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THE MICRO AND SMALL ENTERPRISE ACT

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THE MICRO AND SMALL ENTERPRISES ACT

No. 55 of 2012

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THE MICRO AND SMALL ENTERPRISES ACT

No. 55 of 2012

AN ACT of Parliament to provide for the promotion, development, and regulation of micro and small enterprises; to provide for the establishment of the Micro and Small Enterprises Authority, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Micro and Small Enterprises Act, 2012.

Interpretation.

2. In this Act, unless the context otherwise requires—

"association" means a group of not less than thirty five micro and small enterprises registered under this Act for the purpose of accessing common services and mobilizing resources for the development of the aforementioned enterprises;

"Authority" means the Micro and Small Enterprises Authority established under section, 29;

"enterprise" means an undertaking or a business concern whether formal or informal engaged in production of goods or provision of services;

"factoring" means buying of invoices at a discount and taking the responsibility of collecting the payment due on them;

"farm enterprise" includes micro and small scale agricultural, livestock and fishing enterprises;

"Fund" means the Micro and Small Enterprises Development Fund established under section 51;

"manufacturing sector" means enterprises that add value to basic raw material to produce an enhanced product;

"micro enterprise" means a firm, trade, service, industry or a business activity--

- (a) whose annual turnover does not exceed five hundred thousand shillings;
- (b) which employs less than ten people; and
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time, and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed ten million shillings;
 - (ii) the service sector and farming enterprises where the investment in equipment or registered capital of the enterprise does not exceed five million shillings;

"Cabinet Secretary" means the Cabinet Secretary of the Ministry for the time being responsible for matters relating to micro and small enterprises;

"Registrar" means the Registrar of micro and small enterprises designated as such under section 4;

"small enterprise" means a firm, trade, service, industry or a business activity—

- (a) whose annual turnover ranges between five hundred and five million shillings; and
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time, and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery as well as the registered capital of the enterprise is between ten million and fifty million shillings; and
 - (ii) service and farming enterprises, where the equipment investment as well as registered capital of the

enterprise is between five million and twenty million shillings;

"Tribunal" means the Micro and Small Enterprises Tribunal established under section 54; and

"umbrella organization" means an organization of micro and small enterprise associations.

Object and purpose of the Act.

3. The object and purpose of this Act is to provide a legal and institutional framework for the promotion, development and regulation of micro and small enterprises by—

- (a) providing an enabling business environment;
- (b) facilitating access to business development services by micro and small enterprises;
- (c) facilitating formalization and upgrading of informal micro and small enterprises;
- (d) promoting an entrepreneurial culture; and
- (e) promote representative associations

**PART II—REGULATION OF MICRO AND SMALL
ENTERPRISES**

Registrar of micro and small enterprises.

4. (1) There shall be an office of the Registrar of Micro and Small Enterprises which shall be an office in the public service.

(2) The office of Registrar shall be headed by an officer who shall be designated the Registrar of Micro and Small Enterprises.

(3) The Registrar shall be responsible for the registration of micro and small enterprises in accordance with the provisions of this Act.

Application for registration.

5. (1) Every association or umbrella organization which intends to be registered under this Act shall, within twenty-eight days after its formation, make an application to the Registrar for registration under this Act.

(2) An application under this section shall be made in the prescribed manner and shall be accompanied by—

- (a) a copy of the constitution or other constitutive document of the applicant;
- (b) names and addresses of the founders of the association or umbrella organization;
- (c) the postal and physical address of the principal place of doing business of the applicant;
- (d) the prescribed fee, if any; and
- (e) such other particulars or information as may be required by the Registrar in order to assist the Registrar to determine whether or not the organisation meets the requirements for registration under this Act.

Consideration of application.

6. (1) The Registrar shall, within sixty days after receiving an application under this Act—

- (a) consider the application and any further information provided by the applicant; and
- (b) if satisfied that the application meets the requirements of this Act, register the association or umbrella organisation.

Certificate of registration.

7. Upon registering an association or umbrella organisation, the Registrar shall issue a certificate of registration in the prescribed form.

Refusal of registration.

8. The Registrar may refuse to register an association or umbrella organization where—

- (a) the Registrar is satisfied that such association or umbrella organization is a branch of, or is affiliated to or connected with, any organization or association of a political nature;
- (b) any of the proposed officers has been at any time an officer of an association or umbrella organization which

has been refused registration or which has had its registration cancelled under this Act;

- (c) the constitution or the rules of the association or umbrella organization are in any respect repugnant to or inconsistent with this Act or any written law;
- (d) the Registrar is satisfied that the association or umbrella organization does not exist; or
- (e) the name under which the association or umbrella organization is to be registered—
 - (i) is identical to that of any other association or umbrella organization which either is existing or has existed, or of any association or umbrella organization whose application for registration. has been refused under this section;
 - (ii) so nearly resembles the name of any other association or umbrella organization as to be likely to deceive the public or the members of either association or umbrella organization as to its nature or identity; or
 - (iii) is repugnant to or inconsistent with any law or is otherwise undesirable.

Cancellation of registration.

9. (1) Where, in respect of any registered association or umbrella organization, the Registrar is of the opinion that the registration of an association or umbrella organization should be cancelled or suspended on the ground that—

- (a) the association or umbrella organization has, among its objects, or is likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Kenya;
- (b) the interests of peace, welfare, or good order in Kenya would likely be prejudiced by the continued registration of the association or umbrella organization;
- (c) the constitution or rules of the association or umbrella organization are repugnant to or inconsistent with any written law;

- (d) the association or umbrella organization has wilfully, and after notice from the Registrar, contravened any of the provisions of its constitution or rules, or the provisions of this Act;
- (e) the association or umbrella organization has failed to comply, within the time allowed for compliance, with an order made under this Act;
- (f) the association or umbrella organization has dissolved itself;
- (g) the management body of the association or umbrella organization is constituted otherwise than in conformity with its constitution or rules;
- (h) a person has become an officer of the association or umbrella organization, who has been for some time an officer of an association or umbrella organization which has been refused registration under this Act or which has had its registration cancelled under this section, and the Registrar has given written notice to the association or umbrella organization in the prescribed form that such officer be removed within a period, not being less than seven days from the date of the notice, specified in the notice, and the officer has not been removed within that period;
- (i) the association or umbrella organization has failed to furnish, within the time allowed, one of the documents required under this Act; or
- (j) the association or umbrella organization is, or has without prior notice to the Registrar in the prescribed form, become a branch of or affiliated to, or connected with, any organization or group of a political nature.

(2) The Registrar shall give written notice in the prescribed form to the association or umbrella organization calling upon the association or umbrella organization to show cause, within such period as is specified in the notice, why its registration should not be cancelled or, as the case may be suspended, and, if the association or umbrella organization fails to show cause to the satisfaction of the Registrar within the time specified, the Registrar may cancel or suspend the registration of the association or umbrella organization as the case maybe.

(3) The Registrar may, with the approval of the Cabinet Secretary, at any time cancel any registration made under this Act.

(4) The Registrar shall cancel the registration of any registered association or umbrella organization which has ceased to be an association or umbrella organization within the meaning of this Act.

(5) Where the registration of an association or umbrella organization is cancelled under this section, the Registrar shall at the same time cancel the registration of every branch of that association or umbrella organization.

(6) Where the registration of an association or umbrella organization has been suspended under this section, the association or umbrella organization shall not take any action, nor permit any action to be taken, in furtherance of its objects except—

(a) the payment of its debts; and

(b) such action as the Registrar may from time to time authorize.

(7) An association or umbrella organization which contravenes subsection (6) commits an offence.

Cessation of existence of an association, etc.

10. (1) If the Registrar has reason to believe that any registered association or umbrella organization has ceased to exist, the Registrar may publish in the Gazette a notice calling upon such association or umbrella organization to furnish the Registrar, within a period of three months from the date of the notice, with proof of its continued existence.

(2) If at the expiration of such period the Registrar is satisfied that the association or umbrella organization has ceased to exist, the Registrar shall cancel the registration of the association or umbrella organization, and shall thereupon publish in the Gazette notice of such cancellation.

(3) If the Registrar is satisfied beyond doubt that a registered association or umbrella organization has ceased to exist, the Registrar may immediately proceed under subsection (2) without having previously published a notice in the Gazette, and the remaining provisions of that subsection shall apply accordingly.

Appeal from order of refusal, cancellation or suspension.

11. (1) Any association or umbrella organization aggrieved by the Registrar's refusal to register it, or by the cancellation or suspension of its registration under section 9 of this Act may, in the case of any other association or umbrella organization, appeal to the Tribunal within thirty days of such refusal, cancellation or suspension.

(2) An association or umbrella organization aggrieved by the decision of the Tribunal under subsection (1) may appeal to the High Court within thirty days on points of law.

Office and postal address.

12. (1) Every registered association or umbrella organization shall have an office and a postal address, and notice of the situation of the office and of the postal address shall be given to the Registrar in the prescribed form on application for registration.

(2) All communications and notices required or authorized to be sent under, or for purposes of this Act or regulations made thereunder may be sent by post addressed to the postal address of the association or umbrella organization.

(3) A notice in the prescribed form of any change of the situation of the office, or of the postal address, of a registered association or umbrella organization shall be given to the Registrar within fourteen days of the change, and the notice shall be signed by three of the registered officers of the association or umbrella organization.

(4) Any registered association or umbrella organization which—

- (a) operates without having an office, or without having a postal address, or without having given notice of the situation of its office or of its postal address as required by subsection (1) ;
- (b) operates at any place to which its office may have been removed without having given notice of the change in the situation thereof to the Registrar as required by subsection (3) ; or
- (c) fails to give notice of any change of its postal address as required by subsection (3) ,

commits an offence.

Change of officers or title of office.

13. (1) A notice in the prescribed form of any change of officers, or of the title of any office, of a registered association or umbrella organization shall be given to the Registrar within fourteen days of the change, and the notice shall be signed by three of the registered officers of the association or umbrella organization.

(2) Any registered association or umbrella organization which fails to give notice as required under subsection (1) commits an offence.

Disputes as to officers.

14. (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered association or umbrella organization as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the association or umbrella organization, the Registrar may, by order in writing, require the association or umbrella organization to produce to him or her, within thirty days of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the association or umbrella organization or of the institution of proceedings for the settlement of such dispute.

(2) If an order under subsection (1) is not complied with to the satisfaction of the Registrar within the period set out in the order or such other longer period as the Registrar may determine, the Registrar may cancel the registration of the association or umbrella organization.

(3) An association or umbrella organization aggrieved by the cancellation of its registration under subsection (2) may appeal to the Tribunal within thirty days of such cancellation.

Contents of constitution or rules.

15. (1) The constitution or rules of every registered association or umbrella organization, formed after the commencement of this Act shall provide, to the satisfaction of the Registrar, for all the matters specified in the First Schedule to this Act and shall not be amended so that it ceases so to provide.

(2) The Registrar may, by order in writing, require any

association or umbrella organization which, at the commencement of this Act, is registered to amend its constitution or rules within three months from the date of the order, to provide for all or any of the matters specified in the First Schedule to this Act, and, notwithstanding its constitution or rules, the association or umbrella organization, for the purpose of complying with the order, shall convene a meeting of the same kind as is required by its constitution or rules for amending its constitution or rules, or if the constitution or rules make no provision for such amendment, the association or umbrella organization shall convene a general meeting of members for the purpose.

(3) If a registered association or umbrella organization contravenes an order given under subsection (2), the association or umbrella organization and every officer thereof each commits an offence, and the association or umbrella organization shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, and every officer shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

(4) An officer shall not be convicted of an offence under subsection (3) if the officer establishes to the satisfaction of the court that he or she exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his or her control.

Consent of Registrar before amending name, constitution, etc.

16. (1) A registered association or umbrella organization shall not—

- (a) amend its name, or its constitution or rules;
- (b) become a branch of, or affiliated to or connected with, any organization or group of a political nature;
- (c) dissolve itself,

except with the prior consent in writing of the Registrar, obtained upon written application to the Registrar signed by three officers of the association or umbrella organization.

(2) An application by an association or umbrella organization to do any of the things specified in subsection (1) shall be accompanied by a copy of the minutes of the meeting at which the resolution to do that thing was passed, certified as a true copy by

three officers of the association or umbrella organization, and the application shall be delivered to the Registrar within fourteen days from the date on which the resolution was passed.

(3) A registered association or umbrella organization which contravenes this section commits an offence.

Restriction of appointment of certain officers, etc.

17. (1) No person who has been convicted of a crime involving fraud or dishonesty shall be appointed or elected—

(a) to the office of treasurer, deputy treasurer or assistant treasurer of a registered association or umbrella organization;

(b) to any other office in such an association or umbrella organization the holder of which is responsible for the collection, disbursement, custody or control of the funds of the association or umbrella organization or for its accounts; or

(c) to be trustee or auditor of such an association or umbrella organization.

(2) An officer of a registered association or umbrella organization shall not be appointed as an auditor of that association or organization.

Purporting to act as officer.

18. Any person who—

(a) acts or purports to act as an officer of a registered association or umbrella organization, and who has not been duly appointed or elected as an officer of that association or umbrella organization; or

(b) having been appointed or elected as an officer of an association or umbrella organization, otherwise than at the time of the formation of the association or umbrella organization, acts as an officer of that association or umbrella organization after the end of the period prescribed by section 41(1) of this Act for giving notice of his or her appointment or election to the Registrar, no such notice having been given within such period,

commits an offence and shall liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

Register of members.

19. (1) Every registered association or umbrella organization shall keep a register of its members in such form as the Registrar may specify or as may be prescribed, and shall cause to be entered therein the name and address of each member, the date of his or her admission to membership and the date on which he or she ceases to be a member.

(2) A registered association or umbrella organization which contravenes subsection (1), and its officers, commits an offence, and the association or umbrella organization shall be liable on conviction to a fine not exceeding one hundred thousand shillings, and every officer shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

(3) An officer shall not be convicted of an offence under subsection (2) if the officer establishes to the satisfaction of the court that he or she exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his or her control.

Books of account.

20. (1) Every registered association or umbrella organization shall keep one or more books of account, and shall cause to be entered therein details of all moneys received and payments made by the association or umbrella organization.

(2) A registered association or umbrella organization which contravenes subsection (1) commits an offence.

Treasurer to render accounts.

21. (1) Subject to the constitution or rules of the association or umbrella organization, every treasurer and every other officer of a registered association or umbrella organization who is responsible for the accounts of the association or umbrella organization or for the collection, disbursement, custody or control of its funds shall—

- (a) at least once in every year at such time as may be specified in the constitution or rules of the association or umbrella organization;
- (b) at any other times at which he or she may be required to do so by a resolution of the members of the association or umbrella organization or by the rules thereof; and
- (c) upon resigning or otherwise vacating his or her office,

render to the association or umbrella organization and its members a full and true account of all moneys received and paid by him or her during the period which has elapsed since the date of his or her assuming office or, if he or she has previously rendered an account, since the last date upon which he or she rendered such account, and of the moneys remaining in his or her hands at the time of rendering such account, and of all bonds, securities or other property of the association or umbrella organization entrusted to his or her custody or under his or her control.

(2) After account has been rendered under subsection (1), the treasurer or other officer shall, if he or she is resigning or vacating his or her office or if required to do so, forthwith hand over to the succeeding treasurer or officer, as the case may be, such moneys as appear to be due from him or her, and all bonds, securities, effects, books, papers and property of the association or umbrella organization in his or her hands or otherwise under his or her control.

(3) A treasurer or other officer referred to in subsection (1) who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

Inspection of accounts and documents.

22. (1) A registered association or umbrella organization shall make its books of account and all documents relating thereto, and a list of the members of the association or umbrella organization, available for inspection by—

- (a) any officer or member of the association or umbrella organization at such place and at such times as may be provided for in the constitution or rules of the association or umbrella organization; or

- (b) the Registrar, or by any person authorized by him or her in writing in that behalf, at the office of the Registrar at any reasonable time specified by him or her, if so required in writing by the Registrar.

(2) A registered association or umbrella organization which fails to make available to the Registrar, at his or her office and at the specified time, any books of account, documents or lists of members which he or she has been required under subsection (1) to make so available commits an offence.

(3) A person who obstructs the Registrar or any such authorized person in the carrying out of an inspection under subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Meetings of an association or umbrella organization.

23. (1) Every registered association or umbrella organization shall, at least once in every year, hold a general meeting to which all its members shall be invited, and shall at such meeting—

- (a) render a full and true account of the moneys received and paid by the association or umbrella organization, such account being audited in accordance with the rules of the association or umbrella organization; and
- (b) cause to be elected or appointed all such officers, trustees and auditors and, where applicable, such committees as are required in accordance with the constitution and rules of the association or umbrella organization.

(2) A registered association or umbrella organization which contravenes subsection (1) commits an offence.

Annual returns.

24. (1) Every registered association or umbrella organization shall furnish annually to the Registrar, on or before the prescribed date, such returns, accounts and other documents as may be prescribed.

(2) If any return, account or other document furnished under subsection (1) is incomplete in any material particulars, it shall be taken not to have been furnished for the purposes of subsection

(1).

(3) A registered association or umbrella organization which contravenes subsection (1) commits an offence.

(4) A person who wilfully makes or orders or causes or procures to be made any false entry in or omission from any return, account or other document furnished under this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred-thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

Registrar to call for information and accounts.

25. (1) Where the Registrar has reasonable cause to believe that circumstances have arisen which render it expedient for the proper performance of his or her functions under this Act so to do, he or she may, by order in writing, require any registered association or umbrella organization to furnish him or her with—

- (a) a true and complete copy of its constitution or rules;
- (b) a true and complete list of its officers and members;
- (c) a true and complete copy of the minutes of any meeting held by the association or umbrella organization at which officers of the association or umbrella organization were elected or appointed or are ostensibly appointed or elected;
- (d) a true and complete return of the number of meetings held by the association or umbrella organization during such period as the Registrar may determine, stating the place or places at which such meetings were held;
- (e) the audited accounts of the association or umbrella organization covering such period as the Registrar deems necessary for the purpose for which the order is made; and
- (f) such other accounts, returns and other information as may be prescribed.

(2) An order given under subsection (1) shall require compliance therewith within such period as may be specified in the order, which shall not be less than twenty-one days in respect of the documents specified in subsection (1) (a), (b), (c), (d) and (f),

and not less than sixty days in respect of the documents specified in subsection (1) (e), but the Registrar may, upon application, extend the period.

(3) Where the Registrar ordered the auditing of accounts under subsection (1) (e), the cost of the audit shall be paid out of the funds of the association or umbrella organization in respect of which the order is made, unless the Registrar otherwise directs.

(4) An association or umbrella organization which, on the ground of its failure to comply with an order to furnish duly audited accounts under this section, has had its registration cancelled under section 36 shall not be registered again, and no association or umbrella organization which, in the opinion of the Registrar, is a successor of such an association or umbrella organization, shall be registered, unless in either case, in addition to compliance with the provisions of this Act concerning registration, the application for registration is accompanied by the duly audited accounts required by the order.

(5) A registered association or umbrella organization which fails to comply with an order given under subsection (1) commits an offence.

(6) If any information or document furnished to the Registrar in pursuance of an order given under this section is false, incorrect or incomplete in any material particular, there shall be deemed to have been no compliance with such order.

(7) In this Section, the expression "audited" means audited by a person approved by the Registrar.

Discretion to publish certain information.

26. The Registrar may, where it appears to him or her to be in the interests of the members of any association or umbrella organization, publish in the Gazette, or by advertisement in any newspaper or in any other manner he or she may deem necessary, any information received by him or her under section 43 or 53 of this Act.

Power to investigate.

27. (1) The Registrar or any administrative officer or any police officer of or above the rank of Senior Sergeant (in this section referred to as the requiring officer) may, in writing, require any person who he or she has reason to believe is able to give any

information as, to the existence or operation of any unlawful association or umbrella organization, or suspected unlawful association or umbrella organization, or as to the operations of any registered association or umbrella organization, or as to the operations or property of a association or umbrella organization which has been dissolved or has otherwise ceased to exist, to attend before him or her at a specified time, and such attendance may be required at any police station or police office situated within the district in which that person resides, or for the time being is or is found, or at the office of any administrative officer within such district, or at the office of the Registrar.

(2) Any person who, without reasonable cause, fails to comply with a requirement made under subsection (1) or, having attended in compliance therewith, refuses or fails to give his or her correct name and address and to answer truly all questions that may be properly put to him or her, and to produce all documents in his or her custody, possession or power relating to such association or umbrella organization or suspected association or umbrella organization which he or she has been required to produce, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(3) The requiring officer may record in writing any statement made to him or her by the person attending before him or her, whether such person is suspected of having committed an offence under any law or not, and any such written statement shall be signed by the person making it after it has been read to him or her in a language which he or she understands, and after he or she has been invited to make any correction he or she may wish.

(4) If any person does anything which constitutes an offence under subsection (2), the requiring officer may, if he or she considers it advisable to provide for the future identification of such person, order that a photograph and impressions of fingerprints of such person be taken, and section 21 (but not including the proviso to subsection (1) thereof) of the Police Act Cap. 84 shall apply accordingly as though the person were in lawful custody.

Determination of micro and small enterprises.

28. (1) The Cabinet Secretary may, in consultation with the Authority, by regulation, prescribe measures for—

- (a) determining categories of micro and small enterprises to be assisted subject to section 31 of this Act;

(b) determining the kind of assistance to be rendered.

2) In determining the categories of micro and small enterprises to be assisted, the Cabinet Secretary shall consider the potential and viability of the enterprise.

PART III—THE MICRO AND SMALL ENTERPRISES AUTHORITY

Establishment of the Authority.

29. (1) There is established an authority to be known as the Micro and Small Enterprises Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Composition of the Authority.

30. (1) The Authority shall consist of—

- (a) a non-executive chairperson, who shall be a person with knowledge, and at least ten years experience, in business and entrepreneurship development or a related field, appointed by the President;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to micro and small enterprises development or his or her representative appointed in writing;

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- (c) the Principal Secretary of the Ministry for the time being responsible for finance or his or her representative appointed in writing;
 - (d) the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialization or his or her representative appointed in writing;
 - (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to trade or his or her representative appointed in writing;
 - (f) the Principal Secretary of the Ministry for the time being responsible for matters relating to the youth or his or her representative appointed in writing;
 - (g) seven persons nominated as follows and appointed by the Cabinet Secretary—
 - (i) four persons nominated by the umbrella organization from the following national sectoral associations—
 - (aa) manufacturing;
 - (bb) traders;
 - (cc) services;
 - (dd) agri-business;
 - (ii) one person nominated by the most representative association of women engaged in micro and small enterprises;
 - (iii) one person nominated by the most representative association of youth engaged in micro and small enterprises;
 - (iv) one person nominated by the most representative association of persons with disability engaged in micro and small enterprises;
 - (h) one person nominated by the most representative private sector organization with national membership and having micro and small enterprise support programs;

- (i) one person nominated by the most representative umbrella organization of micro finance institutions;
- (j) one person, not being a public officer, with knowledge and at least ten years' experience in micro and small enterprise development;
- (k) one person nominated by the umbrella association of workers;
- (l) the Chief Executive officer.

(2) The Authority may co-opt to serve on it for such length of time as it deems necessary any number of persons whose assistance or advice it may require, but a person so co-opted shall neither be entitled to vote in a meeting of the Authority nor be counted as a member thereof for the purpose of forming a quorum.

(3) A person shall not qualify for appointment as a member of the Authority unless such person is the holder of a minimum Kenya Certificate of Secondary Education or an equivalent qualification and has at least five years practical experience in matters related to micro and small enterprises.

Functions of the Authority.

31. The functions of the Authority shall be to—

- (a) formulate and review policies and programs, for micro and small enterprises;
- (b) monitor and evaluate the implementation of existing policies and programmes related to, or affecting, micro and small enterprises and advise the Government on appropriate policies and course of action to be taken;
- (c) coordinate, harmonize and facilitate the integration of various public and private sector activities, programmes and development plans relating to micro and small enterprises;
- (d) promote and facilitate research, product development and patenting in the micro and small enterprises sector;
- (e) promote the mainstreaming of youth, gender and persons with disabilities in all micro and small enterprises activities and programs;

- (f) mobilize resources for the development of micro and small enterprise sector;
- (g) promote access to markets by micro and small enterprises;
- (h) promote innovation and development of products by micro and small enterprises;
- (i) formulate capacity building programmes for micro and small enterprises;
- (j) facilitate technology development, acquisition and transfer by micro and small enterprises;
- (k) develop mechanisms, tools and programs for collection of comprehensive data disaggregated by sex, region and age among others, in collaboration with key stakeholders, to enable proper planning for the, micro and small enterprises sector.

Powers of the Authority.

32. The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;

- (f) open such banking accounts for its funds as may be necessary;
- (g) invest any funds of the Authority not immediately required for its purposes;
- (h) offer services to any person upon such terms as the Authority may from time to time determine;
- (i) undertake any activity necessary for the fulfilment of any of its functions.

Conduct of business and affairs of the Authority.

33. (1) The conduct and regulation of the business and affairs of the Authority shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Authority may regulate its own procedure.

Delegation by the Authority.

34. The Authority may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

Chief Executive Officer.

35. (1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Authority through a competitive process.

(2) The Chief Executive Officer shall hold office for a period of five years, on such terms and conditions of employment as the Authority may determine, and shall be eligible for re-appointment for a further and final term of five years.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Authority but shall have no right to vote at any meeting of the Authority.

(4) The Chief Executive Officer shall—

- (a) subject to the direction of the Authority, be responsible for the day-to-day management of the Authority;

- (b) in consultation with the Authority, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Authority;
- (c) be the Secretary of the Authority.

Qualifications for appointment as Chief Executive officer.

36. A person shall not be appointed the Chief Executive officer of the Authority unless that person has—

- (a) experience in micro and small enterprise development and entrepreneurship;
- (b) proven leadership ability;
- (c) management experience in the areas of both personnel and budget control.

Staff.

37. The Authority may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Authority may determine.

Common seal.

38. (1) The common seal of the Authority shall be kept in the custody of the Chief Executive officer or of such other person as the Authority may direct, and shall not be used except upon the order of the Authority.

(2) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Authority under this section shall be presumed to have been duly given.

(3) The common seal of the Authority shall be authenticated by the signature of the chairperson of the Authority and the Chief Executive officer, but the Authority shall, in the absence of either the chairperson or the Chief Executive officer, in any particular matter, nominate one member of the Authority to authenticate the seal of the Authority on behalf of either the chairperson or the Chief Executive officer.

Protection from personal liability.

39. (1) No matter or thing done by a member of the Authority or by any officer, member of staff, or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of, the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against him in any court, in respect of any act which is done or purported to be done by him under the direction of the Authority, shall, if the court holds that such act was done *bona fide*, be paid out of the general funds of the Authority, unless such expenses are recovered by him in such suit or prosecution.

Liability for damages.

40. The provisions of section 39 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

PART IV—FINANCIAL PROVISIONS**Funds of the Authority.**

41. (1) The funds and assets of the Authority shall consist of—

- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such moneys as may be payable to the Authority pursuant to this Act or any other written law;
- (c) such gifts as may be given to the Authority; and
- (d) all moneys from any other source provided, donated or lent to the Authority.

(2) All the funds of the Authority and the balance at the end of each financial year shall be retained for the purposes for which the Authority is established and shall, for that purpose, establish a

reserve account.

Financial year.

42. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

43. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of its revenue and expenditure for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for the—

- (a) payment of the salaries, allowances and other charges in respect of members and staff of the Authority;
- (b) payment of pensions, gratuities and other charges in respect of members and staff of the Authority;
- (c) proper maintenance of the buildings and grounds of the Authority;
- (d) maintenance, repair and replacement of the equipment and other property of the Authority; and
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Authority may deem appropriate.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorisation of the Authority given with prior written approval of the Cabinet Secretary, and the Principal Secretary to the Treasury.

Accounts and audit.

44. (1) The Authority shall cause to be kept proper books and records of accounts of its income, expenditure and assets.

(2) Within a period of three months after the end of each financial year, the Authority shall submit to the Auditor-General, the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (No.12 of 2003).

Investment of funds.

45.(1) The Authority may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

(2) The Authority may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Authority.

PART V—DEVELOPMENT AND PROMOTION OF MICRO
AND SMALL ENTERPRISES

Authority to advise on zoning, etc, of land.

46. The Authority shall advise and liaise with the relevant authorities for the earmarking and zoning out of land for the development of micro and small enterprises.

Development of infrastructure.

47. The Authority shall advise and facilitate the relevant Government Ministries and other agencies in developing worksite management policy, provide suitable infrastructure, including worksites, social amenities, business information centres, model centres of excellence, common usage facilities and other facilities necessary for development of micro and small enterprises.

Capacity building programmes for micro and small enterprises.

48. The Authority shall, in partnership with the relevant Government Ministries, agencies and public and private training institutions, as the Authority may deem necessary—

- a) develop and administer certified demand- driven capacity building and entrepreneurship programmes;
- b) promote the technological modernization and development of micro and small enterprises;
- c) promote and provide business development services for the micro and small enterprises.

Development of markets and provision of marketing services.

49. In order to promote the development of market for goods and services from micro and small enterprises, the Authority shall, in partnership with the relevant Government Ministries and agencies and other stakeholders—

- (a) provide technical assistance in the development of products;
- (b) identify markets for products generated by micro and small enterprises and provide linkages between the micro and small enterprises and potential markets;
- (c) organize trade fairs and shows in order to promote products generated by micro and small enterprises;
- (d) conduct market research, survey and analysis.

Technology transfer, acquisition, etc.

50. The Authority shall, in order to promote technology transfer, acquisition and adaptation of new and modern technologies—

- (a) mobilise funds and resources for the development of appropriate technology in relevant research institutions and enterprises that develop technology for the micro and small enterprises sector;
- (b) encourage innovation and transfer of technology- in order to increase competitiveness of micro and small enterprises products and services;

- (c) facilitate the registration and protection of intellectual property rights for micro and small enterprises;
- (d) provide incentives to encourage invention and innovation by micro and small enterprises;
- (e) establish regional and other centres of excellence to enhance utilization of locally available knowledge, skills and resources;
- (f) establish technology parks for graduating micro and small enterprises;
- (g) identify, collect, develop, modify, package and disseminate technology and products to the micro and small enterprises;
- (h) develop in collaboration with relevant institutions, programmes in standardization and product development for different sectors;
- (i) facilitate micro and small enterprises to access relevant equipment either through, purchasing, leasing or franchising;
- (j) develop programmes to enable micro and small enterprises comply with environmental legislation;
- (k) conduct research on available technologies with a view to improving them;
- (l) import modern and appropriate technologies for use by micro and small enterprises;
- (m) develop, in collaboration with relevant institutions, programmes for improving credit access and other financial services by micro and small enterprises.

Micro and Small Enterprises Development Fund.

51. (1) There is hereby established a Fund to be known as the Micro and Small Enterprises Development Fund.

(2) The purpose of the fund shall be to—

- (a) finance the promotion and development of micro and small enterprises in accordance with this Act;
- (b) provide affordable and accessible credit to micro and small enterprises;
- (c) finance capacity building of micro and small enterprises;
- (d) finance research, development, innovation and transfer of technology.

(3) The Cabinet Secretary may, by notice in the Gazette, fix the size of the Fund sufficient to facilitate the promotion and development, of micro and small enterprises.

(4) The Fund shall consist of—

- (a) such monies or assets as may accrue to or vest in the Fund under this Act;
- (b) such moneys as may be payable to the Fund pursuant to this Act or any other written law;
- (c) interest accruing on the Fund;
- (d) such gifts as may be given to the Fund; and
- (e) all moneys from any other source provided, donated or lent to the Fund.

(5) The monies constituting the Fund shall be placed in an account to be used for the promotion and development of micro and small enterprises, and the surplus monies of the fund shall be invested by the Authority 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.

52. (1) The Authority shall administer the Fund.

(2) In administering the Fund, the Authority shall be responsible for—

- (a) entering into agreements with financial institutions for the purpose of administering affordable and accessible credit to micro and small enterprises;

- (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) causing to be kept books of accounts and other records in relation to the Fund, and preparing, signing and transmitting to the 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, 2003 (No. 12 of 2003).

Accessing the Fund.

53.(1) Any community-based organisation, non-governmental organisations, association, umbrella organization, or any other institution involved in the promotion and development of the micro and small enterprise sector activities may, on application to the Authority, access funds for various micro and small enterprise programmes.

(2) Any association or umbrella organization registered under this Act may, on an application to the Authority, access funds by way of loan, factoring, guarantee and micro-insurance from the Fund for the benefit of its members.

(3) The Cabinet Secretary may, in consultation with the Authority, by Regulations make provision for—

- (a) the procedure to be followed by a person seeking to access funds from the Fund;
- (b) forms to be used while making an application under this section;
- (c) the amounts that may be accessed;
- (d) the kind of securities that may be given by an applicant under this section;

- (e) the rates of interest on the loan; or
- (f) the maximum period of loan repayment.

(4) The organization of the management and the Regulations governing the Fund receipts and expenses, custody and use shall be drawn up by the Authority.

PART VI—SETTLEMENT OF DISPUTES

Establishment of the Tribunal.

54. (1) There is hereby established a Tribunal to be known as the Micro and Small Enterprises Tribunal to deal with claims enumerated in section 56 of this Act.

(2) The Tribunal shall consist of the following members—

- (a) a chairperson and vice- chairperson nominated by the Judicial Service Commission, who shall be persons qualified for appointment as Judges of the High Court, and appointed by the Cabinet Secretary;
- (b) an advocate of High Court of Kenya, with experience of not less than seven years, nominated by the Law Society of Kenya and appointed by the Cabinet Secretary;
- (c) two advocates with expertise in micro and small enterprises matters one of whom shall be the secretary, appointed by the Cabinet Secretary; and
- (d) two persons who have demonstrated exemplary competence in the field of micro and small enterprises management appointed by the Cabinet Secretary in consultation with the Authority.

(3) All appointments to the Tribunal shall be notified through a Gazette Notice.

(4) The chairperson, vice-chairperson and members of the Tribunal shall hold office for a term of five years and shall be eligible for reappointment for one further and final term of five years.

(5) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of five years from the date of his or her appointment;
- (b) if he or she accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible for appointment to the office of a member of the Tribunal;
- (c) if he or she is removed from office by the Cabinet Secretary for failure to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; and
- (d) if he or she resigns the office of a member of the Tribunal.

Jurisdiction of the Tribunal.

55. (1) If any dispute concerning the micro and small enterprises arises—

- (a) among members, past members and persons claiming through members, past members of associations and or administrators of estate of deceased members of the associations;
- (b) between members, past members or administrators of estate of deceased members of the association, and the Authority, or any of their officers or members;
- (c) between the Authority and an association,

it shall be referred to the Tribunal for determination.

(2) A dispute for the purpose of this Act shall include—

- (a) commercial disputes involving micro and small enterprises;
- (b) failure to comply with the terms and condition of allocation of worksites;
- (c) election and management of associations;
- (d) failure to comply with the constitution or rules of a micro and small enterprise association or umbrella organisation;

- (e) unprocedural and illegal allocation, subdivision, subletting of a micro and small enterprise worksite;
- (f) mismanagement and misappropriation of funds;
- (g) any other dispute acceptable by the Tribunal.

Proceedings of the Tribunal.

56. (1) The provisions of the Evidence Act (Cap. 80) shall not apply to the Tribunal.

(2) The Tribunal shall, upon an application made to it in writing by any party, or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case maybe.

(3) The Tribunal shall sit at such times and in such places as it may appoint.

(4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings.

Award of the Tribunal.

57. (1) The Tribunal may—

- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths, or
- (c) on its own motion, summon and hear any person as witness.

- (2) Any person who—
- (a) fails to attend the Tribunal after having been required to do so under subsection (1) (a);
 - (b) refuses to take oath or affirmation before the Tribunal or to answer satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her in any proceedings before the Tribunal, or to produce any article or document when required to do so by the Tribunal;
 - (c) being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal, without any lawful cause;
 - (d) knowingly gives false evidence or information which he or she knows to be misleading before the Tribunal; or
 - (e) at any sitting of the Tribunal—
 - (i) wilfully insults any member or officer of the Tribunal;
 - (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;
 - (f) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal,

commits an offence.

(3) Where the Tribunal enters judgement in terms of the award together with costs, it shall issue a decree, inclusive of penalties for non-compliance, which shall be enforceable as a decree of a court.

(4) If, after making an order, the Tribunal discovers that the order was based on a misrepresentation or a concealment of a material fact by either party to the dispute, the Tribunal may order the party guilty of the misrepresentation or concealment to pay the other party such sum as is, in the opinion of the Tribunal, sufficient compensation for any damage or loss suffered by the party as a result of the misrepresentation or concealment.

Quorum of the Tribunal.

58. (1) For the purposes of hearing and determining any cause or matter under this Act, the chairperson or vice-chairperson

and two members of the Tribunal shall form a quorum.

(2) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(3) Any matter considered by the Tribunal shall be decided by the votes of the majority of the members constituting the Tribunal and voting, and the person presiding shall have a casting as well as a deliberative vote.

Provided that any point of law arising, in any proceeding before the Tribunal shall be reserved to, and pronounced upon, by the person presiding exclusively.

(4) Notwithstanding any other provision of this Act, the Chairperson of the Tribunal acting alone shall have jurisdiction to deal with temporary injunctions.

(5) Any power conferred or duty imposed by or under this Act on the chairperson may unless a contrary intention appear, be exercised or performed by the vice-chairperson of the Tribunal if—

- (a) the chairperson is unable to exercise or perform that power or duty owing to illness or absence;
- (b) the chairperson authorises the vice-chairperson to exercise or perform that power or duty.

Appeals to the Tribunal.

59. (1) Any person who is aggrieved by—

- (a) a refusal by the Registrar to grant or recommend registration of association under this Act or regulations made thereunder;
- (b) the imposition of any condition, limitation or restriction on the registration of association under this Act or regulations made there under;
- (c) the revocation, suspension or variation of registration certificate under this Act or regulations made there under;
- (d) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Registrar or the chief executive officer to make decisions, such decisions may be subjected to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal, for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including an order for costs, as it may deem just.

(4) Upon any appeal to the Tribunal under this section, the *status quo* of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

Appeals to the High Court.

60. (1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced, until the appeal has been determined.

(3) Upon the hearing of an appeal under this, the High Court may—

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem necessary to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connections with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

(4) The decision of the High Court on any appeal under this section shall be final.

Power to appointment assessors.

61. The chairperson of the Tribunal may appoint any persons with special skills or knowledge on micro and small enterprises issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Power to seek the directions of the Tribunal in complex matters, etc.

62. (1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law or to be of unusual importance or complexity, it may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction.

(2) Where any matter has been referred to the Tribunal under subsection(1), the Authority and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an advocate.

Representation.

63. A person who is a party to proceedings before the Tribunal may appear in person or be represented by an advocate.

Immunity.

64. (1) The chairperson or other members of the Tribunal shall not be liable to be sued for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction:

Provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of.

(2) It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish such person for contempt in accordance with

the provisions of this Act.

Expenses of the Tribunal, etc.

65. (1) The expenses of the Tribunal for the conduct of its business shall be met from the funds of the Authority.

(2) There shall be paid to the chairperson, vice- chairperson and the members of the Tribunal such remuneration and allowances as the Cabinet Secretary may, in consultation with the Authority, determine from time to time.

PART VII—MISCELLANEOUS PROVISIONS

Proceedings against associations or umbrella organization.

66. (1) Where an association or umbrella organization is charged with an offence under this Act or any rules made thereunder, the association or umbrella organization may appear by a representative, who may enter a plea on behalf of the association or umbrella organization and conduct the association or umbrella organization's defence on its behalf.

(2) In this section, "representative" in relation to an association or umbrella organization means a person who the court is satisfied has been duly appointed in writing by the association or umbrella organization to represent it, but a person so appointed shall not by virtue of such appointment be qualified to act on behalf of the association or umbrella organization before any court for any purposes other than those specified in this section.

General penalty.

67. (1) Where an association or umbrella organization is convicted of an offence under this Act for which no penalty is expressly provided, the association or umbrella organization shall be liable to a fine not exceeding one hundred thousand shillings, and in addition every officer thereof commits the like offence and shall be liable to the like fine or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

(2) An officer shall not be convicted of an offence under subsection (1) if he or she establishes to the satisfaction of the court that he or she exercised due diligence to prevent its commission and that the offence occurred by reason of matters beyond his or her control.

Admissibility of certified copies and extracts.

68. (1) In any legal proceedings, a paper purporting to be a copy of or an extract from any register or document kept by the Registrar, and purporting to be certified by him or her as a true copy or extract as aforesaid, shall be admissible as prima facie evidence of the contents of such register or document.

(2) In the absence of evidence to the contrary, it shall be presumed that the signature on any such certificate is genuine and that the person signing it held the office and qualifications which he or she professed to hold at the time when he or she signed it.

(3) No process for compelling the production of any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process which is so issued shall bear a statement that it is issued with the leave of the court.

(4) The Registrar shall not, in any legal proceedings to which he or she is not a party, be compelled to—

- (a) produce any document the contents of which can be proved under subsection (1) ; or
- (b) appear as a witness to prove the matters, transactions or accounts recorded in any such document, unless the court for special cause so orders.

Inspection of documents by public.

69. On payment of the prescribed fees, any person may inspect at the office of the Registrar the register and any documents relating to any association or umbrella organization lodged with the Registrar under this Act, and may obtain from the Registrar a copy of or extract from such register or document.

Orders binding if served.

70. An order given by the Registrar to any association or umbrella organization under this Act shall be binding—

- (a) upon the association or umbrella organization if served in accordance with section 72 (1) of this Act; and
- (b) upon every officer thereof upon whom the order or a copy thereof is served.

Service of summons.

71. (1) Every order, notice, summons or other document issued under this Act or under any rule made there under shall be validly served—

- (a) on an association or umbrella organization, if it is sent by registered post addressed to it at its registered postal address; or
- (b) on an individual, if it is served or is sent by registered post addressed to him or her at the registered postal address of the association or umbrella organization with which he/her is concerned.

(2) Any document served by being sent by registered post shall be deemed to have reached the person or association or umbrella organization to whom or to which it is addressed at the end of seven days from the day in which it is posted.

Indemnification of public officers.

72. No suit shall lie against any public officer for anything done or omitted to be done by him or her in good faith and without negligence in the intended exercise of any power or the intended performance of any duty conferred or imposed on him or her by or under this Act.

Annual report.

73. (1) The Authority shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Authority for the immediately preceding year.

(2) The annual report shall provide information regarding the activities and plans of the Authority during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and, without limitation, shall include—

- (a) details of the performance of the Authority against its key performance indicators;
- (b) report on the overall status, progress, impact and challenges or impediments in the implementation of the micro and small enterprises development policies and programmes as well as the appropriate measures to

address any challenges that should be taken by the various Government Ministries or Departments, including the Authority's projections;

- (c) a report on the growth and development of micro and small enterprises in the country;
- (d) such information and other material as the Authority may be required by this Act or regulations made thereunder to include in the annual report; and
- (e) such additional information or other material as the Cabinet Secretary may request in writing.

(3) In addition to what is required under subsection (2), the annual report shall include the financial statements of the Authority for the year to which the report relates.

(3)The Cabinet Secretary shall, within three months after receiving the annual report, transmit it to the Clerk of the National Assembly for tabling before the National Assembly.

Regulations.

74. (1) The Cabinet Secretary may, in consultation with the Authority, make Regulations for prescribing anything which under this Act may be prescribed, and generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), Regulations made under this section may provide for all or any of the following matters--

- (a) forms and fees or any levies to be used under this Act;
- (b) regulation and .licensing of business development service providers;
- (c) access of loans granted under section 53 (2) by micro and small enterprises;
- (d) prescribing the form of accounts to be used by associations or umbrella organization;
- (e) securing the submission to the Registrar of periodical returns relating to the constitution, rules, membership and management of associations or umbrella organization;

- (f) prescribing penalties for the breach of any such regulations.

Transition.

75. An association or umbrella organization previously registered under any written law shall be deemed to have been registered under this Act and shall operate subject to modifications as shall be necessary to give effect to this Act.

FIRST SCHEDULE

MATTERS TO BE PROVIDED FOR IN THE
CONSTITUTION OR RULES OF EVERY ASSOCIATION OR
UMBRELLA ORGANIZATION

1. The name of the association or umbrella organization.
2. The whole of the objects for which the association or umbrella organization is to be established.
3. The persons to whom membership is open.
4. The rates of entrance and subscription fees (if any) for membership.
5. The method of suspension or expulsion of members.
6. The titles of officers, trustees and auditors and their terms of office, and the method of their election, appointment, dismissal and suspension.
7. The composition of committees (if any) of the association or umbrella organization, the terms of office of members of such committees and the method of their election, appointment, dismissal and suspension.
8. The authority for and the method of filling vacancies on committees.
9. The frequency of, quorums for and dates of the general meetings referred to in section 52 of this Act.
10. The custody and investment of the funds and property of

the association or umbrella organization, and the designation of the persons responsible therefore.

11. The purposes for which the funds may be used, and in particular the prohibition of the distribution of funds among members.
12. The inspection of books and list of members of an association or umbrella organization, by any member or officer, under section 51 (1) of this Act.
13. The annual or periodical audit of accounts.
14. The formation of branches, if branches may be formed.
15. The manner of amending the name, constitution or rules of the association or umbrella organization.
16. The manner of the dissolution of the association or umbrella organization and the disposal of its property on dissolution.

SECOND SCHEDULE (s. 33)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY

Tenure of office.

1. Any member of the Authority, other than an *ex-officio* member shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re- appointment for a further and final-term of three years.

Vacation of office.

2. A member of the Authority, other than an *ex-officio* member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;

- (b) be removed from office by the Cabinet Secretary if the member—
- (i) has been absent from three consecutive meetings of the Authority without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme of arrangement with his creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Authority; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure.

Meetings.

3. (1) The Authority shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least seven members shall, convene a special meeting of the Authority at any time for the transaction of the business of the Authority.

(3) Unless three quarters of the total members of the Authority otherwise agree, at least fourteen days' written notice of every meeting of the Authority shall be given to every member of Authority.

(4) The quorum for the conduct of the business of the Authority shall be eight members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Authority at which he is present but, in his absence, the members

present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Authority shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Authority shall be invalid by reason only of a vacancy among the members thereof.

Conflict of interest.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Authority and is present at a meeting of the Authority at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Authority may permit the member to participate in the deliberations subject to such restrictions, as it may impose but such member shall not have the right to vote on the matter in question.

(2) A member of the Authority shall be considered to have a conflict of interest for the purposes of this Act if he acquires any pecuniary or other interest that could conflict with the proper performance of his duties as a member or employee of the Authority.

(3) Where the Authority becomes aware that a member has a conflict of interest in relation to any matter before the Authority, the Authority shall direct the member to refrain from taking part, or taking any further part, in the consideration or determination of the matter.

(4) If the chairperson has a conflict of interest he shall, in

addition to complying with the other provisions of this section, disclose the conflict that exists to the Cabinet Secretary in writing.

(5) Upon the Authority becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Authority and the member with the conflict of interest shall not vote on this determination.

(6) Where the Authority determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in subparagraph (1), the member shall resign unless the member has eliminated the conflict to the satisfaction of the Authority within thirty days.

(7) The Authority shall report to the Cabinet Secretary any determination by the Authority that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Authority.

(8) The annual report of the Authority shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(9) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(10) A member of the Authority who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

Code of conduct.

5. (1) Within twelve months of the commencement of this Act, the Authority shall adopt a code of conduct prescribing standards of behaviour to be observed by the members and staff of the Authority in the performance of their duties.

(2) Subject to sub-paragraph (1), before adopting any code of conduct or making any substantial amendments to an existing code of conduct, the Authority shall publish the proposed code or amendments in the Gazette and in a newspaper circulating nationally, inviting public comments.

(3) The Authority shall include in its annual report a report on

compliance with the code during the period covered by the annual report.

(4) The code of conduct adopted or prescribed under this paragraph shall be binding on the Authority and its staff.

Execution of instruments.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Authority for that purpose.

Authority to be entered in books kept for that purpose.

7. The Authority shall cause minutes of all resolutions and proceedings of meetings of the Authority to be entered in books kept for that purpose.

