to financial indicators and forecasts;
- (f) the accounting policies of the Agency; and
- (g) any other relevant information which relates to the financial and non-financial support activities of the Agency. 40

(5) The Minister must commission an independent assessment of the Board's performance every three years.

Material or persistent failure to meet objectives and targets

12. (1) If the Agency materially or persistently fails to meet the objectives and targets as contained in its corporate planning instruments and as specified by the Minister in terms of binding shareholder instructions as contained in shareholder compacts, the Minister may call a special general meeting of the Agency to consider the corrective action to be taken. 45

(2) In the circumstances contemplated in subsection (1), the Minister may— 50

- (a) request any additional information required;
- (b) commission an independent investigation of the Agency, or a subsidiary, in relation to its operations and finances;

- ekonomiese groei, werkskepping en gelykheid aan histories benadeelde gemeenskappe bevorder;
- (c) koöperatiewe banke en koöperatiewe finansiële instellings te ondersteun, bevorder en ontwikkel; en
- (d) oor die algemeen die kapasiteit te versterk van— 5
- (i) diensverskaffers om klein ondernemings te ondersteun; en
- (ii) klein ondernemings om suksesvol binnelands en internasionaal mee te ding.

Aandeelhouer se bevoegdhede en pligte

11. (1) Behoudens hierdie artikel en artikel 12, moet die Minister al die regte en pligte van 'n aandeelhouer kragtens die Maatskappywet met betrekking tot die Agentskap uitoefen ten einde die werksaamhede van die Agentskap te bevorder en te ondersteun en om jaarliks verslag te doen oor die ontwikkelingsimpak en wesenlike risiko's van die belegging in die Agentskap. 10 15

- (2) Ondanks die Maatskappywet, kan die Minister slegs—
- (a) behoudens subartikel (3), die direkteure op die Direksie van die Agentskap aanstel ingevolge artikel 68 van die Maatskappywet op aanbevelings van die Direksie, na 'n deursigtige aanstellingsproses wat deur hom of haar gevolg is; 20
- (b) direkteure ingevolge artikels 69 en 71 van die Maatskappywet onthef indien die direkteur—
- (i) die direkteur se fidusiële pligte verbreek; of
- (ii) nie in staat is om die werksaamhede van 'n direkteur voldoende of bekwaam te verrig nie; en 25
- (c) die vergoeding van direkteure in ooreenstemming met die beste markpraktyk en in ooreenstemming met toepaslike riglyne bepaal.

(3) Ondanks subartikel (2)(a), kan die Minister, op goeie gronde, by die Hooggeregshof aansoek doen om 'n bevel om 'n direkteur aan te stel wat nie ingevolge daardie subartikel deur die Direksie aanbeveel is nie. 30

(4) Die Direksie moet 'n jaarlikse korporatiewe plan aan die Minister voorlê vir goedkeuring, wat insluit—

- (a) die Agentskap se strategiese doelwitte, besigheidstrategieë en uitkomst; 35
- (b) prestasiemaatstawwe en sleutelaanwysers vir die beoordeling van die Direksie se prestasie in die lewering van die verlangde doelwitte, strategieë en uitkomst; 40
- (c) die beleggings- en finansieringsprogramme, met inbegrip van enige leenplan, en die onderliggende aannames vir daardie programme;
- (d) die strategieë vir die bestuur van finansiële en nie-finansiële risiko; 45
- (e) besonderhede met betrekking tot finansiële aanwysers en vooruitskattings;
- (f) die rekeningkundige beleid van die Agentskap; en
- (g) enige ander relevante inligting wat verband hou met die finansiële en nie-finansiële ondersteuningsaktiwiteite van die Agentskap. 45

(5) Die Minister moet elke drie jaar 'n onafhanklike beoordeling van die Direksie se prestasie laat doen.

Wesenlike of aanhoudende versuim om doelwitte en teikens te bereik

12. (1) Indien die Agentskap wesenlik of aanhoudend versuim om die doelwitte en teikens soos vervat in sy korporatiewe beplanningsinstrumente en soos gespesifiseer deur die Minister ingevolge bindende aandeelhouersinstruksies soos vervat in aandeelhouersooreenkomste, te bereik, kan die Minister 'n spesiale algemene vergadering van die Agentskap belê om die regstellende stappe wat geneem moet word, te oorweeg. 50 55

- (2) In die omstandighede in subartikel (1) beoog, kan die Minister—
- (a) enige bykomende inligting wat vereis word, aanvra;
- (b) 'n onafhanklike ondersoek van die Agentskap of filiaal laat doen, met betrekking tot sy bedrywighede en finansies;

- (c) require, in consultation with the Board, that the Agency be restructured with a view to meet the financial and non-financial support objectives of the State in relation to small enterprises or reducing the Agency's costs or increasing its revenue;
- (d) review Board membership and provide additional capacity to the Board; 5
- (e) issue instructions to the Board to remedy the failure; or
- (f) apply to the High Court to appoint a curator, on such terms as the Court may determine, to take control of the management of the Agency. 10
- (3) If the Minister exercises any of the powers listed in subsection (2), the powers of the Board and the performance of its functions to manage the business and affairs of the Agency are restricted accordingly, notwithstanding anything to the contrary contained in section 66 of the Companies Act.
- (4) If the Minister commissions an independent investigation in terms of subsection (2)(b)— 15
- (a) the Board must ensure that the person carrying out the investigation has access to all relevant information of the Agency; and
- (b) the person carrying out the investigation must— 20
- (i) ensure that the information gleaned in the investigation is confidential and may not be communicated to any person other than the Minister, the Board or an applicable law enforcement agency; and
- (ii) submit a written report of the findings arising from the investigation to the Minister and the Board. 25
- (5) If a curator is appointed in terms of subsection (2)(f), the curator assumes all the duties, functions and powers of the Board.
- (6) Both the Minister and the Board must disclose any appointment and main findings of an independent investigator in the Minister's annual report and the Agency's annual report. 30

Agency's powers and functions

- 13.** In the exercise of its powers and the performance of its functions to manage the business and affairs of the Agency, the Board must, subject to section 11—
- (a) implement the policy of the national government for small enterprise development inclusive of both financial and non-financial support services; 35
- (b) design and implement a standard national delivery network that must uniformly apply throughout the Republic in respect of small enterprise development; 40
- (c) design and implement small enterprise development support programmes in order to—
- (i) facilitate the building of sustainable and competitive small enterprises; 45
- (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 financial resources, non-financial resources, capacity-building services, products and services;
- (v) promote participation of historically disadvantaged persons in small enterprises;
- (vi) facilitate international and national market access for products and services of small enterprises; 55
- (vii) foster partnerships across all spheres of government, the private sector and relevant stakeholders to assist the Agency to achieve its objectives;

- (c) vereis, in oorleg met die Direksie, dat die Agentskap herstruktureer word met die oog op die voldoening aan die finansiële en nie-finansiële ondersteuningsdoelwitte van die Staat met betrekking tot klein ondernemings of om die Agentskap se koste te verminder of sy inkomste te verhoog; 5
- (d) lidmaatskap van die Direksie hersien en bykomende kapasiteit aan die Direksie verskaf;
- (e) instruksies aan die Direksie uitreik om die versuim reg te stel; of
- (f) by die Hooggeregshof aansoek doen om 'n kurator aan te stel, op sodanige voorwaardes as wat die Hof mag bepaal, om beheer oor die bestuur van die Agentskap te neem. 10
- (3) Indien die Minister enige van die bevoegdhede gelys in subartikel (2) uitoefen, word die bevoegdhede van die Direksie en die uitvoering van sy werksaamhede om die besigheid en sake van die Agentskap te bestuur dienoreenkomstig beperk, nieteenstaande enigiets tot die teendeel vervat in artikel 66 van die Maatskappywet. 15
- (4) Indien die Minister 'n onafhanklike ondersoek ingevolge subartikel (2)(b) laat doen—
- (a) moet die Direksie verseker dat die persoon wat die ondersoek uitvoer, toegang het tot alle relevante inligting van die Agentskap; en 20
- (b) moet die persoon wat die ondersoek uitvoer—
- (i) verseker dat die inligting wat in die ondersoek ingewin is, vertroulik is en nie aan enige persoon anders as die Minister, die Direksie of 'n toepaslike wetstoepassingsagentskap oorgedra mag word nie; en 25
- (ii) 'n skriftelike verslag van die bevindinge wat uit die ondersoek voortspruit, aan die Minister en die Direksie voorlê.
- (5) Indien 'n kurator ingevolge subartikel (2)(f) aangestel word, aanvaar die kurator al die pligte, werksaamhede en bevoegdhede van die Direksie.
- (6) Beide die Minister en die Direksie moet enige aanstelling en hoofbevindinge van 'n onafhanklike ondersoeker in die Minister se jaarverslag en die Agentskap se jaarverslag openbaar maak. 30

Agentskap se bevoegdhede en werksaamhede

- 13.** In die uitoefening van sy bevoegdhede en die uitvoering van sy werksaamhede om die besigheid en sake van die Agentskap te bestuur, moet die Direksie, behoudens artikel 11— 35
- (a) die beleid van die nasionale regering vir die ontwikkeling van klein ondernemings in werking stel, met inbegrip van beide finansiële en nie-finansiële ondersteuningsdienste;
- (b) 'n standaard nasionale leweringsnetwerk ontwerp en in werking stel, wat eenvormig regdeur die Republiek moet geld ten opsigte van kleinondernemingsontwikkeling; 40
- (c) ontwikkelingsondersteuningsprogramme ontwerp en in werking stel vir klein ondernemings ten einde—
- (i) die bou van volhoubare en mededingende klein ondernemings te vergemaklik; 45
- (ii) die bevordering van entrepreneurskap te vergemaklik;
- (iii) die skepping van 'n bemagtigende bedryfsomgewing vir klein ondernemings te vergemaklik;
- (iv) toegang deur klein ondernemings tot finansiële hulpbronne, nie-finansiële hulpbronne, kapasiteitsboudienste, produkte en dienste te vergemaklik; 50
- (v) deelname van histories benadeelde persone in klein ondernemings te bevorder;
- (vi) internasionale en nasionale marktoegang vir produkte en dienste van klein ondernemings te vergemaklik; 55
- (vii) vennootskappe oor alle sfere van die regering, die privaatsektor en relevante belanghebbendes bevorder om die Agentskap by te staan om sy doelwitte te bereik;

- (viii) promote a service delivery network to facilitate access and outreach to development support for small enterprises;
- (ix) facilitate and co-ordinate research relating to small enterprise support programmes;
- (x) provide support in the implementation of the Small Enterprise Development Policy; 5
- (xi) co-operate with, and assist, including through providing information, the Financial Sector Conduct Authority and the Prudential Authority as defined in section 1(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), in dealing with matters of mutual interest; 10
- (xii) at the request of the Minister, investigate, advise on and comment on the effect of existing legislation and the impact of proposed legislation on small enterprises; and
- (xiii) improve the understanding of the public regarding the contribution of small enterprises to inclusive economic growth, job creation and general welfare; 15
- (d) establish provincial structures to ensure the effective implementation of its functions, including, subject to availability of resources, facilitating the devolution of such implementation at the municipal level; and 20
- (e) conduct a public and transparent process, through its nominations committee, to make recommendations for appointments to the Board based on a matrix of skills, experience and diversity, which when considered collectively, enables them to attain the Agency's prescribed objectives. 25

Role, functions and duties of Agency Board

- 14.** (1) The Board must ensure that its business and affairs are conducted in a manner consistent with this Act, the Companies Act, the Co-operatives Act and the Co-operative Banks Act, and in particular, it must— 30
- (a) develop the annual corporate plan referred to in section 11(4) in respect of the Agency and any of its subsidiaries;
 - (b) prepare and approve an annual budget, including any borrowing plan, if necessary, to give effect to that corporate plan;
 - (c) without delay notify the Minister of any adverse events that may affect the ability of the Agency to meet its performance and comply with this Act, and the reasons therefor; 35
 - (d) implement an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective in accordance with section 51 of the Public Finance Management Act; and 40
 - (e) develop a system for properly evaluating all Agency activities, both financial and non-financial.
- (2) Subject to the requirements of this Act, the Board may exercise all its powers under the Companies Act, including the power to borrow money from, issue a guarantee, indemnity or security to, a third party for the purpose of performing its functions and achieving its objectives. 45

- (viii) 'n diensleweringsnetwerk te bevorder om toegang en uitreiking tot ontwikkelingsondersteuning vir klein ondernemings te fasiliteer;
- (ix) navorsing met betrekking tot ondersteuningsprogramme vir klein ondernemings te fasiliteer en te koördineer; 5
- (x) ondersteuning bied in die inwerkingstelling van die Ontwikkelingsbeleid vir Klein Ondernemings;
- (xi) saamwerk met, en bystand lewer aan, met inbegrip van deur die verskaffing van inligting, die Gedragsowerheid vir die Finansiële Sektor en die Omsigtigheidsowerheid soos omskryf in artikel 1(1) van die 'Financial Sector Regulation Act, 2017' (Wet No. 9 van 2017), in die hantering van sake van wedersydse belang; 10
- (xii) op versoek van die Minister die uitwerking van bestaande wetgewing en die impak van voorgestelde wetgewing op klein ondernemings ondersoek, daarvoor advies gee en kommentaar lewer; en 15
- (xiii) die begrip van die publiek ten opsigte van die bydrae van klein ondernemings tot inklusiewe ekonomiese groei, werkskepping en algemene welsyn te verbeter; 20
- (d) provinsiale strukture daarstel om die doeltreffende inwerkingstelling van die agentskap se werksaamhede te verseker, met inbegrip van, onderhewig aan beskikbaarheid van hulpbronne, die vergemakliking van die afwenteling van sodanige inwerkingstelling op munisipale vlak; en 25
- (e) 'n openbare en deursigtige proses deur middel van sy benoemingskomitee voer om aanbevelings te maak vir aanstellings in die Direksie gegrond op 'n matriks van vaardighede, ervaring en diversiteit, wat, wanneer gesamentlik oorweeg word, hulle in staat stel om die Agentskap se voorgeskrewe doelwitte te bereik. 30

Rol, werksaamhede en pligte van Agentskapdireksie

- 14.** (1) Die Direksie moet verseker dat sy besigheid en sake bedryf word op 'n wyse wat ooreenstem met hierdie Wet, die Maatskappywet, die 'Co-operatives Act' en die 'Co-operative Banks Act', en in die besonder moet die Direksie— 35
- (a) die jaarlikse korporatiewe plan bedoel in artikel 11(4) ten opsigte van die Agentskap en enige van sy filiale ontwikkel;
- (b) 'n jaarlikse begroting opstel en goedkeur, met inbegrip van enige leenplan, indien nodig, om uitvoering aan daardie korporatiewe plan te gee; 40
- (c) die Minister sonder versuim in kennis stel van enige nadelige gebeurtenisse wat die vermoë van die Agentskap kan beïnvloed om sy prestasie na te kom en aan hierdie Wet te voldoen, en die redes daarvoor;
- (d) 'n toepaslike verkryging- en voorsieningstelsel in werking stel wat billik, gelyk, deursigtig, mededingend en koste-effektief is in ooreenstemming met artikel 51 van die Wet op Openbare Finansiële Bestuur; en 45
- (e) 'n stelsel ontwikkel om alle Agentskapaktiwiteite, beide finansiële en nie-finansiële, behoorlik te evalueer. 50
- (2) Behoudens die vereistes van hierdie Wet, kan die Direksie al sy bevoegdhede kragtens die Maatskappywet uitoefen, insluitend die bevoegdheid om geld te leen by, 'n waarborg, skadeloosstelling of sekuriteit uit te reik aan, 'n derde party met die doel om sy werksaamhede te verrig en sy doelwitte te bereik. 55

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) income gained through investment of monies; and
 - (d) money lawfully obtained or raised by the Agency from any other source.
- (2) Any appropriation of funds contemplated in subsection (1)(a) must, prior to being distributed to the Agency, specify criteria for the use of funds and whether the funds are to be used by the Agency for financial or non-financial support services.
- (3) The criteria contemplated in subsection (2) must—
- (a) in the case of financial support services, in relation to any consequent loans made to small enterprises, specify—
 - (i) intended recipients;
 - (ii) categories of each sector;
 - (iii) applicable interest rates;
 - (iv) repayment terms;
 - (v) acceptable impairment levels; and
 - (vi) any other relevant terms; and
 - (b) in the case of non-financial support services, include categories of recipients and the nature of the non-financial support to be provided.
- (4) The procedures to be followed when granting or not granting financial or non-financial support by the Agency must allow for the review of that decision.
- (5) The Agency must include in its reporting to the Minister prescribed information as to—
- (a) the recipients of the financial and non-financial support services envisaged in subsection (3)(a) and (b); and
 - (b) the funds envisaged in subsection (1)(b) to (d).
- (6) 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).

Composition of Board

- 16.** (1) Subject to section 11, the Minister must appoint all the directors of the Board on grounds of their skill, knowledge and experience, which, when considered collectively, are representative of the nine provinces, and will enable them to fulfil the objectives of the Agency.
- (2) The Board must comprise a minimum of seven and a maximum of 13 directors.
- (3) Non-executive directors serve a term of three years and may not be reappointed for more than two additional terms.
- (4) The CEO and CFO of the Agency are Executive members of the Board.

Board committees

- 17.** In addition to any other Board committees permitted in terms of section 72 of the Companies Act, the Board must appoint—
- (a) an audit and risk committee;
 - (b) a human resources, remuneration and nominations committee, *inter alia*, to make recommendations of persons to be appointed to the Board in terms of section 11(2)(a);
 - (c) a social and ethics committee; and
 - (d) a credit and investment committee.

Finansies van Agentskap

- 15.** (1) Die fondse van die Agentskap bestaan uit—
- (a) geld wat deur die Parlement bewillig is;
 - (b) toekennings, skenkings en bemakings aan die Agentskap gemaak;
 - (c) inkomste verkry deur belegging van gelde; en
 - (d) geld wat wettiglik van enige ander bron deur die Agentskap verkry of ingesamel is.
- (2) Enige bewilliging van fondse beoog in subartikel (1)(a) moet, voordat dit aan die Agentskap versprei word, maatstawwe spesifiseer vir die gebruik van fondse en of die fondse deur die Agentskap vir finansiële of nie-finansiële ondersteuningsdienste gebruik gaan word.
- (3) Die maatstawwe beoog in subartikel (2) moet—
- (a) in die geval van finansiële ondersteuningsdienste, met betrekking tot enige gevolglike lenings wat aan klein ondernemings gemaak is, spesifiseer—
 - (i) beoogde ontvangers;
 - (ii) kategorieë van elke sektor;
 - (iii) toepaslike rentekoerse;
 - (iv) terugbetalingsvoorwaardes;
 - (v) aanvaarbare waardedalingsvlakke; en
 - (vi) enige ander tersaaklike bepalings; en
 - (b) in die geval van nie-finansiële ondersteuningsdienste, kategorieë van ontvangers en die aard van die nie-finansiële ondersteuning wat verskaf moet word, insluit.
- (4) Die prosedures wat gevolg moet word wanneer finansiële of nie-finansiële ondersteuning deur die Agentskap toegestaan word of nie, moet die hersiening van daardie besluit moontlik maak.
- (5) Die Agentskap moet in sy verslagdoening aan die Minister voorgeskrewe inligting insluit oor—
- (a) die ontvangers van die finansiële en nie-finansiële ondersteuningsdienste wat in subartikel (3)(a) en (b) beoog word; en
 - (b) die fondse beoog in subartikel (1)(b) tot (d).
- (6) Alle gelde wat deur die Agentskap ontvang word, moet in 'n bankrekening in die naam van die Agentskap by 'n bank wat kragtens die Bankwet, 1990 (Wet No. 94 van 1990) gestig is, inbetaal word.

Samestelling van Direksie

- 16.** (1) Behoudens artikel 11, moet die Minister al die direkteure van die Direksie aanstel op grond van hul vaardigheid, kennis en ervaring, wat, wanneer dit gesamentlik beskou word, verteenwoordigend is van die nege provinsies, en hulle in staat sal stel om die doelwitte van die Agentskap te bereik.
- (2) Die Direksie moet uit 'n minimum van sewe en 'n maksimum van 13 direkteure bestaan.
- (3) Nie-uitvoerende direkteure dien vir 'n termyn van drie jaar en mag nie vir meer as twee bykomende termyne heraangestel word nie.
- (4) Die HUB en finansiële hoof van die Agentskap is Uitvoerende lede van die Direksie.

Direksiekomitees

- 17.** Benewens enige ander Direksiekomitees wat ingevolge artikel 72 van die Maatskappywet toegelaat word, moet die Direksie—
- (a) 'n oudit- en risikokomitee;
 - (b) 'n menslikehulpbron-, vergoedings- en benoemingskomitee, onder andere, om persone aan te beveel om ingevolge artikel 11(2)(a) op die Direksie aangestel te word;
 - (c) 'n maatskaplike en etiese komitee; en
 - (d) 'n krediet- en beleggingskomitee, aanstel.

Standards of director conduct

17A. In addition to the standards of director conduct contemplated in section 76 of the Companies Act and governed by the common law, a director of the Agency must act in the best interests of the company taking into account its public service delivery and developmental objectives. 5

Reporting

17B. (1) The Board must submit to the Minister an annual report within five months of the end of each financial year in respect of the Agency to include—

- (a) the audited financial statements including, but not limited to, profit and loss statements, statement of financial position and statement of cash flows; 10
- (b) the audit reports and any necessary commentaries on those financial statements;
- (c) detailed performance against targets; 15
- (d) material risks;
- (e) shareholder instructions and achievement of performance against these instructions, including an analysis of factors likely to affect achievement of such performance or create significant risks;
- (f) significant and material transactions concluded and their respective values; 20
- (g) information required under the Companies Act for public companies;
- (h) a report on corporate governance;
- (i) a business sustainability report;
- (j) risk management systems implemented by the Agency; and 25
- (k) such other information as may be prescribed.

(2) The Board must submit to the Minister the Agency's unaudited financial statements by no later than 31 May of every year.

(3) The Minister must table a copy of the annual report contemplated in subsection (1) in Parliament. 30

Audit of Agency

17C. Despite section 90(1) of the Companies Act, the Auditor-General must, in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004), ensure that the financial statements of the Agency are audited each year." 35

Insertion of Chapter 3A in Act 102 of 1996

5. The following Chapter is hereby inserted after Chapter 3 of the principal Act:

**“Chapter 3A
Dispute Resolution Mechanism**

Establishment of Office of Small Enterprise Ombud Service 40

- 17D.** (1) The Office is hereby established as a juristic person.
- (2) The Office is accountable to the Minister and Parliament.
- (3) The Department responsible for small business development must establish an appropriate administrative structure, including a national head office and, where necessary, regional offices for the Office. 45
- (4) The provisions of the Public Finance Management Act apply to the Office.

Standaard van direkteurgedrag

17A. Benewens die standaard van direkteurgedrag wat in artikel 76 van die Maatskappywet beoog word en deur die gemene reg beheer word, moet 'n direkteur van die Agentskap in die beste belang van die maatskappy optree, met inagneming van die Agentskap se openbare dienslewings- en ontwikkelingsdoelwitte. 5

Verslagdoening

17B. (1) Die Direksie moet binne vyf maande na die einde van elke boekjaar 'n jaarverslag aan die Minister voorlê ten opsigte van die Agentskap, wat moet insluit— 10

(a) die geouditeerde finansiële state insluitend, maar nie beperk nie tot, wins- en verliesstate, staat van finansiële posisie en staat van kontantvloei;

(b) die auditverslae en enige nodige kommentaar op daardie finansiële state; 15

(c) gedetailleerde prestasie teenoor teikens;

(d) wesenlike risiko's;

(e) aandeelhouersinstruksies en die bereiking van prestasie teenoor hierdie instruksies, met inbegrip van 'n ontleding van faktore wat waarskynlik die bereiking van sodanige prestasie sal beïnvloed of beduidende risiko's sal skep; 20

(f) beduidende en wesenlike transaksies wat aangegaan is en hul onderskeie waardes;

(g) inligting wat kragtens die Maatskappywet vereis word vir openbare maatskappye; 25

(h) 'n verslag oor korporatiewe bestuur;

(i) 'n besigheidsvolhoubaarheidsverslag;

(j) risikobestuurstelsels wat deur die Agentskap in werking gestel is; en

(k) sodanige ander inligting wat voorgeskryf mag word. 30

(2) Die Direksie moet die Agentskap se ongeouditeerde finansiële state teen nie later nie as 31 Mei van elke jaar aan die Minister voorlê.

(3) Die Minister moet 'n afskrif van die jaarverslag in subartikel (1) beoog in die Parlement ter tafel lê.

Oudit van Agentskap

17C. Ondanks artikel 90(1) van die Maatskappywet, moet die Ouditeur-generaal, ooreenkomstig die Wet op Openbare Oudit, 2004 (Wet No. 25 van 2004), verseker dat die finansiële state van die Agentskap elke jaar geudit word." 35

Invoeging van Hoofstuk 3A in Wet 102 van 1996

5. Die volgende Hoofstuk word hierby na Hoofstuk 3 van die Hoofwet ingevoeg: 40

**“Hoofstuk 3A
Geskilbeslegtingsmeganisme**

Stigting van Kantoor van Kleinondernemingsombudsdienst

17D. (1) Die Kantoor word hierby as 'n regs persoon ingestel. 45

(2) Die Kantoor is aan die Minister en die Parlement aanspreeklik.

(3) Die Departement wat vir kleinondernemingsontwikkeling verantwoordelik is, moet 'n gepaste administratiewe struktuur instel, met inbegrip van 'n nasionale hoofkantoor en, waar nodig, streekskantore vir die Kantoor.

(4) Die bepalinge van die Wet op Openbare Finansiële Bestuur is op die Kantoor van toepassing. 50

- (5) The Office must exercise its functions in terms of this Act—
- (a) in the most efficient and cost-effective manner; and
 - (b) in accordance with the values and principles mentioned in section 195 of the Constitution.

Objective of Office

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17E. (1) The objective of the Office is to adjudicate and dispose of complaints in terms of this Act in a manner which is procedurally fair, economical, and expeditious and by reference to what is equitable in all the circumstances, with due regard to—

- (a) existing contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
- (b) the provisions of this Act.

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(2) The Ombud and any deputy Ombud must act independently and impartially.

(3) The Office of the ombud must fulfil advocacy, in relation to the powers and functions of the Ombud.

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Appointment of Ombud and deputy Ombud

17F. (1) The Minister must within 90 days of a vacancy, following a transparent nomination process and a shortlisting by the National Assembly, appoint, as Ombud, a person—

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- (a) with legal training and appropriate experience and who possesses knowledge of small enterprises, trade, industry, finance or the economy; and
- (b) resident or ordinarily resident in South Africa.

(2) The person contemplated in subsection (1) is appointed for a term of five years which may be renewed for one more term.

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(3) The Minister may within 90 days of a vacancy appoint as deputy Ombud, one or more persons—

- (a) with legal training and appropriate experience and who possess knowledge of small enterprise, trade, industry, finance, or the economy; and
- (b) resident or ordinarily resident in South Africa.

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(4) The person contemplated in subsection (3) is appointed for a term of five years which may be renewed for one more term.

(5) The remuneration and other terms of appointment of the Ombud and a deputy Ombud must be determined by the Minister, in consultation with the Minister of Finance.

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(6) The Ombud or deputy Ombud may resign by submitting a written notice to the Minister at least three calendar months prior to the intended date of vacation of office, unless the Minister allows a shorter period.

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(7) The Minister may, on good cause shown, remove the Ombud or deputy Ombud from office on the ground of misconduct, incapacity or incompetence or acts contrary to the purpose and principles of this Act, after affording the person concerned a reasonable opportunity to be heard.

(8) The Minister must make the appointments in such a manner that the terms of appointment of the Ombud and deputy Ombud overlap by six months.

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Powers and functions of Ombud

17G. (1) The Ombud must—

- (a) consider and adjudicate complaints by small enterprises and small enterprise organisations in terms of this Chapter through alternative dispute resolution mechanisms;

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(b) initiate an investigation—

- (i) if a small enterprise files a complaint in terms of this chapter;
- (ii) concerning any alleged prohibited conduct on its own initiative; or
- (iii) when directed to do so by the Minister in terms of section 17L;

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- (5) Die Kantoor moet sy werksaamhede ingevolge hierdie Wet—
- (a) op die mees doeltreffende en koste-effektiewe wyse uitoefen; en
 - (b) ooreenkomstig die waardes en beginsels in artikel 195 van die Grondwet vermeld, uitoefen.

Oogmerk van Kantoor

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17E. (1) Die oogmerk van die Kantoor is om klagtes ingevolge hierdie Wet te bereg en af te handel op 'n wyse wat prosedureel billik, ekonomies en spoedig is en met verwysing na wat in al die omstandighede billik is, met behoorlike inagneming van—

- (a) bestaande kontraktuele reëling of ander regsverhouding tussen die klaer en enige ander party tot die klage; en
- (b) die bepalinge van hierdie Wet.

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(2) Die Ombudspersoon en enige adjunk-ombudspersoon moet onafhanklik en onpartydig optree.

(3) Die Kantoor van die ombudspersoon moet voorspraak maak met betrekking tot die bevoegdhede en werksaamhede van die Ombudspersoon.

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Aanstelling van Ombudspersoon en adjunk-ombudspersoon

17F. (1) Die Minister moet, binne 90 dae sedert die ontstaan van 'n vakature, volgens 'n deursigtige benoemingsproses en 'n kortlys deur die Nasionale Vergadering opgestel, 'n persoon as Ombudspersoon aanstel—

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- (a) met regsopleiding en gepaste ervaring en wat kennis het van klein ondernemings, handel, nywerheid, finansies of die ekonomie; en
- (b) wat in Suid-Afrika woon of gewoonlik woon.

(2) Die persoon in subartikel (1) beoog, word vir 'n termyn van vyf jaar aangestel, wat met nog een termyn verleng kan word.

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(3) Die Minister kan binne 90 dae sedert die ontstaan van 'n vakature, een of meer persone as adjunk-ombudspersoon aanstel—

- (a) met regsopleiding en gepaste ervaring en wat kennis het van klein ondernemings, handel, nywerheid, finansies of die ekonomie; en
- (b) wat in Suid-Afrika woon of gewoonlik woon.

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(4) Die persoon in subartikel (3) beoog, word vir 'n tydperk van vyf jaar aangestel, wat met nog een termyn hernu kan word.

(5) Die vergoeding en ander aanstellingsvoorwaardes van die Ombudspersoon en 'n adjunk-ombudspersoon moet deur die Minister, in oorleg met die Minister van Finansies, bepaal word.

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(6) Die Ombudspersoon of adjunk-ombudspersoon kan bedank deur 'n skriftelike kennisgewing aan die Minister voor te lê ten minste drie kalendermaande voor die beoogde datum van ontruiming van die amp, tensy die Minister 'n korter tydperk toelaat.

(7) Die Minister kan, by die aanvoer van goeie gronde, die Ombudspersoon of adjunk-ombudspersoon uit die amp onthef op grond van wangedrag, ongeskiktheid of onbevoegdheid of handeling wat strydig is met die doel en beginsels van hierdie Wet, nadat die betrokke persoon 'n redelike geleentheid gegun is om aangehoor te word.

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(8) Die Minister moet die aanstellings op so 'n wyse doen dat die aanstellingstermyn van die Ombudspersoon en adjunk-ombudspersoon met ses maande oorvleuel.

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Bevoegdhede en werksaamhede van Ombudspersoon

17G. (1) Die Ombudspersoon moet—

- (a) klagtes deur klein ondernemings en kleinondernemingsorganisasies ingevolge hierdie Hoofstuk oorweeg en daarvoor bereg deur alternatiewe geskilbeslegtingsmeganismes;
- (b) 'n ondersoek van stapel stuur—

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- (i) indien 'n klein onderneming 'n klage ingevolge hierdie Hoofstuk indien;
- (ii) na enige beweerde verbode gedrag uit eie inisiatief; of
- (iii) wanneer die Minister dit ingevolge artikel 17L gelas;

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- (c) consider and approve the strategic plan of the Office;
- (d) consider and decide on capital acquisitions and transactions that have not been delegated to the Director;
- (e) prepare reports on a quarterly basis on the nature and progress on all complaints and investigations for submission to the Minister and Parliament; 5
- (f) appoint personnel to ensure the efficient management of complaints; and
- (g) make recommendations for amendments to the regulations and policy guidelines. 10
- (2) The Ombud may conduct any business that is required for the proper maintenance and development of the Office.
- (3) For the purposes of subsection (1)(b), the Ombud is—
- (a) competent to investigate, on receipt of a complaint by a complainant, any alleged— 15
- (i) unfairness in relation to a contractual arrangement or other legal relationship between the complainant and any other party to the complaint;
- (ii) abuse or unjustifiable exercise of power or unfair or other improper conduct or undue delay in performing in terms of a contractual arrangement or other legal relationship between the complainant and any other party to the complaint; or 20
- (iii) practice, act or omission which results in unlawful or improper prejudice to a small enterprise. 25
- (4) At any time prior to, during, or after an investigation referred to in subsection (3), the Ombud may if he or she— 25
- (a) is of the opinion that the facts reveal the commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions; or
- (b) deems it advisable, refer any matter which has a bearing on an investigation to the appropriate body or authority affected by it, or make an appropriate recommendation regarding the redress of the prejudice in question or make any other appropriate recommendation that the Ombud deems expedient, to the affected body or authority. 30
- (5) For the purposes of an investigation, the Ombud may— 35
- (a) summon any person to furnish any information on the subject of the investigation or who has in his or her possession or under his or her control any book, document or other object relating to the investigation, to appear before the Ombud at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and 40
- (b) designate a person to question that person, under oath or affirmation, and examine or retain for further examination or for safe custody the book, document or other object in question. 45
- (6) A summons referred to in subsection (5)(a) must— 45
- (a) be in the form determined in the regulations;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Ombud;
- (c) be signed by the Ombud or a person authorised by him or her; and 50
- (d) be served as determined in the regulations. 50
- (7)(a) The Ombud may, subject to paragraph (b), in the manner he or she deems fit, make known to any person or body any report, finding, recommendation or determination in respect of a matter investigated by him or her.
- (b) The report, finding, recommendation or determination in respect of an investigation by the Ombud must, when he or she deems it fit but as soon as possible, be made available to the complainant and to any person or body implicated thereby. 55

- (c) die strategiese plan van die Kantoor oorweeg en goedkeur;
- (d) kapitaalverkrygings en transaksies wat nie aan die Direkteur gedelegeer is nie, oorweeg en daaroor besluit;
- (e) kwartaalliks verslae voorberei oor die aard van en vordering met alle klagtes en ondersoeke vir voorlegging aan die Minister en die Parlement; 5
- (f) personeel aanstel om die doeltreffende bestuur van klagtes te verseker; en
- (g) aanbevelings doen vir wysigings aan die regulasies en beleidsriglyne. 10
- (2) Die Ombudspersoon kan enige sake doen wat nodig is vir die behoorlike onderhoud en ontwikkeling van die Kantoor.
- (3) By die toepassing van subartikel (1)(b), is die Ombudspersoon—
- (a) bevoeg om, by ontvangs van 'n klagte deur 'n klaer, ondersoek in te stel na enige beweerde— 15
- (i) onregverdigheid met betrekking tot 'n kontraktuele reëling of ander regsverhouding tussen die klaer en enige ander party tot die klagte;
- (ii) misbruik of onregverdigbare uitoefening van mag of onregverdige of ander onbehoorlike gedrag of onnodige vertraging in werkverrigting ingevolge 'n kontraktuele reëling of ander regsverhouding tussen die klaer en enige ander party tot die klagte; of 20
- (iii) praktyk, handeling of versuim wat onwettige of onbehoorlike benadeling vir 'n klein onderneming veroorsaak.
- (4) Te eniger tyd voor, tydens, of na 'n ondersoek in subartikel (3) bedoel, kan die Ombudspersoon, indien hy of sy— 25
- (a) van mening is dat die feite die pleging van 'n misdryf deur enige persoon onthul, die aangeleentheid onder die aandag van die tersaaklike owerheid wat vir vervolgings verantwoordelik is, bring; of
- (b) dit raadsaam ag, enige aangeleentheid wat op 'n ondersoek betrekking het, na die gepaste liggaam of owerheid wat daardeur geraak word, verwys of 'n gepaste aanbeveling aangaande die herstel van die betrokke benadeling maak of enige ander gepaste aanbeveling doen wat die Ombudspersoon wenslik ag, aan die geraakte liggaam of owerheid maak. 30
- (5) Vir die doeleindes van 'n ondersoek, kan die Ombudspersoon— 35
- (a) enige persoon dagvaar om enige inligting oor die onderwerp van die ondersoek te verstrek, of wat in sy of haar besit of onder sy of haar beheer enige boek, dokument of ander voorwerp het wat met die ondersoek verband hou, om voor die Ombudspersoon te verskyn op 'n tyd en plek wat in die dagvaarding gespesifiseer is, om ondervra te word of om daardie boek, dokument of ander voorwerp te verstrek; en 40
- (b) 'n persoon aanwys om daardie persoon te ondervra, onder eed of plegtige verklaring, en die betrokke boek, dokument of ander voorwerp ondersoek of behou vir verdere ondersoek of vir veilige bewaring. 45
- (6) 'n Dagvaarding bedoel in subartikel (5)(a) moet—
- (a) in die vorm wees wat in die regulasies bepaal is;
- (b) besonderhede bevat van die aangeleentheid in verband waarmee die betrokke persoon voor die Ombudspersoon moet verskyn; 50
- (c) deur die Ombudspersoon of die persoon deur hom of haar gemagtig, onderteken wees; en
- (d) beteken word soos in die regulasies bepaal.
- (7)(a) Die Ombudspersoon kan, behoudens paragraaf (b), op die wyse wat hy of sy gepas ag, aan enige persoon of liggaam enige verslag, bevinding, aanbeveling of beslissing ten opsigte van 'n aangeleentheid wat deur hom of haar ondersoek is, bekend maak. 55
- (b) Die verslag, bevinding, aanbeveling of beslissing ten opsigte van 'n ondersoek deur die Ombudspersoon moet, wanneer hy of sy dit gepas ag, maar so gou as moontlik, aan die klaer en aan enige persoon of liggaam wat daardeur geïmpliseer word, beskikbaar gestel word. 60

(c) A report or finding, recommendation or determination in respect of an investigation by the Ombud must be open to the public, unless the Ombud is of the opinion that exceptional circumstances require that the report, finding, recommendation or determination be kept confidential.

Receipt of complaints

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17H. (1) Upon receipt of a complaint by the Ombud, the Ombud must—

- (a) determine whether the requirements of the regulations contemplated in section 17S have been complied with;
- (b) in the case of any non-compliance, act in accordance with the regulations made under that section; and
- (c) otherwise officially receive the complaint.

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(2) Official receipt of a complaint by the Ombud suspends the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period after such receipt of the complaint until the complaint has either been withdrawn or determined by the Ombud.

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Prescription of complaints

17I. The following jurisdictional provisions apply to the Ombud in respect of the investigation of complaints:

- (a) The Ombud must decline to investigate any complaint which relates to an act or omission which occurred on or before the date of commencement of this Act;
- (b) where the complainant was unaware of the occurrence of the act or omission, the period of three years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first;
- (c) the Ombud must decline to investigate a complaint if, before the date of official receipt of the complaint, proceedings have been instituted by the complainant in any Court in respect of a matter which would constitute the subject of the investigation; and
- (d) where any Court or other proceedings are instituted during an investigation by the Ombud, such investigation must not be proceeded with.

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Jurisdiction for complaints

17J. The Ombud may, on reasonable grounds, determine that it is more appropriate that the complaint be dealt with by a Court or through any other available dispute resolution process, and dismiss the complaint.

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Resolution of complaints

17K. (1) The Ombud must not proceed to resolve a complaint officially received, unless the Office—

- (a) has, in writing, informed every other interested party to the complaint of the receipt thereof;
- (b) is satisfied that all interested parties have been provided with such particulars as will enable the parties to respond thereto; and
- (c) has provided all interested parties the opportunity to submit a response to the complaint.

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(2) The Ombud—

- (a) may, in resolving an officially received complaint, follow and implement any alternative dispute resolution procedure which the Ombud deems appropriate;
- (b) may, delineate the functions of conciliation, mediation and arbitration between various functionaries of the Office;

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(c) 'n Verslag of bevinding, aanbeveling of beslissing ten opsigte van 'n ondersoek deur die Ombudspersoon, moet oop wees vir die publiek, tensy die Ombudspersoon van mening is dat buitengewone omstandighede vereis dat die verslag, bevinding, aanbeveling of vasstelling vertroulik gehou word.

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Ontvangs van klagtes

17H. (1) By ontvangs van 'n klagte deur die Ombudspersoon, moet die Ombudspersoon—

- (a) vasstel of voldoen is aan die vereistes van die regulasies in artikel 17S beoog;
- (b) in die geval van enige nie-voldoening, optree ooreenkomstig die regulasies wat ingevolge daardie artikel gemaak is; en
- (c) die klagte andersins amptelik ontvang.

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(2) Amptelike ontvangs van 'n klagte deur die Ombudspersoon, skort die loop van verjaring ingevolge die Wet op Verjaring, 1969 (Wet No. 68 van 1969), op vir die tydperk na ontvangs van die klagte totdat die klagte óf teruggetrek óf deur die Ombudspersoon beslis is.

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Verjaring van klagtes

17I. Die volgende jurisdiksiebepalings is op die Ombudspersoon van toepassing ten opsigte van die ondersoek van klagtes:

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- (a) Die Ombudspersoon moet weier om enige klagte te ondersoek wat verband hou met 'n handeling of versuim wat voor of op die datum van inwerkingtreding van hierdie Wet plaasgevind het;
- (b) waar die klaer nie van die voorkoms van die handeling of versuim bewus was nie, begin die tydperk van drie jaar op die datum waarop die klaer bewus geword het, of redelikerwys bewus moes geword het, van sodanige gebeurtenis, wat ook al eerste plaasvind;
- (c) die Ombudspersoon moet weier om 'n klagte te ondersoek indien, voor die datum van amptelike ontvangs van die klagte, verrigtinge deur die klaer in enige Hof ingestel is ten opsigte van 'n aangeleentheid wat die onderwerp van die ondersoek sou uitmaak; en
- (d) waar enige hof- of ander verrigtinge tydens 'n ondersoek deur die Ombudspersoon ingestel word, moet sodanige ondersoek gestaak word.

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Jurisdiksie vir klagtes

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17J. Die Ombudspersoon kan, op redelike gronde, bepaal dat dit meer gepas is dat 'n Hof die klagte hanteer of dat die klagte deur enige ander beskikbare geskilbeslegtingsproses hanteer word, en die klagte van die hand wys.

Beregting van klagtes

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17K. (1) Die Ombudspersoon moet nie voortgaan om 'n klagte wat amptelik ontvang is op te los nie, tensy die Kantoor—

- (a) elke ander belanghebbende party by die klagte skriftelik in kennis gestel het van die ontvangs daarvan;
- (b) tevrede is dat alle belanghebbende partye van sodanige besonderhede voorsien is wat die partye in staat sal stel om daarop te reageer; en
- (c) aan alle belanghebbende partye die geleentheid gebied het om 'n antwoord op die klagte in te dien.

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(2) Die Ombudspersoon—

- (a) kan, in die oplossing van 'n klagte wat amptelik ontvang is, enige alternatiewe geskilbeslegtingsprosedure volg en implementeer wat die Ombudspersoon toepaslik ag;
- (b) kan die werksaamhede van versoening, bemiddeling en arbitrasie afbaken tussen verskeie funksionaris van die Kantoor;

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- (c) must, in the first instance, explore any reasonable prospect of resolving a complaint by conciliation or mediation acceptable to all parties;
- (d) may, in order to resolve a complaint speedily by conciliation or mediation, make a recommendation to the parties, requiring the parties to confirm whether or not they accept the recommendation; 5
- (e) may, where the recommendation is not accepted by a party, require that party to give reasons for not accepting it and refer the matter for arbitration;
- (f) may, in the event of conciliation and mediation failing to reach resolution, if appropriate, initiate arbitration proceedings to adjudicate the matter in an expeditious manner; and 10
- (g) may, on terms specified by the Office, mandate any person or persons to form an arbitral forum to perform any of the functions referred to in paragraph (e) or (f). 15
- (3) Where the parties accept the recommendation contemplated in subsection (2)(d), such recommendation has the effect of a final determination by the Office, contemplated in section 17M(1).
- (4) For the purposes of any resolution by the Ombud, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes. 20

Investigation

- 17L.** (1) The Ombud may investigate a matter if— 25
- (a) the matter is referred to it by the Minister; or
- (b) a significant number of small enterprises are negatively impacted by a business practice.
- (2) For the purposes of any investigation by the Ombud, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes. 30

Determinations by Ombud

- 17M.** (1) The Ombud must in any case where a matter has not been settled or a recommendation referred to in section 17K(2)(d) has not been accepted by all parties concerned, make a final determination, which may include— 35
- (a) the dismissal of the complaint; or
- (b) the upholding of the complaint, wholly or partially, in which case— 40
- (i) the complainant may be awarded an amount as fair compensation for any financial prejudice or damage suffered; and
- (ii) a direction may be issued that the other party concerned take such steps in relation to the complaint as the Ombud deems appropriate and just. 45
- (2) To make a considered monetary award the Ombud may—
- (a) require full disclosure of contractual terms as well as financial dealings between the contractual parties;
- (b) determine the appropriate monetary award as contemplated in subsection (1)(b)(i); and 50
- (c) determine the amount payable to bear interest at a rate, and as from a date, determined by the Ombud.

- (c) moet, in die eerste instansie, enige redelike vooruitsig ondersoek wat vir alle partye aanvaarbaar is om 'n klagte deur versoening of bemiddeling op te los;
- (d) kan, ten einde 'n klagte spoedig deur versoening of bemiddeling op te los, 'n aanbeveling aan die partye maak, waar van die partye vereis word om te bevestig of hulle die aanbeveling aanvaar, al dan nie; 5
- (e) kan, waar die aanbeveling nie deur 'n party aanvaar word nie, vereis dat daardie party redes verskaf waarom dit nie aanvaar word nie en die aangeleentheid vir arbitrasie verwys;
- (f) kan, in die geval van versoening en bemiddeling wat nie opgelos word nie, indien gepas, arbitrasieverrigtinge inisieer om die aangeleentheid op 'n spoedige wyse te bereg; en 10
- (g) kan, op voorwaardes deur die Kantoor gespesifiseer, enige persoon of persone opdrag gee om 'n arbitrare forum te vorm om enige van die werksaamhede te verrig waarna in paragraaf (e) of (f) verwys word. 15
- (3) Waar die partye die aanbeveling beoog in subartikel (2)(d) aanvaar, het sodanige aanbeveling die uitwerking van 'n finale bepaling deur die Kantoor, beoog in artikel 17M(1).
- (4) Vir die doeleindes van enige besluit deur die Ombudspersoon, geld die bepalings van die Kommissiewet, 1947 (Wet No. 8 van 1947), met betrekking tot die dagvaarding en ondersoek van persone en die afneem van ede of plegtige verkларings van hulle, die beroep vir die verstrekking van boeke, dokumente en voorwerpe, en misdrywe deur getuies, met die nodige veranderinge. 20

Ondersoek

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17L. (1) Die Ombudspersoon kan 'n aangeleentheid ondersoek indien—

- (a) die aangeleentheid deur die Minister na hom of haar verwys word; of
- (b) 'n beduidende aantal klein ondernemings negatief deur 'n sakepraktyk geraak word.

(2) Vir die doeleindes van enige ondersoek deur die Ombudspersoon, geld die bepalings van die Kommissiewet, 1947 (Wet No. 8 van 1947), met betrekking tot die dagvaarding en ondersoek van persone en die afneem van ede of bevestigings van hulle, die beroep vir die verstrekking van boeke, dokumente en voorwerpe, en misdrywe deur getuies, met die nodige veranderinge. 30
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Beslissings deur Ombudspersoon

17M. (1) Die Ombudspersoon moet, in enige geval waar 'n aangeleentheid nie geskik is nie of 'n aanbeveling in artikel 17K(2)(d) bedoel, nie deur alle betrokke partye aanvaar is nie, 'n finale beslissing maak, wat kan insluit—

- (a) die afwysing van die klagte; of 40
- (b) die handhawing van die klagte, in die geheel of gedeeltelik, in welke geval—
- (i) 'n bedrag aan die klaer toegeken kan word as billike vergoeding vir enige finansiële benadeling of skade wat gely is; en 45
- (ii) 'n opdrag kan uitgereik word dat die ander betrokke party sodanige stappe met betrekking tot die klagte doen soos die Ombudspersoon gepas en regverdig ag.

(2) Om 'n oorwoë geldelike toekenning te maak, kan die Ombudspersoon— 50

- (a) volle openbaarmaking van kontraktuele terme asook finansiële transaksies tussen die kontraktuele partye vereis;
- (b) die gepaste geldelike toekenning soos beoog in subartikel (1)(b)(i) bepaal; en 55
- (c) bepaal dat die betaalbare bedrag rente moet dra teen 'n koers, en met ingang van 'n datum, deur die Ombudspersoon bepaal.

- (3) The Minister may by regulation determine—
- (a) the maximum monetary award for a particular kind of financial prejudice or damage;
 - (b) different maximum monetary awards for different categories of complaints; or
 - (c) the granting of costs, including costs against either party in favour of the Office or the other party if in the opinion of the Ombud—
 - (i) the party's conduct was improper or unreasonable; or
 - (ii) the party was responsible for an unreasonable delay in the finalisation of the relevant investigation: Provided that an amount payable under a cost award bears interest at a rate and as from a date determined by the Ombud.
- (4) Any award of interest by the Ombud in terms of subsection (2) may not exceed the rate which a Court would have been entitled to award, had the matter been heard by a Court.
- (5) The Office must reduce a determination to writing, including the reasons therefor, sign the determination, and send copies thereof to all parties concerned with the complaint and to the clerk or registrar of the Court which would have had jurisdiction in the matter had it been heard by a Court.
- (6) A determination of the Ombud finalised according to subsection (5) may only be taken up on review specifically on the following grounds:
- (a) Illegality;
 - (b) procedural unfairness; or
 - (c) irrationality.
- (7) A determination is regarded as a civil judgment of a Court, had the matter in question been heard by a Court, and must be so noted by the clerk or registrar, as the case may be, of that Court.
- (8)(a) A writ of execution may, in the case of a determination amounting to a monetary award, be issued by the clerk or the registrar referred to in subsection (5) and may be executed by the sheriff of such Court after expiration of a period of two weeks after the date of the determination.
- (b) Any other determination must be given effect to in accordance with the applicable procedures of a Court after expiration of a period of two weeks after the date of the determination.

Staff of Office

- 17N.** (1) In order to perform the functions of the Office, the Ombud must—
- (a) employ a person as director of the Office who is the administrative head of the Office; and
 - (b) employ such administrative staff as may be necessary.
- (2) The Ombud must appoint the person referred to in subsection (1)(a) for an agreed term not exceeding five years which may be renewed for one additional term not exceeding five years and on the conditions as the Minister, in consultation with the Minister of Finance, may determine.
- (3) The director is responsible for the general administration of the Office, and must—
- (a) manage and direct the activities of the Office, subject to the direction of the Ombud;
 - (b) supervise the administrative staff of the Office;
 - (c) enter into contracts with service providers and accept liability on behalf of the Office for the expenses incurred as a result of such services being rendered; and
 - (d) perform any other function necessary in accordance with this Act.

- (3) Die Minister kan by regulasie—
- (a) die maksimum geldelike toekenning vir 'n bepaalde soort finansiële benadeling of skade bepaal;
 - (b) verskillende maksimum geldelike toekennings vir verskillende kategorieë klagtes bepaal; of
 - (c) die toestaan van koste, met inbegrip van koste teen een van die partye ten gunste van die Kantoor of die ander party indien, na mening van die Ombudspersoon—
 - (i) die party se gedrag onbehoorlik of onredelik was; of
 - (ii) die party verantwoordelik was vir 'n onredelike vertraging in die afhandeling van die tersaaklike ondersoek: Met dien verstande dat 'n bedrag wat kragtens 'n kostetoekenning betaalbaar is, rente dra teen 'n koers en met ingang van 'n datum deur die Ombudspersoon bepaal.
- (4) Enige toekenning van rente deur die Ombudspersoon ingevolge subartikel (2), kan nie die koers oorskry wat 'n Hof geregtig sou wees om toe te ken nie, sou die aangeleentheid deur 'n Hof aangehoor wees.
- (5) Die Kantoor moet 'n beslissing op skrif stel, met inbegrip van die redes daarvoor, die beslissing onderteken, en afskrifte daarvan stuur aan alle partye wat met die klagte gemoeid is en aan die klerk of griffier van die Hof wat jurisdiksie in die aangeleentheid sou gehad het as dit deur 'n Hof aangehoor sou word.
- (6) 'n Beslissing van die Ombudspersoon wat volgens subartikel (5) afgehandel is, mag slegs hersien word op spesifiek die volgende gronde:
- (a) Onwettigheid;
 - (b) prosedurele onbillikheid; of
 - (c) irrasionaliteit.
- (7) 'n Beslissing word as 'n siviele uitspraak van 'n Hof beskou, sou die betrokke aangeleentheid deur 'n Hof aangehoor gewees het, en moet aldus deur die klerk of griffier, na gelang van die geval, van daardie Hof aangeteken word.
- (8)(a) 'n Uitwinningslasbrief mag, in die geval van 'n beslissing wat op 'n geldelike toekenning neerkom, deur die klerk of die griffier in subartikel (5) bedoel, uitgereik word en kan deur die balju van sodanige Hof uitgevoer word na afloop van 'n tydperk van twee weke na die datum van die beslissing.
- (b) Enige ander beslissing moet aan gevolg gegee word ooreenkomstig die toepaslike prosedures van 'n Hof na verstryking van 'n tydperk van twee weke na die datum van die beslissing.

Personeel van Kantoor

- 17N.** (1) Ten einde die werksaamhede van die Kantoor te verrig, moet die Ombudspersoon—
- (a) 'n persoon as direkteur van die Kantoor aanstel, wat die administratiewe hoof van die Kantoor is; en
 - (b) sodanige administratiewe personeel in diens neem soos nodig mag wees.
- (2) Die Ombudspersoon moet die persoon bedoel in subartikel (1)(a) aanstel vir 'n ooreengekome termyn van hoogstens vyf jaar wat hernu kan word vir een bykomende termyn van hoogstens vyf jaar en op die voorwaardes wat die Minister, in oorleg met die Minister van Finansies, kan bepaal.
- (3) Die direkteur is verantwoordelik vir die algemene administrasie van die Kantoor, en moet—
- (a) die werksaamhede van die Kantoor bestuur en lei, onderhewig aan die opdrag van die Ombudspersoon;
 - (b) toesig hou oor die administratiewe personeel van die Kantoor;
 - (c) kontrakte met diensverskaffers aangaan en aanspreeklikheid namens die Kantoor aanvaar vir die uitgawes wat aangegaan word as gevolg van sodanige dienste wat gelewer word; en
 - (d) enige ander werksaamheid verrig wat ingevolge hierdie Wet nodig is.

- (4) The Minister must, after consultation with the Minister of Finance, determine—
- (a) the director's remuneration, allowances, benefits and other terms and conditions of employment; and
 - (b) the staff establishment of the Office, the remuneration, allowances, benefits, and other terms and conditions of appointment of the members of staff.

Delegation by Ombud, deputy Ombud and director

- 17O.** (1) The Ombud may delegate any of his or her powers and assign any of his or her duties to a deputy Ombud or the director. 10
- (2) A deputy Ombud or the director, as the case may be, may delegate any of his or her powers and assign any of his or her duties to an employee of the Office.
- (3) A delegation contemplated in subsection (1) or (2)—
- (a) may be made subject to such conditions as the Ombud, a deputy Ombud or the director, as the case may be, may determine; 15
 - (b) must be communicated to the delegatee in writing; and
 - (c) may be amended or withdrawn in writing by the Ombud, a deputy Ombud or the director, as the case may be.
- (4) Despite a delegation or assignment contemplated in subsection (1) or (2), the Ombud, a deputy Ombud or the director, as the case may be, remains accountable for any power delegated or function assigned, and is not divested of any power or duty so delegated or assigned. 20

Funding of Office

- 17P.** (1) Expenditure in connection with the administration and functioning of the Office must be defrayed from— 25
- (a) money appropriated by Parliament for this purpose;
 - (b) any fees payable in terms of this Chapter; and
 - (c) funds accruing to the Office from any other source.
- (2) The Office must deposit all funds in an account opened with a bank registered under the Banks Act, 1990 (Act No. 94 of 1990). 30
- (3) The Office may invest funds which are not required for immediate use—
- (a) in a call account or short-term fixed deposit with any registered bank contemplated in subsection (2); or 35
 - (b) in an investment account with the Public Investment Corporation established by section 2 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004).
- (4) Funds standing to the credit of the Office in the account mentioned in subsection (2) at the end of the financial year, as well as funds invested under subsection (3), must, subject to section 53(3) of the Public Finance Management Act, be carried forward to the next financial year. 40

Accountability

- 17Q.** (1) Subject to the Public Finance Management Act, the director—
- (a) is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Office; and 45
 - (b) must cause the necessary accounting and other related records to be kept.
- (2) The financial year of the Office is the period from 1 April to 31 March of the following year, except that the first financial year of the Office begins on the date on which this Chapter comes into operation, and ends on 31 March of the following year. 50

- (4) Die Minister moet, na oorleg met die Minister van Finansies—
- (a) die direkteur se vergoeding, toelaes, voordele en ander diensbepalings en -voorwaardes bepaal; en
- (b) die diensstaat van die Kantoor, die vergoeding, toelaes, voordele en ander bepalinge en voorwaardes van aanstelling van die personeellede bepaal. 5

Delegering deur Ombudspersoon, adjunk-ombudspersoon en direkteur

17O. (1) Die Ombudspersoon kan enige van sy of haar bevoegdhede deleger en enige van sy of haar pligte aan 'n adjunk-ombudspersoon of die direkteur toewys. 10

(2) 'n Adjunk-ombudspersoon of die direkteur, na gelang van die geval, kan enige van sy of haar bevoegdhede deleger en enige van sy of haar pligte opdra aan 'n werknemer van die Kantoor.

(3) 'n Delegering beoog in subartikel (1) of (2)— 15

(a) kan onderworpe gemaak word aan voorwaardes soos die Ombudspersoon, 'n adjunk-ombudspersoon of die direkteur, na gelang van die geval, kan bepaal;

(b) moet skriftelik aan die afgevaardigde oorgedra word; en

(c) kan skriftelik deur die Ombudspersoon, 'n adjunk-ombudspersoon of die direkteur, na gelang van die geval, gewysig of teruggetrek word. 20

(4) Ten spyte van 'n delegering of opdrag beoog in subartikel (1) of (2), bly die Ombudspersoon, 'n adjunk-ombudspersoon of die direkteur, na gelang van die geval, aanspreeklik vir enige bevoegdheid wat gedeleger of werksaamheid wat opgedra is, en word nie ontnem van enige bevoegdheid of plig aldus gedeleger of opgedra nie. 25

Befondsing van Kantoor

17P. (1) Uitgawes in verband met die administrasie en funksionering van die Kantoor moet gedek word uit—

(a) geld wat deur die Parlement vir hierdie doel bewillig is; 30

(b) enige gelde betaalbaar ingevolge hierdie Hoofstuk; en

(c) fondse wat die Kantoor uit enige ander bron toeval.

(2) Die Kantoor moet alle fondse deponer in 'n rekening wat geopen is by 'n bank wat ingevolge die Bankwet, 1990 (Wet No. 94 van 1990), geregistreer is. 35

(3) Die Kantoor kan fondse wat nie vir onmiddellike gebruik benodig word nie belê —

(a) in 'n daggeldrekening of korttermyn vaste deposito by enige geregistreerde bank beoog in subartikel (2); of

(b) in 'n beleggingsrekening by die Openbare Beleggingskorporasie gestig deur artikel 2 van die Wet op die Openbare Beleggingskorporasie, 2004 (Wet No. 23 van 2004). 40

(4) Fondse wat aan die einde van die boekjaar op die krediet van die Kantoor staan in die rekening genoem in subartikel (2), sowel as fondse wat kragtens subartikel (3) belê is, moet, behoudens artikel 53(3) van die Wet op Openbare Finansiële Bestuur, na die volgende boekjaar oorgedra word. 45

Aanspreeklikheid

17Q. (1) Behoudens die Wet op Openbare Finansiële Bestuur—

(a) is die direkteur belas met die verantwoordelikheid om rekenskap te gee van geld wat ontvang of uitbetaal is vir of op grond van die administrasie en funksionering van die Kantoor; en 50

(b) moet die direkteur die nodige rekeningkundige en ander verwante rekords laat hou.

(2) Die Kantoor se boekjaar is die tydperk van 1 April tot 31 Maart van die volgende jaar, behalwe dat die eerste boekjaar van die Kantoor begin op die datum waarop hierdie Hoofstuk in werking tree, en eindig op 31 Maart van die volgende jaar. 55

- (3) Within three months after the end of each financial year, the director must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising—
- (a) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Office during the preceding financial year; and
 - (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.
- (4) The Auditor-General must, in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004), ensure that the financial statements of the Office are audited each year.

Disestablishment and liquidation of Office

- 17R.** (1) The Office may not be disestablished or liquidated, except by an Act of Parliament.
- (2) In the event of such disestablishment or liquidation, the surplus assets of the Office, if any, accrue to the Agency.

Regulations applicable to Ombud

- 17S.** (1)(a) The Minister must make regulations including different regulations in respect of different categories of complaints or investigations by the Ombud, regarding—
- (i) any matter which is required or permitted under this Act to be regulated by regulation;
 - (ii) the category of small enterprises qualifying as complainants;
 - (iii) the types of complaints justiciable by the Ombud;
 - (iv) the rights of complainants in connection with complaints, including the manner of submitting a complaint to the Ombud;
 - (v) the rights and duties of any other party to the complaint on receipt of a complaint, particularly in connection with the furnishing of replies to the complainant;
 - (vi) the rights of a complainant to submit a complaint to the Ombud where the complainant is not satisfied with a reply received from the party concerned;
 - (vii) the circumstances under which the Ombud may dismiss a complaint without consideration of its merits; and
 - (viii) the reasonable time limit for any aspect of the proceedings before the Ombud and the extension of any time limit;
- (b) the payment to the Office by a party involved in a complaint submitted to the Ombud, of case fees in respect of the consideration of the complaint by the Ombud; or
- (c) any other administrative or procedural matter necessary or expedient for the better achievement of the objects of this Chapter, but which is not inconsistent with a provision of this Act.
- (2) The Minister must—
- (a) ensure that no regulation made under subsection (1) undermines or affects the independence of the Ombud in any material way; and
 - (b) publish the regulations made under subsection (1) in the *Gazette*.

Record-keeping

- 17T.** (1) The Ombud must keep proper files and records, including electronically, in respect of complaints as well as a record of any determination proceedings conducted in terms of section 17 and considering the provisions of the Protection of Personal Information Act.
- (2) Any interested person may, subject to the discretion of the Ombud and applicable regulations of confidentiality, obtain a copy of any record on payment of a fee determined by the Ombud.

- (3) Binne drie maande na die einde van elke boekjaar moet die direkteur finansiële state opstel ooreenkomstig gevestigde rekeningkundige praktyk, beginsels en prosedures, wat bestaan uit—
- (a) 'n staat, met geskikte en voldoende besonderhede, wat die inkomste en uitgawes van die Kantoor gedurende die voorafgaande finansiële jaar weerspieël; en 5
- (b) 'n balansstaat wat die stand van sy bates, laste en finansiële posisie soos aan die einde van daardie boekjaar toon.
- (4) Die Ouditeur-generaal moet, ooreenkomstig die Wet op Openbare Oudit, 2004 (Wet No. 25 van 2004), verseker dat die finansiële state van die Kantoor elke jaar geaudit word. 10

Ontbinding en likwidasië van Kantoor

- 17R.** (1) Die Kantoor mag nie ontbind of gelikwideer word nie, behalwe deur 'n Parlements wet.
- (2) In die geval van sodanige ontbinding of likwidasië, val die surplusbates van die Kantoor, indien enige, die Agentskap toe. 15

Regulasies van toepassing op Ombudspersoon

- 17S.** (1)(a) Die Minister moet regulasies uitvaardig, met inbegrip van verskillende regulasies ten opsigte van verskillende kategorieë klagtes of ondersoeke deur die Ombudspersoon, rakende— 20
- (i) enige aangeleentheid wat ingevolge hierdie Wet vereis of toegelaat word om by regulasie gereguleer te word;
- (ii) die kategorie van klein ondernemings wat as klaers kwalifiseer;
- (iii) die tipe klagtes wat deur die Ombudspersoon bereg kan word;
- (iv) die regte van klaers in verband met klagtes, met inbegrip van die wyse waarop 'n klagte by die Ombudspersoon ingedien word; 25
- (v) die regte en pligte van enige ander party by die klagte by ontvangs van 'n klagte, veral in verband met die verskaffing van antwoorde aan die klaer;
- (vi) die regte van 'n klaer om 'n klagte by die Ombudspersoon in te dien waar die klaer nie tevrede is met 'n antwoord wat van die betrokke party ontvang is nie; 30
- (vii) die omstandighede waaronder die Ombudspersoon 'n klagte kan afwys sonder om die meriete daarvan te oorweeg; en
- (viii) die redelike tydsbeperking vir enige aspek van die verrigtinge voor die Ombudspersoon en die verlenging van enige tydsbeperking; 35
- (b) die betaling aan die Kantoor deur 'n party betrokke by 'n klagte wat by die Ombudspersoon ingedien is, van saakgelde ten opsigte van die oorweging van die klagte deur die Ombudspersoon; of
- (c) enige ander administratiewe of prosedurele aangeleentheid wat nodig of doelmatig is vir die beter bereiking van die oogmerke van hierdie Hoofstuk, maar wat nie teenstrydig is met 'n bepaling van hierdie Wet nie. 40
- (2) Die Minister moet—
- (a) verseker dat geen regulasie wat kragtens subartikel (1) uitgevaardig is, die onafhanklikheid van die Ombudspersoon op enige wesenlike wyse ondermyn of beïnvloed nie; en 45
- (b) die regulasies wat kragtens subartikel (1) uitgevaardig is, in die Staatskoerant publiseer.

Rekordhouding

- 17T.** (1) Die Ombudspersoon moet behoorlike lêers en rekords hou, ook elektronies, ten opsigte van klagtes, asook 'n rekord van enige beslissingsverrigtinge wat ingevolge artikel 17 gehou is, met inagneming van die bepalings van die Wet op Beskerming van Persoonlike Inligting. 50
- (2) Enige belangstellende persoon kan, onderworpe aan die diskresie van die Ombudspersoon en toepaslike regulasie van vertroulikheid, 'n afskrif van enige rekord verkry by betaling van gelde deur die Ombudspersoon bepaal. 55

Annual Report of Ombud

17U. (1) The Office must prepare and submit to the Minister an annual report, as determined in the regulations, within three months after the end of its financial year.

(2) The annual report referred to in subsection (1) must include the following documents:

- (a) The audited financial statements prepared in terms of this Chapter;
- (b) the report prepared in terms of the Public Audit Act, 2004;
- (c) a report of the activities undertaken in terms of the functions of the Ombud set out in this Chapter; and
- (d) such other information as may be prescribed.

(3) The Minister must table in Parliament each annual report submitted in terms of this section.

Penalties

17V. (1) A person who commits any act in respect of the Ombud or an investigation by the Ombud which, if committed in respect of a Court of law, would have constituted contempt of Court, is guilty of an offence and liable on conviction to a penalty which may be imposed on a conviction of contempt of Court.

(2) A person who—

- (a) anticipates a determination of the Ombud in any manner calculated to influence the determination; or
 - (b) wilfully interrupts proceedings conducted by the Ombud,
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Promotion of stakeholder education

17W. The Office may—

(a) take any steps conducive to stakeholder education and the promotion of awareness of the nature and availability of the Ombud and other enforcement measures established by or in terms of this Chapter, including arrangements—

- (i) with organs of state;
- (ii) representative bodies of business; and
- (iii) other stakeholders,

to assist in the provision of information to the general public on matters relating to the work of the Ombud; and

(b) take steps conducive to stakeholder education and promotion of the awareness of the nature and availability of the Ombud and other enforcement measures established by or in terms of this Chapter, including arrangements to accommodate—

- (i) rural stakeholders; and
- (ii) stakeholders found in underserved urban areas.

Promotion of inter-agency co-ordination and collaboration

17X. The Office may take any steps in line with the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005), to facilitate, promote and establish inter-agency collaboration and co-ordination measures including institutional arrangements, agreements and joint programmes with bodies or institutions such as the Competition Commission, Consumer Commission, Companies Tribunal and the Companies and Intellectual Property Commission.

Jaarverslag van Ombudspersoon

- 17U.** (1) Die Kantoor moet 'n jaarverslag voorberei en aan die Minister voorlê, soos in die regulasies bepaal, binne drie maande na die einde van hul boekjaar. 5
- (2) Die jaarverslag in subartikel (1) bedoel, moet die volgende dokumente insluit: 5
- (a) Die geouditeerde finansiële state wat ingevolge hierdie Hoofstuk voorberei is; 10
- (b) die verslag wat ingevolge die Wet op Openbare Oudit, 2004, voorberei is; 10
- (c) 'n verslag van die aktiwiteite wat onderneem is ingevolge die werksaamhede van die Ombudspersoon in hierdie Hoofstuk uiteengesit; en 10
- (d) sodanige ander inligting soos voorgeskryf kan word. 10
- (3) Die Minister moet elke jaarverslag wat ingevolge hierdie artikel ingedien is, in die Parlement ter tafel lê. 15

Strawwe

- 17V.** (1) 'n Persoon wat enige handeling ten opsigte van die Ombudspersoon pleeg of 'n ondersoek deur die Ombudspersoon wat, indien dit ten opsigte van 'n geregshof gepleeg word, minagting van die Hof sou wees, is aan 'n misdryf skuldig en is by skuldigbevinding strafbaar met 'n straf wat by 'n skuldigbevinding van minagting van die Hof opgelê kan word. 20
- (2) 'n Persoon wat— 20
- (a) 'n beslissing van die Ombudspersoon verwag wat op enige wyse bereken is om die beslissing te beïnvloed; of 25
- (b) opsetlik verrigtinge wat die Ombudspersoon voer, onderbreek, is skuldig aan 'n misdryf en is by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens een jaar. 25

Bevordering van belanghebbendeopvoeding

- 17W.** Die Kantoor kan— 30
- (a) enige stappe doen wat bydra tot belanghebbendeopvoeding en die bevordering van bewustheid van die aard en beskikbaarheid van die Ombudspersoon en ander afdwingingsmaatreëls wat ingestel is deur of ingevolge hierdie Hoofstuk, met inbegrip van reëlins met— 35
- (i) staatsorgane; 35
- (ii) verteenwoordigende liggame van besigheid; en 35
- (iii) ander belanghebbendes, 35
- om te help met die voorsiening van inligting aan die algemene publiek oor aangeleenthede wat met die werk van die Ombudspersoon verband hou; en 40
- (b) stappe doen wat bydra tot belanghebbendeopvoeding en bevordering van bewustheid van die aard en beskikbaarheid van die Ombudspersoon en ander afdwingingsmaatreëls ingestel deur of ingevolge hierdie Hoofstuk, met inbegrip van reëlins om— 40
- (i) landelike belanghebbendes; en 45
- (ii) belanghebbendes wat in onderbediende stedelike gebiede gevind word, 45
- te akkommodeer. 45

Bevordering van koördinasie en samewerking tussen agentskappe

- 17X.** Die Kantoor kan enige stappe doen in ooreenstemming met die 'Intergovernmental Relations Framework Act, 2005' (Wet No. 13 van 2005), om samewerkings- en koördineringsmaatreëls tussen agentskappe te vergemaklik, te bevorder en in te stel, met inbegrip van institusionele reëlins, ooreenkomste en gesamentlike programme met liggame of instellings soos die Mededingingskommissie, Verbruikerskommissie, Maatskappytribunaal en die Kommissie vir Maatskappye en Intellektuele Eiendom. 50

Unfair trading practices

- 17Y.** (1) The Minister—
- (a) may on recommendation of the Ombud, by notice in the *Gazette*, declare certain practices in relation to small enterprises to be prohibited unfair trading practices; 5
- (b) may, subject to subsections (2) to (4), instruct that a comprehensive investigation be undertaken by the Ombud into an alleged unfair trading practice on recommendation by the Ombud;
- (c) must consult with the Minister responsible for trade, industry and competition before issuing a notice contemplated in paragraph (a); 10
and
- (d) must, in the performance of a function in terms of this section, consult with any Minister responsible for a national function affected by the performance of that function. 15
- (2) Small enterprises have the right to trade and transact freely, including— 15
- (a) the right to unambiguous business contract;
- (b) the right to a reasonable payment date and interest on late payments;
- (c) the right to disclosure of relevant information; and
- (d) the right to accountability from large enterprises and government entities. 20
- (3) The following principles must guide the Minister and the Ombud in considering whether or not a declaration contemplated in subsection (1) may be made— 25
- (a) that the practice concerned, directly or indirectly, has or is likely to have the effect of— 25
- (i) harming the sustainability and competitiveness of small enterprises;
- (ii) unreasonably prejudicing any small enterprise;
- (iii) deceiving any small enterprise; or 30
- (iv) unfairly affecting any small enterprise; and
- (b) that if the practice is allowed to continue, one or more objects of this Act will, or is likely to be defeated. 30
- (4) Before making a declaration contemplated in subsection (1), the Minister must— 35
- (a) by notice in the *Gazette*—
- (i) publish an intention to make the declaration and give reasons therefor;
- (ii) indicate where a copy of the draft declaration may be obtained; 40
and
- (iii) invite interested persons to make written representations in relation thereto, so as to reach the Minister within the time stipulated in the notice after the date of the publication of that notice; and
- (b) consider any representations received in terms of paragraph (a)(iii). 45
- (5) An affected party may not, on or after the date of the publication of a notice referred to in subsection (1), carry on the practice concerned.
- (6) The Ombud may direct a party who, on or after the date of the publication of a notice referred to in subsection (1), carries on the practice concerned in contravention of that notice, to rectify, to the satisfaction of the Ombud, any harm which was caused by, or arose out of, the carrying on of the practice concerned. 50
- (7) Any party who, under subsection (6), is directed to rectify any harm, must do so within 60 business days after such direction is issued.
- (8) The Ombud may, after affording the party concerned a reasonable opportunity to make representations, impose an administrative penalty in the amount prescribed by the Minister for any contravention of subsection (5) or failure by the party concerned to comply with subsection (6), read with subsection (7).” 55

Onbillike handelspraktyke**17Y. (1) Die Minister—**

- (a) kan op aanbeveling van die Ombudspersoon, by kennisgewing in die *Staatskoerant*, sekere praktyke aangaande klein ondernemings verbied verklaar as onbillike handelspraktyke; 5
- (b) kan, behoudens subartikels (2) tot (4), op aanbeveling van die Ombudspersoon, opdrag gee dat die Ombudspersoon 'n omvattende ondersoek onderneem na 'n beweerde onbillike handelspraktyk;
- (c) moet met die Minister verantwoordelik vir handel, nywerheid en mededinging oorleg pleeg voordat 'n kennisgewing beoog in paragraaf (a), uitgereik word; en 10
- (d) moet, in die uitvoering van 'n werksaamheid ingevolge hierdie artikel, met enige Minister oorleg pleeg wat verantwoordelik is vir 'n nasionale werksaamheid wat deur die uitvoering van daardie werksaamheid geraak word. 15
- (2) Klein ondernemings het die reg om vrylik handel te dryf en transaksies te doen, met inbegrip van—
- (a) die reg op 'n ondubbelsinnige besigheidskontrak;
- (b) die reg op 'n redelike betaaldatum en rente op laat betalings;
- (c) die reg op openbaarmaking van tersaaklike inligting; en 20
- (d) die reg op aanspreeklikheid vanaf groot ondernemings en regeringentiteite.
- (3) Die volgende beginsels moet die Minister en die Ombudspersoon lei wanneer oorweeg word of 'n verklaring beoog in subartikel (1) gemaak kan word, al dan nie— 25
- (a) dat die betrokke praktyk, regstreeks of onregstreeks, die uitwerking het of waarskynlik sal hê dat—
- (i) die volhoubaarheid en mededingendheid van klein ondernemings skade berokken word;
- (ii) enige klein onderneming onredelik benadeel word; 30
- (iii) enige klein onderneming mislei word; of
- (iv) enige klein onderneming onbillik geraak word; en
- (b) dat indien die praktyk toegelaat word om voort te gaan, een of meer oogmerke van hierdie Wet verydel sal word, of waarskynlik verydel sal word. 35
- (4) Voordat 'n verklaring beoog in subartikel (1) gemaak word, moet die Minister—
- (a) by kennisgewing in die *Staatskoerant*—
- (i) 'n voorneme om die verklaring te maak, publiseer en redes daarvoor gee; 40
- (ii) aandui waar 'n afskrif van die konsepverklaring verkry kan word; en
- (iii) 'n beroep op belanghebbende persone doen om skriftelike verhoë in verband daarmee te rig, ten einde die Minister te bereik binne die tyd na die datum van die publikasie van daardie kennisgewing in die kennisgewing vermeld; en 45
- (b) enige verhoë wat ingevolge paragraaf (a)(iii) ontvang is, oorweeg.
- (5) 'n Geraakte party mag nie, op of na die datum van die publikasie van 'n kennisgewing bedoel in subartikel (1), die betrokke praktyk voortsit nie.
- (6) Die Ombudspersoon kan 'n party wat, op of na die datum van die publikasie van 'n kennisgewing bedoel in subartikel (1), in stryd met daardie kennisgewing met die betrokke praktyk voortgaan, gelas om tot die bevrediging van die Ombudspersoon, enige skade te herstel wat veroorsaak is deur, of ontstaan het uit, die voortsetting van die betrokke praktyk. 50
- (7) Enige party wat kragtens subartikel (6) gelas word om enige skade reg te stel, moet dit doen binne 60 besigheidsdae nadat sodanige lasgewing uitgereik is. 55
- (8) Die Ombudspersoon kan, nadat hy of sy die betrokke party 'n redelike geleentheid gebied het om verhoë te rig, 'n administratiewe boete in die bedrag wat deur die Minister voorgeskryf word, oplê vir enige oortreding van subartikel (5) of versuim deur die betrokke party om aan subartikel (6), saamgelees met subartikel (7), te voldoen.”. 60

Substitution of section 19 of Act 102 of 1996, as amended by section 6 of Act 26 of 2003 and section 6 of Act 29 of 2004

6. The following section is hereby substituted for section 19 of the principal Act:

“National Review of Small Enterprises

19. (1) The Director-General must, on the request of the Minister, 5
 compile a review called the National Review of Small Enterprises which
 must cover areas defined by the Minister or the Director-General,
 including—
- (a) particulars of progress achieved in furtherance of the objects of the 10
 National Small Business Support Strategy;
 - (b) summaries of any findings or recommendations of the Director-
 General in respect of legislation, proposed legislation and administra-
 tive practices which impact on the small enterprise sector;
 - (c) an outline of new developments and trends with regard to the small 15
 enterprise sector in South Africa;
 - (d) reports on the growth and decline of small enterprise according to
 sector, size and region; and
 - (e) a statistical analysis of the contribution of the small enterprise sector to 20
 the economy, to export promotion, to rural development and to the
 level of inclusion of previously disadvantaged groups into the
 economy.
- (2) The Director-General may request the assistance of the Advisory 25
 Body, the Agency or the Office when compiling the review.
- (3) The Director-General must complete the review timeously and
 thereafter submit it to the Minister and the Minister must table it in 25
Parliament.”.

Amendment of section 20 of Act 102 of 1996, as amended by section 6 of Act 29 of 2004

7. Section 20 of the principal Act is hereby amended by the substitution for subsection 30
 (2) of the following subsection:

- “(2) The Minister may, in order to achieve the objects of this Act, by notice in the 30
Gazette **[amend the Schedule]** make regulations, setting the criteria to determine
the classification of micro, small and medium enterprises, to account for inflation[,]
and macro-economic shifts in the economy[, any legislation affecting small 35
enterprises, and any other matter which could have an effect on the
functionality of the Schedule].”.

Repeal of Schedule to Act 102 of 1996, as substituted by section 7 of Act 26 of 2003 and amended by section 6 of Act 29 of 2004

8. The schedule to the principal Act is hereby repealed.

Amendment of laws 40

9. The laws mentioned in the Schedule are hereby amended to the extent set out in the
 third column of that Schedule.

Transitional arrangements

10. (1) In this section, unless the context otherwise indicates— 45
 ‘**CBDA**’ means the Co-operative Banks Development Agency as established by
 Chapter IX of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);
 ‘**SEDA**’ means the Small Enterprise Development Agency established in terms of
 Chapter 3 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996), prior
 to its amendment by this Act; and

Vervanging van artikel 19 van Wet 102 van 1996, soos gewysig deur artikel 6 van Wet 26 van 2003 en artikel 6 van Wet 29 van 2004

6. Artikel 19 van die Hoofwet word hierby deur die volgende artikel vervang:

“Nasionale Oorsig van Klein Ondernemings

19. (1) Die Direkteur-generaal moet, op versoek van die Minister, ’n oorsig saamstel wat die Nasionale Oorsig van Klein Ondernemings heet, wat areas moet dek soos deur die Minister of die Direkteur-generaal omskryf, met inbegrip van—

- (a) besonderhede van vordering wat behaal is ter bevordering van die oogmerke van die Nasionale Ondersteuningstrategie vir Klein Ondernemings;
- (b) opsommings van enige bevindings of aanbevelings van die Direkteur-generaal ten opsigte van wetgewing, voorgestelde wetgewing en administratiewe praktyke wat ’n invloed op die kleinondernemingssektor het;
- (c) ’n uiteensetting van nuwe ontwikkelings en neigings met betrekking tot die kleinondernemingssektor in Suid-Afrika;
- (d) verslae oor die groei en agteruitgang van klein ondernemings volgens sektor, grootte en streek; en
- (e) ’n statistiese ontleding van die bydrae van die kleinondernemingssektor tot die ekonomie, tot die bevordering van uitvoere, tot landelike ontwikkeling en tot die vlak van insluiting van voorheen benadeelde groepe in die ekonomie.

(2) Die Direkteur-generaal kan die hulp van die Adviesliggaam, die Agentskap of die Kantoor aanvra wanneer die oorsig saamgestel word.

(3) Die Direkteur-generaal moet die oorsig betyds voltooi en dit daarna aan die Minister voorlê en die Minister moet dit in die Parlement ter tafel lê.”.

Wysiging van artikel 20 van Wet 102 of 1996, soos gewysig deur artikel 6 van Wet 29 of 2004

7. Artikel 20 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die Minister kan, ten einde die oogmerke van hierdie Wet te bereik, [die Bylae] by kennisgewing in die *Staatskoerant* [wysig] regulasies uitvaardig waarin maatstawwe gestel word om die klassifikasie van mikro, klein en medium ondernemings te bepaal, ten einde rekenskap te gee vir inflasie[,] en makro-ekonomiese verskuiwings in die ekonomie[, enige wetgewing wat kleinsake raak, en enige ander aangeleentheid wat ’n uitwerking op die werking van die Bylae kan hê].”.

Herroeping van Bylae by Wet 102 van 1996, soos vervang deur artikel 7 van Wet 26 van 2003 en gewysig deur artikel 6 van Wet 29 van 2004

8. Die Bylae by die Hoofwet word hierby herroep.

Wysiging van wette

9. Die wette in die Bylae word hierby gewysig tot die mate in die derde kolom van daardie Bylae uiteengesit.

Oorgangsbepalings

10. (1) In hierdie artikel, tensy dit uit die samehang anders blyk, beteken—

‘OAKSB’ die Ontwikkelingsagentskap vir Koöperatiewe Banke, soos gestig by Hoofstuk IX van die “Co-operative Banks Act, 2007” (Wet No. 40 van 2007);

‘KOOA’ die Kleinondernemingsontwikkelingsagentskap, gestig ingevolge Hoofstuk 3 van die Nasionale Kleinondernemingswet, 1996 (Wet No. 102 van 1996), voor dit deur hierdie Wet gewysig is; en

‘SEFA’ means the Small Enterprise Finance Agency, a state owned company registered under company registration number 1995/011258/06.

(2) With effect from the date of commencement of this section—

(a) the CBDA, SEDA and SEFA are disestablished; and

(b) any board of an entity referred to in paragraph (a), established in terms of its founding legislation or other legal instrument must be dissolved. 5

(3) A person who is employed by the CBDA, SEDA and SEFA, immediately before the commencement of this section must be transferred to the Agency in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) For 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 (3) takes up employment at the Agency. 10

(5) On the date of commencement of this section, or on a date determined by the Minister, all assets, liabilities, rights and obligations of the CBDA, SEDA and SEFA, as the case may be, 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. 15

(6) Anything done by or on behalf of the CBDA, SEDA and SEFA is deemed to have been done by the Agency, subject to this Act.

(7) The Director-General must, in writing, as soon as practicable after the commencement of this section, notify the Boards of the CBDA, SEDA and SEFA, the Companies and Intellectual Property Commission and the Registrar of Deeds of the provisions of this section. 20

(8) On receipt of the notification contemplated in subsection (7) the Companies and Intellectual Property Commission and 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 Commission or Registrar. 25

(9) No transfer duties, stamp duties, fees or taxes will be payable for purposes of subsection (5) or (8).

Substitution of long title of Act 102 of 1996 30

11. 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 Small Enterprise Development Finance Agency; to provide for the functioning of the Small Enterprise Development Finance Agency; to ensure the provision of financial and non-financial support services to small enterprises; to promote the development of sustainable and responsible co-operative banking; to provide for the establishment of the Office of the Small Enterprise Ombud Service; to enable an equitable trading environment for small enterprises through the provision of affordable and effective access to justice; to empower the Minister to declare certain practices in relation to small enterprises to be prohibited as unfair trading practices; to provide guidelines for organs of state in order to promote small business in the Republic; and to provide for matters incidental thereto. 35 40

Short title and commencement

12. This Act is called the National Small Enterprise Amendment Act, 2024, and comes into operation on a date fixed by the President by Proclamation in the *Gazette*. 45

- ‘SEFA’ Kleinondernemingsfinansieringsagentskap, ’n staatsonderneming wat geregistreer is onder maatskappyregistrasienuommer 1995/011258/06.
- (2) Met ingang van die datum van inwerkingtreding van hierdie artikel—
- (a) word die OAKSB, KOOA en SEFA afgestig; en
- (b) moet enige raad van enige entiteit in paragraaf (a) bedoel, wat ingevolge die stigtingswetgewing daarvan of ander regsinstrument gestig is, ontbind word. 5
- (3) ’n Persoon wat onmiddellik voor die inwerkingtreding van hierdie artikel in diens van die OAKSB, KOOA en SEFA is, moet ooreenkomstig artikel 197 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), na die Agentskap oorgeplaas word.
- (4) By die toepassing van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), moet geag word dat geen verandering van werkgever plaasgevind het nie wanneer ’n persoon in subartikel (3) beoog, by die Agentskap in diens tree. 10
- (5) Op die datum van inwerkingtreding van hierdie artikel, of op ’n datum deur die Minister bepaal, gaan al die bates, laste, regte en verpligtinge van die OAKSB, KOOA en SEFA, na gelang van die geval, met inbegrip van die ongebruikte balans van bewilligings, magtigings, toewysings en ander fondse wat gebruik word of gehou word in verband met die bevordering van hul oogmerke en werksaamhede, oor na die Agentskap. 15
- (6) Enigiets wat deur of namens die OAKSB, KOOA en SEFA gedoen is, word geag deur die Agentskap gedoen te wees, behoudens hierdie Wet. 20
- (7) Die Direkteur-generaal moet, skriftelik, so gou as prakties moontlik na die inwerkingtreding van hierdie artikel, die Rade van die OAKSB, KOOA en SEFA, die Kommissie vir Maatskappye en Intellektuele Eiendom en die Registrateur van Aktes in kennis stel van die bepalings van hierdie artikel.
- (8) By ontvangs van die kennisgewing in subartikel (7) beoog, moet die Kommissie vir Maatskappye en Intellektuele Eiendom en die Registrateur van Aktes die nodige inskrywings en endosserings op enige register of dokument in die registrasiekantoor, of dokumente wat by daardie Kommissie of Registrateur ingedien is, maak. 25
- (9) Geen hereregte, seëlregte, gelde of belasting sal by die toepassing van subartikel (5) of (8) betaalbaar wees nie. 30

Vervanging van lang titel van Wet 102 van 1996

11. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:
- “ **Om voorsiening te maak vir die instelling van die Adviesliggaam en die [Kleinondernemingsontwikkelingsagentskap] Finansieringsagentskap vir Kleinondernemingsontwikkeling; voorsiening te maak vir die werking van die Finansieringsagentskap vir Kleinondernemingsontwikkeling; te verseker dat finansiële en nie-finansiële ondersteuningsdienste aan klein ondernemings voorsien word; die ontwikkeling van volhoubare en verantwoordelike koöperatiewe bankwese te bevorder; voorsiening te maak vir die stigting van die Kantoor van die Kleinondernemingsombudsdien; ’n gelyke handelsomgewing vir klein ondernemings moontlik te maak deur bekostigbare en doeltreffende toegang tot geregtigheid te voorsien; die Minister te bemagtig om sekere praktyke met betrekking tot klein ondernemings as onbillike handelpraktyke verbode te verklaar; om riglyne vir staatsorgane te verskaf ten einde kleinsake in die Republiek te bevorder; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.** 35 40 45

Kort titel en inwerkingtreding

12. Hierdie Wet heet die Nasionale Kleinondernemingswysigingswet, 2024 en tree in werking op ’n datum deur die President by Proklamasie in die *Staatskoerant* vasgestel.

Schedule

LAWS AMENDED

(Section 9)

No. and year of Act	Short title	Extent of repeal or amendment
Act 40 of 2007	Co-operative Banks Act, 2007	<p>Amendment of section 1 of Act 40 of 2007</p> <p>1. Section 1 of the Co-operative Banks Act, 2007, is hereby amended—</p> <p>(a) by the deletion of the definition of “Agency”;</p> <p>(b) by the deletion of the definition of “representative body”;</p> <p>(c) by the deletion of the definition of “rule”; and</p> <p>(d) by the deletion of the definition of “support organisation”.</p> <p>Amendment of section 1A of Act 40 of 2007</p> <p>2. Section 1A of the Co-operative Banks Act, 2007, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A reference in this Act to the Authority [or the Agency] determining or publishing a matter by notice in the <i>Gazette</i> must be read as including a reference to the Authority [or the Agency] determining or publishing the matter by notice published in the Register.”.</p> <p>(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p>“(3) Unless expressly provided otherwise in this Act, or this Act requires a matter to be prescribed by regulation in terms of section 86, [or permits a matter to be prescribed by the Agency, including in a rule in terms of section 57,] a reference in this Act to a matter being—</p> <p>(c) by the deletion in subsection (6) of paragraph (b);</p> <p>(d) by the substitution for subsections (7) to (9) of the following subsections respectively:</p> <p>“(7) (a) A reference in this Act to the Authority [or the Agency] announcing or publishing information or a document on a web site must be read as a reference to the Authority [or the Agency] publishing the information or document in the Register.</p> <p>(b) The Authority [or the Agency] may also publish the information or document on its web site.</p> <p>(8) (a) A reference in this Act to a prescribed fee, [other than a reference to a fee prescribed by the Agency,] must be read as a reference to the relevant fee determined in terms of section 237 and Chapter 16 of the Financial Sector Act.</p> <p>[(b) The Agency, when determining a fee in terms of this Act, must comply with the requirements of section 237 and Chapter 16 of the Financial Sector Regulation Act.].”.</p> <p>(9) A reference in this Act to an appeal of a decision of the Authority [or the Agency] must be read as a reference to a reconsideration of the decision by the Tribunal in terms of the Financial Sector Regulation Act.”; and</p> <p>(e) by the deletion in subsection (10) of paragraph (b).</p> <p>Amendment of section 2 of Act 40 of 2007</p> <p>3. Section 2 of the Co-operative Banks Act, 2007, is hereby amended by the insertion in paragraph (c) of the word “and” at the end of subparagraph (i), the deletion of the word “and” at the end of subparagraph (ii) and the deletion of subparagraph (iii).</p> <p>Amendment of section 14 of Act 40 of 2007</p> <p>4. Section 14 of the Co-operative Banks Act, 2007, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:</p> <p>“(c) borrow money from [the Agency] third parties and members, other than deposits referred to in paragraph (a), up to a percentage of the assets held by it as prescribed by the Minister;”.</p> <p>Repeal of Chapters VI and VII of Act 40 of 2007</p> <p>5. Chapters VI and VII of the Co-operative Banks Act, 2007, are hereby repealed.</p>

Bylae

WETTE GEWYSIG

(Artikel 9)

No. en jaar van Wet	Kort titel	Omvang van herroeping of wysiging
UMthetho 40 ka-2007	UMthetho weNtsebenziswano yeeBhanki ka-2007	<p>Ukuhlonyelwa kwesolotya 1 loMthetho-40 ka-2007</p> <p>1. Isolotya 1 loMthetho weNtsebenziswano yeeBhanki, ka-2007 uthethe wahlonyelwa ke ngoko—</p> <p>(a) ngokucinywa kwengcaciso ethi “i-Arhente”;</p> <p>(b) ngokucinywa kwengcaciso ethi “ibhunga elimeleyo”;</p> <p>(c) ngokucinywa kwengcaciso ethi “umyalelo”; kunye</p> <p>(d) ngokucinywa kwengcaciso ethi “umbutho oxhasayo”.</p> <p>Ukuhlonyelwa kwesolotya 1A loMthetho 40 ka-2007</p> <p>2. Isolotya 1A loMthetho weNtsebenziswano yeeBhanki, ka-2007, uthethe wahlonyelwa ke ngoko—</p> <p>(a) ngokufakela isolotyana (2) kula masolotyana alandelayo:</p> <p>“(2) Irefurensi yalo Mthetho ukuya kwiSiphatha-mandla [okanye i-Arhente] eqingqayo okanye epapasha ngesaziso <i>kwiGazethi</i> kumele ifundwe njengequka irefurensi yeSiphatha-mandla [okanye i-Arhente] eqingqa okanye epapasha lo mba ngesaziso esipapashwe kwiRegister.”.</p> <p>(b) ngokufakela kwisolotyana (3) ngamazwi ahlakulela umhlathi (a) wala mazwi alandelayo:</p> <p>“(3) Ngaphandle kokuba athe avakaliswa ngenye indlela kulo Mthetho, okanye lo Mthetho uyalela ukuba lo mba ucinywe ngemiqathango ngokwemimiselo yesolotya 86, [okanye uvumela lo mba ukuba ucinywe yi-Arhente, kuquka nomyalelo ngokwemimiselo yesolotya 57.] irefurensi yalo Mthetho ngalo mba ithe—</p> <p>(c) yacinywa kwisolotyana (6) lomhlathi (b);</p> <p>(d) ngokufakela amasolotyana (7) ukuya (9) kula masolotyana alandelayo:</p> <p>“(7) (a) Irefurensi kulo Mthetho weSiphatha-mandla [okanye i-Arhente] eyazisayo okanye epapasha ulwazi okanye uxwebhu kwi-web site kumele ifundwe nerefurensi kwiSiphatha-mandla [okanye kwi-Arhente] epapasha ulwazi okanye uxwebhu kwiRegister kuyo.</p> <p>(b) ISiphatha-mandla [okanye i-Arhente] ingalupapasha ulwazi okanye uxwebhu kwi-web site.</p> <p>(8)(a) Irefurensi kulo Mthetho kwixabiso eliqingqiweyo, [ngaphandle kwexabiso eliqingqwe yi-Arhente,] kumele ifundwe njengerefurensi kwixabiso elifanelekileyo eliqingqwe ngokwemimiselo yesolotya 237 kunye neSahluko 16 soMthetho weCandelo leeMali.</p> <p>[(b) I-Arhente, xa iqingqa ixabiso ngokwemimiselo yalo Mthetho, kumele ithobeke iimfuno zesolotya 237 kunye neSahluko 16 soMthetho oQingqa kwiCandelo leeMali.]”.</p> <p>(9) Irefurensi yalo Mthetho kwisibheni sesigqibo seSiphatha-mandla [okanye se-Arhente] kumele ifundwe ngokucingela isigqibo seBhunga ngokwemimiselo yoMthetho oQingqa kwiCandelo leeMali.”; kunye</p> <p>(e) nokucinywa kwesolotyana (10) lomhlathi (b).</p> <p>Ukuhlonyelwa kwesolotya 2 loMthetho 40 ka-2007</p> <p>3. Isolotya 2 loMthetho weNtsebenziswano yeeBhanki, ka-2007, uthethe ke ngoko wahlonyelwa ngokufakelwa komhlathi (c) wegama elithi “kunye” ekugqibeleni komhlathana (i), ukucinywa kwegama elithi “kunye” ekugqibeleni komhlathana (ii) kunye nokucinywa komhlathana (iii).</p> <p>Ukuhlonyelwa kwesolotya 14 loMthetho 40 ka-2007</p> <p>4. Isolotya 14 loMthetho weNtsebenziswano yeeBhanki, ka-2007, uthethe wahlonyelwa ngokufakela kwisolotyana (1) ngomhlathi (c) kulo mhlathi ulandelayo:</p> <p>“(c) boleka imali [kwi-Arhente] kumntu wesithathu kwaye kumalungu, ngaphandle kofako ekubhekiswa kulo kumhlathi (a), olufikelela kwiiphesenti zezinto ezinezixabiso zayo nanjengoko kucaciswe nguMphathiswa;”.</p> <p>Ukucinywa kweZahluko VI kunye VII zoMthetho 40 ka-2007</p> <p>5. IZahluko VI kunye VII zoMthetho weNtsebenziswano yeeBhanki, ka-2007, zithe ke ngoko zacinywa.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>Amendment of section 44 of Act 40 of 2007</p> <p>6. Section 44 of the Co-operative Banks Act, 2007, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Authority may, in writing, delegate or assign any of the powers entrusted to the Authority in terms of this Act and assign any of the duties imposed on the Authority in terms of this Act to any person employed by the Authority or the South African Reserve Bank, or to the Financial Sector Conduct Authority[, or, with the concurrence of the Minister, to the Agency].”; and</p> <p>(b) by the deletion in subsection (4) of paragraphs (a) and (c).</p> <p>Repeal of Chapter IX of Act 40 of 2007</p> <p>7. Chapter IX of the Co-operative Banks Act, 2007, is hereby repealed.</p> <p>Amendment of section 80 of Act 40 of 2007</p> <p>8. Section 80 of the Co-operative Banks Act, 2007, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“It is an offence for any co-operative bank[, representative body, support organisation] or other person to—”.</p> <p>Substitution of section 82 of Act 40 of 2007</p> <p>9. The following section is hereby substituted for section 82 of the Co-operative Banks Act, 2007:</p> <p>“Fair administrative action</p> <p>82. Where a decision or other step of an administrative nature taken by the Authority [or the Agency] affects the rights of another person, the Authority [or the Agency] must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless another fair administrative procedure has been provided for in this Act or in terms of the Financial Sector Regulation Act.”.</p> <p>Substitution of section 84 of Act 40 of 2007</p> <p>10. The following section is hereby substituted for section 84 of the Co-operative Banks Act, 2007:</p> <p>“Access to records, register and other documentation</p> <p>84. A regulatory authority must, despite the provisions of any other law, at the request of the Authority [or Agency] make information regarding a co-operative bank[, representative body or support organisation] available to the Authority [or Agency].”.</p> <p>Substitution of section 85 of Act 40 of 2007</p> <p>11. The following section is hereby substituted for section 85 of the Co-operative Banks Act, 2007:</p> <p>“Indemnity</p> <p>85. Neither the Authority [or the Agency, or any board member or employee or managing director thereof, nor a committee of the Agency or any member thereof], a member of the Prudential Committee, a member of a sub-committee of the Authority, or an employee of the Authority incurs any liability in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent.”.</p> <p>Substitution of section 87 of Act 40 of 2007</p> <p>12. The following section is hereby substituted for section 87 of the Co-operative Banks Act, 2007:</p> <p>“Powers of Minister</p> <p>87. The Minister may delegate any of the Minister’s powers in terms of this Act, excluding the power to make regulations [and the power to appoint the members of the Agency], to the Director-General or any other official of the National Treasury.”.</p>

No. en jaar van Wet	Kort titel	Omvang van herroeping of wysiging
		<p>Ukuhlonyelwa kwesolotya 44 loMthetho 40 ka-2007</p> <p>6. Isolotya 44 loMthetho weNtsebenziswano yeeBhanki, ka-2007, uthe wahlonyelwa—</p> <p>(a) ngokufakelwa kwisolotyana (1) leli solotyana lilandelayo: “(1) ISiphatha-mandla sinako, ngokubhala phantsi, ukuthumela nabani na osemandleni othembakileyo kwiSiphatha-mandla ngokwemimiselo yalo Mthetho kwaye amnike nawuphi na umsebenzi weSiphatha-mandla ngokwemimiselo yalo Mthetho kuye nawuphi na umntu oqashwe siSiphatha-mandla okanye yiBhanki enguVimba yoMzantsi Afrika, okanye kwiCandelo loGunyaziso leeMali, okanye, ngokuhambisana noMphathiswa, ukuya kwi-Arhente.”; kwaye</p> <p>(b) ngokucinywa kwesolotyana (4) lwemihlathi (a) kunye (c).</p> <p>Ukucinywa kweSahluko IX soMthetho 40 ka-2007</p> <p>7. ISahluko IX soMthetho weNtsebenziswano yeeBhanki, ka-2007, uye wacinywa.</p> <p>Ukuhlonyelwa kwesolotya 80 loMthetho 40 ka-2007</p> <p>8. Isolotya 80 loMthetho weNtsebenziswano yeeBhanki, ka-2007, uthe wahlonyelwa ngokufakelwa kwamagama aqalayo ngaphambili komhlathi (a) wala magama alandelayo: “Lulwaphulo-mthetho ukuba iibhanki zobambiswano, ibhunga elimeleyo, umbutho oxhasayo] okanye omnye umntu ukuba—”.</p> <p>Ukufakelwa kwesolotya 82 loMthetho 40 ka-2007</p> <p>9. Eli solotya lilandelayo lithe ke ngoko lafakelwa ngesolotya 82 loMthetho weNtsebenziswano yeeBhanki, ka-2007: “Inkqubo elinganayo yolawulo</p> <p>82. Apho isigqibo okanye inyathelo lolawulo elithathwe siSiphatha-mandla [okanye yi-Arhente] sichaphazela amalungelo omnye umntu, iSiphatha-mandla [okanye i-Arhente] kumele sithobele uMthetho wokuPhakanyiswa koLawulo ngoBulungisa, ka-2000 (uMthetho No. 3 ka-2000), ngaphandle kokuba enye inkqubo enobulungisa ithe yakhutshwa ngalo Mthetho okanye ngokwemimiselo yoMthetho oQingqa kwiCandelo leMali.”.</p> <p>Ukufakelwa kwesolotya 84 loMthetho 40 ka-2007</p> <p>10. Eli solotya lilandelayo lithe latshintshelwa kwisolotya 84 loMthetho weNtsebenziswano yeeBhanki, ka-2007: “ Ukufikelela kushicilelo, ubhaliso namanye amaxwebhu</p> <p>84. Ibhunga eliqingqayo kumele, ngaphandle kwezinye izinto ezinokunikwa ngumthetho, ngesicelo seSiphatha-mandla [okanye i-Arhente] lenze ngokumayelana neebhanki ezisebenzisanyayo, ibhunga elimeleyo okanye umbutho oxhasayo] lifumaneke kwiSiphatha-mandla [okanye kwi-Arhente].”.</p> <p>Ngokufaka isolotya 85 loMthetho 40 ka-2007</p> <p>11. Eli solotya lilandelayo lithe latshintshelwa kwisolotya 85 loMthetho weNtsebenziswano yeeBhanki, ka-2007: “Isibhambathiso</p> <p>85. Akukho Siphatha-mandla [okanye i-Arhente, okanye naliphi na ilungu lebhodi okanye umsebenzi okanye umlawuli ophetheyo, nakomiti ye-Arhente okanye naliphi na ilungu kengoko], lungu laKomiti yoVelwano, lungu lakomiti engaphantsi kweSiphatha-mandla elinetyala ngokumayelana nesenzo okanye ukushiya ngeniva okwenzekileyo ngomoya omhle ngaphantsi okanye ngenxa yalo Mthetho, ngaphandle kokuba bekukhona ukungakhathali okumandla.”.</p> <p>Ukutshintshwa kwesolotya 87 loMthetho 40 ka-2007</p> <p>12. Eli solotya lilandelayo lithe latshintshelwa kwisolotya 87 loMthetho weNtsebenziswano yeeBhanki, ka-2007: “Amandla oMphathiswa</p> <p>87. UMphathiswa unako ukunika nawuphi na amandla anawo kumandla oMphathiswa ngokwemimiselo yalo Mthetho, ngaphandle kwamandla okwenza imiqathango [kunye namandla okutyumba ilungu le-Arhente], kuMlawuli-Jikelele okanye nawuphi na umsebenzi kaNongxowa weSizwe.”.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>Amendment of long title of Act 40 of 2007</p> <p>13. The long title of the principal Act is hereby amended by the substitution of the following long title:</p> <p>“To promote and advance the social and economic welfare of all South Africans by enhancing access to banking services and sustainable conditions; to promote the development of sustainable and responsible co-operative banks and co-operative financial institutions; to establish an appropriate regulatory framework and regulatory institutions for co-operative banks and co-operative financial institutions that protect members of co-operative banks and co-operative financial institutions; to provide for the registration of deposit-taking financial services co-operatives as co-operative banks and co-operative financial institutions; to provide for the regulation and supervision of co-operative banks and co-operative financial institutions; [and to provide for the establishment of a development agency for co-operative banks]; and to provide for matters connected therewith.”.</p> <p>Amendment of Arrangement of Sections of Act 40 of 2007</p> <p>14. The Arrangement of Sections of the Co-operative Banks Act, 2007, is hereby amended—</p> <p>(a) by the deletion of the items for Chapters VI and VII, items 31 to 40; and</p> <p>(b) by the deletion of the items for Chapter IX and items 54 to 74.</p> <p>Amendment of section 49 of Act 14 of 2005</p> <p>15. Section 49 of the Co-operatives Act, 2005 (hereinafter referred to as “the principal Act”), is hereby amended by the substitution in paragraph (a) of subsection (1) for subparagraph (ii) of the following subparagraph:</p> <p>“(ii) in the case of an auditor, is not registered with the South African Institute for Chartered Accountants or does not satisfy the requirements for registration as an auditor as contemplated in Chapter III of the Auditing Profession Act; or”.</p> <p>Amendment of section 91B</p> <p>16. Section 91B of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:</p> <p>“(b) provide financial and non-financial assistance to co-operatives to enable the development of co-operatives, provided that deposit-taking financial co-operatives will not be eligible for financial support, but will be eligible for non-financial support;”.</p>
Act No. 14 of 2005	Co-operatives Act, 2005	<p>Amendment of section 91GG of Act 14 of 2005</p> <p>17. Section 91GG of the principal Act is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Establishment, composition and functions of National Interdepartmental Co-ordination Committee on Co-operatives and Inter-Provincial [Coordination] Co-ordination Committee on Co-operatives”.</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The National Interdepartmental Co-ordination Committee on Co-operatives and [The] the Inter-Provincial Co-ordination Committee on Co-operatives [is] are hereby established.”.</p> <p>(c) by the insertion of the following subsection after subsection (1), the subsequent subsections becoming subsection (3), (4), (5), (6), (7) and (8) respectively:</p> <p>“(2) The National Interdepartmental Co-ordination Committee on Co-operatives consists of the following members appointed by the Minister:</p> <p>(a) One person to represent the Minister; and</p> <p>(b) one person in the full-time employment of—</p> <p>(i) the Department; and</p> <p>(ii) such other national departments of state as identified by the Minister.”.</p>

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		<p>Ukuhlonyelwa kwesihloko eside soMthetho 40 ka-2007</p> <p>13. Isihloko eside soMthetho wokuqala sithe ke ngoko sahlonyelwa ngokufakelwa kwezi zihloko zide zilandelayo:</p> <p>“Ukuphakamisa nokuphucula intlalo-ntle noqoqosho lwabemi boMzantsi Afrika ngokubavulela ucango kwiinkonzo zeebhanki kwakunye neemeko ezizinzileyo; ukuphamisa uphuhliso lozinzo kwakunye nokuthatha uxanduva lwentsebenziswano kumaziko eemali; ukumilisele iziko eliqingqa imiqathango ekhusela amalungu eebhanki ezisebenzisanayo kwakunye namaziko eemali asebenzisanayo; ukukhuthaza ubhaliso lofako nokuthatha iinkonzo zemali zentsebenziswano njengobambiswo lweebhanki namaziko emali; ukunika ulawulo nogonyamelo lwentsebenziswano yeebhanki kunye namaziko emali; [kunye nokumilisele i-arhente yophuhliso yentsebenziswano yeebhanki]; nokunika imiba enxulumeneyo noko.”</p> <p>Ukuhlonyelwa kohlengahlengiso lwamasolotya oMthetho 40 ka-2007</p> <p>14. Uhlengahlengiso lwamasolotya oMthetho weNtsebenziswano yeeBhanki, ka-2007, uthe wahlonyelwa—</p> <p>(a) ngokucinywa ngokususwa kwezinto kwiZahluko VI kunye VII, izinto eziku-31 ukuya ku-40; kwaye</p> <p>(b) ngokucinywa kwezinto ezikwiSahluko IX nezinto eziku-54 ukuya ku-74.</p> <p>Ukuhlonyelwa kwesolotya 49 loMthetho 14 ka-2005</p> <p>15. Isolotya 49 loMthetho weNtsebenziswano, ka-2005 (nebekubhekiswa kulo “njengoMthetho wokuqala”), lithe lahlonyelwa ngokufakela kumhlathi (a) wesolotyana (1) ngomhlathana (ii) wale mihlathana ilandelayo:</p> <p>“(ii) kwimeko yomphicothu-mali, ongabhaliswanga kwiSouth African Institute for Chartered Accountants okanye engafikeleli kwiimfuno zobhaliso njengomphicothu-mali nanjengoko kudakaciwe kwiSahluko III soMthetho waBaphicothu-Mali; okanye”.</p> <p>Ukuhlonyelwa kwesolotya 91B</p> <p>16. Isolotya 91B loMthetho wokuqala lithe lahlonyelwa ngokufakelwa komhlathi (b) kule mihlathi ilandelayo:</p> <p>“(b) ukunika uncedo lwemali nolungengolwemali kwiintsebenziswano ukuze zikwazi ukuphuhlisa iintsebenziswano, nangona amaziko emali asebenzisanayo nathatha iimali engazuyinikwa inkxaso-mali, kodwa aza kuyifumana inkxaso engeyoyamali;”.</p>
Nawu wa No. 14 lembe ra 2005	Nawu wa Mabindzu-Ntirhisano, 2005	<p>Ku antswisiwa ka xiyenge xa 91GG Nawu wa 14 lembe ra 2005</p> <p>17. Xiyenge xa 91GG xa nawunkulu hi lexi xi atswisiweke—</p> <p>(a) hi ku siviwa eka nhlokomhaka ka nhlokomhaka leyi yi landzelaka:</p> <p>“Ku tumbuluxiwa, xivumbeko na mintirho ya Komiti ya rixaka ya nkondletelo wa Mabindzu-ntirhisano wa findzawulo to hambanahambana loko swi ta eka Mabindzu-ntirhisano na kondletelo wa swifundzankulu [Mabindzu-ntirhisano] Komiti ya Vufambisi eka Mabindzu-ntirhisano”.</p> <p>(b) hi ku siviwa eka xiyengentsongo xa (1) ka xiyengentsongo lexi xi landzelaka:</p> <p>“(1) Komiti ya Rixaka hinkwaro yo kondletelo wa Mabindzu-ntirhisano na Mabindzu-ntirhisano na Kondletelo wa le ka Swifundzankulu hi leswi swi tumbuluxiweke.”.</p> <p>(c) hi ku ngenisiwa ka xiyengentsongo lexi xi landzelaka endzaku ka xiyengentsongo xa (1), swiyengentsongo leswi swi landzaka swi va xiyengentsongo xa (3), (4), (5), (6), (7) na (8) hi ku hlawuleka:</p> <p>“(2) Komiti ya rixaka ya nkondletelo wa Mabindzu-ntirhisano wa findzawulo to hambanahambana yi vumbiwile hi swirho leswi swi landzelaka leswi swi thoriweke hi Holobyee:</p> <p>(a) Munhu un’we loyi a yimelaka Holobyee; na</p> <p>(b) munhu un’we loyi a nga eka vuthoriwa bya masiku hinkwawo bya—</p> <p>(i) Ndzawulo; na</p> <p>(ii) muxaka wo karhi wa tindzawulo ta Rixaka tani hi loko a lemukiwile hi Holobyee.”.</p>

No. and year of Act	Short title	Extent of repeal or amendment
		<p>(d) by the substitution for subsection (3) of the following subsection: “(3) The Minister must appoint from among the members of the <u>National Interdepartmental Co-ordination Committee on Co-operatives</u> and the <u>Inter-Provincial Co-ordination Committee on Co-operatives</u> a chairperson and a deputy chairperson for each Committee respectively.” and</p> <p>(e) by the substitution for subsection (5) of the following subsection: “(5) A member of the <u>National Interdepartmental Co-ordination Committee on Co-operatives</u> or the <u>Inter-Provincial Co-ordination Committee on Co-operatives</u> may designate an alternate to attend a meeting of the [Inter-Provincial Coordination] Committee [on Co-operatives in his or her place] on his or her behalf.”</p>

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		<p>(d) hi ku siviwa eka xiyengentsongo xa (3) ka xiyengentsongo lexi xi landzelaka: “(3) Holobye u fanele a thola exokarhi ka swirho swa Komiti ya rixaka ya nkondletelo wa Mabindzu-ntirhisano wa tindzawulo to hambanahambana loko swi ta eka Mabindzu-ntirhisano na kondletelo wa swifundzankulu mutshamaxitulu na xandla xa mutshamaxitulu eka komiti yin'wana na yin'wana hi ku hlawuleka.” na</p> <p>(e) hi ku siviwa eka xiyengentsongo xa (5) eka xiyengentsongo lexi xi landzelaka: “(5) Xirho xa Komiti ya rixaka ya nkondletelo wa ntirhisano wa tindzawulo to hambanahambana loko swi ta eka tirhisano na kondletelo wa swifundzankulu yi nga veka muhnu wo siva ku ya eka minhlango ya [Vufambisi bya Mabindzu-ntirhisano bya Xifundzankulu] Komiti [eka Ntirhisano eka ndhawu ya yena] hi ku yimela yina.”.</p>

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