

MICRO AND SMALL ENTERPRISES BILL, 2006
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SCHEDULE

MICRO AND SMALL ENTERPRISES BILL, 2006

A Bill For

An Act of Parliament to make provision for, the establishment of a council that will facilitate the development of Micro and Small Enterprises, creation of a Micro and Small Enterprises development Fund and for connected purposes

Enacted by the Parliament of Kenya as follows-

Short title and commencement.

1. This Act may be cited as the Micro and Small Enterprises Act 2006 and shall come into force by notice in the Gazette.

Interpretation.

2. In this Act unless the context otherwise requires

"Council" means the Micro and small enterprises Council established under section 3 of this Act;

"Director" means the director for small and micro enterprises appointed under section 10 of this Act;

"field officer" means a field officer appointed by the Minister under section 23 of this Act;

"Fund" means the Micro and small enterprises Development Fund established under section 13 of this act;

"micro and small enterprises" means a business

- (a) in both the formal and informal sector;
- (b) classified in farm and non- farm categories;
- (c) that is carried on with not more than fifty employees; and
- (d) that has an annual turnover of less than four million shillings.

"Minister" means the minister responsible for matters relating to Labour.

Scope of the Act.

3. The requirements of this Act are in addition to the requirements imposed by any other Act.

PART II - ADMINISTRATIVE PROVISIONS

The director and assistants

4. (1) There shall be a Director of Micro and Small Enterprises and such number of deputy directors and assistant directors of micro and small enterprises as may be necessary for the purpose of this Act.

(2) The office of the Director, deputy directors and assistant directors shall be an office in the Public Service.

(3) The Director shall manage the day to day affairs of the Council.

Establishment of Council.

5. (1) There is hereby established a council to be known as the National Council for micro and small enterprises.

Composition of the Council.

6.(1) The Council shall consist of the following members appointed by the Minister

- (a) a chairman, who shall be a person with ten

years experience in micro and small enterprises;

- (b) the Executive Director of the Association of Microfinance Institutions or his representative nominated in writing;
- (c) the Director of the Kenya Industrial Research and Development Institute or his representative nominated in writing;
- (d) the Director of the Non-Governmental Organizations Councilor his representative nominated in writing;
- (e) three person nominated by the Micro and small enterprises umbrella organizations;
- (f) three persons with expertise in micro and small enterprises development, nominated by the private sector; and
- (g) the Permanent Secretary in the Ministry for the matters relating to Labour or his representative nominated in writing.

(2) The chairman and members of the Council shall hold office for a period of three years but shall be eligible for reappointment, once, for a further term of three years.

(3) All appointments shall be 'published by notice in the Gazette.

Functions of the council.

7. The Council shall

- (a) co-ordinate and steer Micro and

small enterprises support programmes, projects and activities;

(b) co-ordinate and monitor the provision of training, advice and enterprises, counseling and any other non- financial service to Micro and small enterprises;

(c) represent and promote the interest of Micro and small enterprises, with emphasis on those entities contemplated in the National Micro and small enterprises strategy;

(d) facilitate access by Micro and small enterprises to raw material and other products;

(e) facilitate international and national market access for products and services of Micro and small enterprises;

(f)

make recommendations to the government on existing and proposed policy affecting Micro and small enterprises; and

(g) facilitate the general understanding of the public regarding Micro and small enterprises contribution to the economic growth, job creation and welfare; and

(h) perform such functions as may be

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necessary for the administration of this Act.

Conduct of
business and affairs
of the Council.

8. (1) The conduct and regulation of the business and affairs of the council shall be as provided in the First Schedule to this Act.

(2) Except as provided in the First Schedule to this Act, the Council shall regulate its own procedure and the procedure of any of its committees.

Co-option
members.

9. The Council may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require.

Delegation
powers of
Council.

10. Subject to this Act, the Council may either generally or in any particular case, delegate to any committee of the Council-or to any member, officer, employee or agent of the Council, the exercise of any of the powers of the Council under this Act.

Remuneration
Council members

11. The Council shall pay to its members such remuneration, fees or allowances for expenses as the Minister may determine after taking into account any. representations made by the Council.

Protection for
personal liability.

12. No matter or thing done by a member of the Council or by an officer, employee or agent of the Council shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Council, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

**PART III - PROVISIONS RELATING TO MANAGEMENT
OF MICRO AND SMALL ENTERPRISES.**

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Registration of a micro or small scale enterprise.

13. A person conducting a micro or small scale enterprise shall register the enterprise with the Council in the prescribed form.

Registration of associations of Micro and small enterprises.

14. Every association of Micro and small enterprises shall register with the Council in the prescribed form.

Council to register and issue certificate.

15 (1). The Council shall register and issue certificate of registration of a micro or small scale enterprise or an association of Micro and small enterprises.

(2) The Council shall keep a register of Micro and small enterprises and associations of Micro and small enterprises.

Minister's power to regulate conduct of entrepreneurs and associations.

16. The Minister may prescribe the conduct and management of Micro and small enterprises or associations registered under the Act.

Minister's power to declare business areas.

17. (1) The Minister may, in consultation with the Minister responsible for matters relating to local authorities, by Order, declare an area or any part of an area of any city, municipality, township or a county to be a general business area for the purpose of this Act.

Council to allocate and manage business areas

18.(1) Upon declaration of a business area by the Minister, the Council shall allocate each registered enterprise, an area from where such enterprise shall operate.

(2) The Council shall prescribe, by regulations the procedure for the allocation and management of the business area.

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Council to render assistance.

19. (1) The Council may render to Micro and small enterprises financial assistance or such other assistance as may be determined, that in the opinion of the Council, will encourage, sustain, improve or develop Micro and small enterprises.

(2) The Minister with the recommendation of the Council, may by regulation, prescribe measures for -

(a) determining categories of Micro and Small enterprises to be assisted; and

(b) determining kind of assistance to be rendered.

(3) In determining the categories of Micro and small enterprises to be assisted the Minister shall consider the capital invested by the micro or small scale enterprise and the annual turnover of the micro or small scale enterprise.

Micro and small enterprises Development Fund.

20. (1) There is hereby established: known as the Micro and small enterprises Development Fund.

(2) The Minister may, in consultation with the Council and by notice in the Gazette, fix the size of the Fund sufficient to facilitate the development of Micro and small enterprises and may authorize the Council to borrow from any person such amount as it may require for the purpose of discharging its functions under this Act.

(3) The Fund shall consist of

- (a) monies contributed to the Fund by institutions;
- (b) monies appropriated by Parliament;
- (c) income credited to the Fund;
- (d) monies borrowed for the purpose of
. discharging the functions of the
Council under the Act;
- (e) money received as subventions, grants or
donation to the Fund.

(4) The monies constituting the Fund shall be placed in an account to be invested by the Council in treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund.

Management of
the Fund.

21. (1) The Council shall administer the Fund.

(2) In administering the Fund the Council in consultation with the Minister shall be responsible for

- (a) determining and regulating interest payable
by loanies;
- (b) approving of all Micro and small enterprises
development and financing proposals;
- (c) entering into agreement with persons for purposes of
providing services to the Fund;

- (d) opening and managing a bank account for the Fund;
- (e) supervising and controlling the administration of the Fund;
- (f) utilizing the interest accruing thereto to defraying operating expenses, and may impose any reasonable restriction or other requirement concerning such use;
- (g) causing to be kept books of account and other records in relation to the Fund; and
- (h) preparing, signing and transmitting to the Controller and Auditor General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund, in such details as the Treasury may direct in accordance with the Public Audit Act.

Accessing the Fund.

22. (1) Any person who has registered a micro or small enterprise under the Act may, on an application to the Council, access funds by way of loan, from the Micro and small enterprises Development Fund.

(2) The Minister may by regulation make provision for

- (a) procedure to be followed by

person seeking to access funds from the Fund;

(b) forms to be used while making an application under this section;

(c) amount that may be accessed;

(d) kind of securities that may be given by an applicant under this section;

(e) rates of interest on the loan; or

(f) maximum period of repayment of loan.

PART IV- FIELD OFFICERS

Appointment of field officers.

23. The Minister shall, by Gazette notice, appoint duly qualified persons whether by name or by title of office, to be field officers of the Council, for such jurisdictional units as shall be specified in the notice appointing them.

Powers of field officers.

24. (1)A field officer may, in the performance of his duties under this Act, at all reasonable times and without a warrant

(a) enter any premises, facility, vessel or property which the officer has reason to believe it is necessary for him to enter in order to ascertain whether the requirements of this Act or any approval under this Act are being complied, with and may take with him any person duly authorized by the Council.

(b) take with him any equipment or material required for

any purpose for which the power of entry is being exercised;

(c) carry out such tests and inspections and make such recordings as may in the circumstances be necessary;

(d) direct that any part of premises which he has power to enter, or anything in such premises shall be left undisturbed for so long as is reasonably necessary for the purpose of any test or inspection;

(e) take appropriate samples of any articles or substances found in any premises which he has power to enter for analysis or any other relevant purpose under this Act;

(f) require the production of any records which are required to be kept under this Act.

(2) When exercising his powers under this Act, the field officer shall suitably identify himself.

PART V - FINANCIAL PROVISIONS

Funds of the Council. 25. The Funds of the Council shall consist of

(a) such moneys as may be appropriated by Parliament for the purposes of the Council;

(b) such moneys as may accrue to or vest in the Council in the course of the exercise of its powers or performance of its functions under this Act; and

(c) all moneys from any other source

provided for, donated or lent to the Council

Investment of funds.

26. (1) The Council may

(a) invest any of its surplus funds in government securities; or

(b) place on deposit with any bank quoted on an approved securities exchange in Kenya any moneys not immediately required for its purpose.

(2) In this Section "approved securities exchange" means a securities exchange approved under the Capital Markets Authority Act.

PART VI - MISCELLANEOUS PROVISIONS

Ministers powers to make regulations.

27. The Minister may, make regulations generally for carrying out the purposes and provisions of this Act and without prejudice to the generality of the foregoing, any such regulations may make provision for

(a) prescribing anything which under this Act is to be prescribed;

(b) the procedures for licensing;

(c) forms and fees to be used under this Act; or

(d) prescribing for the conduct and management of business sites or areas.

General penalty.

28. Any person who contravenes any

provisions of this Act or regulations made under this Act for which no special penalty has been provided for, commits an offence and is liable on conviction to a fine of not exceeding one hundred thousand shillings or to imprisonment for a term of two years.