

DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

**COMPARATIVE ANALYSIS OF SMME LEGISLATION FROM EIGHT COUNTRIES
TO THE NATIONAL SMALL BUSINESS ACT NO 102 OF 1996, AS AMENDED IN
2003 AND 2004**

FINAL REPORT



**small business
development**

Department:
Small Business Development
REPUBLIC OF SOUTH AFRICA

This report presents the results of a comparative analysis of South Africa's National Small Business Act (No. 102) of 1996 with small business legislation in eight other jurisdictions – Brazil, India, Kenya, Malaysia, Nigeria, Taiwan, United Kingdom, and United States. The purpose of the analysis was to gain an understanding of the legislative and regulatory measures that the countries under study have adopted to stimulate, support and grow their small business sector, with a view to ascertaining best practices and innovative approaches that South Africa could learn from. This knowledge would, in turn, enhance the amendment of the National Small Business Act currently underway. The terms of reference for the study required the study to answer four questions:

1. How does South Africa compare on major indicators of Small Business Acts against the eight chosen countries?
2. What do outcome indicators reflect about the relative strengths and weaknesses of South Africa's Small Business Act vis-à-vis the comparison countries?
3. Where are the largest deviations – positive and negative – from the benchmarks?
4. How can the eight country comparisons be useful for policy purposes, in particular regarding the review of South Africa's Small Business Act?

The study found the European Union's (EU) Small Business Act to be a useful framework for analysis and therefore adopted it as the basis for analysing the eight countries' small business legislations and for comparison with South African legislation. An adaptation of the EU's Small Business Act is appended to the report. After presenting the process followed in selecting the eight comparison countries, the report goes on to present a detailed analysis of the various countries' legislations, using the EU Small Business Act framework. It concludes with a presentation of key lessons for South Africa.

The analysis found a considerable degree of variation among the various countries' small business laws, in terms of both focus and content. Some laws are more administrative and procedural in form, whereas others are more substantive. South Africa's legislation leans more towards the former category, rather than the latter. The majority of laws, though not all, provide for the establishment of a national agency for small business promotion and provide guidelines for its governance and operations. Overall, the main findings of the study that are considered to offer important lessons for South Africa are as follows:

1. Sharing of borrower credit information between financiers and credit reference agencies. The so-called ‘thin credit files’, that is, limited credit information on the borrower, is one of the key inhibitors to access to credit for SMMEs. Therefore, sharing of client credit information plays an important role in helping SMMEs build a credit profile, which, in turn, is an important factor in accessing credit. Legislating the sharing of not just negative but also positive credit information is a critical step in assisting SMMEs build their credit history, which in turn improves their chances of accessing credit. In the UK, sharing of client information, subject to the client’s approval and other stipulations, is prescribed in small business legislation.

2. Prevention of prohibition of session of receivables. The ability to cede their receivables in order to access credit is an important access to finance enabler for SMMEs, yet cession of government contracts is prohibited in South Africa. To facilitate access to finance, UK small business legislation prevents prohibition of cession of receivables, granting power to invalidate, completely or under certain conditions, certain restrictive terms of business contracts, specifically those preventing assignment to a non-contracting party of the right to be paid under the contract.

3. Simplification of procedures for small businesses. Regulatory and administrative simplification is an important measure to ease the administrative and cost burdens imposed on small businesses by government legislation, regulations and compliance procedures. Brazilian small business legislation places strong emphasis on general simplification of procedures for micro and small enterprises and strongly promotes differentiated and favoured treatment of these enterprises.

4. Dealing with late payment. Late payment is generally acknowledged as one of the key challenges facing SMMEs. India’s Micro and Small Enterprise Facilitation Council and its alternative dispute resolution mechanism are noteworthy innovations in this context. In India and the UK, small business legislation takes a firm stance on reporting relating to late payment to suppliers. India’s tax treatment of overdue amounts owing to a small business supplier, and penalties for contravening the late payment provisions are all important legislative instruments for dealing with the late payment problem. Malaysia’s legislation, too, stipulates that an employee of SME Corporation, the country’s small business support agency, can be charged for failing to make payment, or for being responsible for delays in the payment.

5. Special tax treatment. Taiwan legislation provides for the granting of special tax treatment, under certain specified conditions, thereby enabling the innovative use of taxation as a tool to achieve certain specific goals relating to SME development, technology diffusion and employment promotion.

6. Research, development and technology transfer. More than any of the comparison countries, the USA's legislation places extensive emphasis on promoting research and development and technology transfer as instruments to strengthen the competitiveness of SMEs. It holds key lessons for South Africa in this area.

7. Special treatment of designated groups in government procurement. US legislation makes extensive provision for special treatment of military veterans, women, ethnic minorities and other designated groups in government procurement. These include set-asides, sole supplier sourcing, restricted competition contract awards, and preferential treatment for SMMEs in disaster zones. The legislated reporting requirements placed on federal agencies in relation to their small business procurement practices are also noteworthy.

8. Accreditation and licensing of business development service providers. Kenya's legislation is unique in providing for the regulation and licensing of business development services providers serving micro and small enterprises. This is an important provision for ensuring that services offered to small businesses are of acceptable universal quality and standards.

9. Regulation of business associations. Kenya is also unique in providing extensively for the regulation of business associations. While South Africa's 1995 White Paper makes reference to membership of business associations being a pre-requisite for small businesses to be eligible for State support, this requirement is not legislated. The country has in the past experienced several challenges associated with some key business organisations. Moreover, weak membership bases and associated membership fee income has left many of these organisations, particularly those serving only small businesses, without adequate resources to build the requisite capacity to offer quality services to members. Kenya's legislation would be worth looking at in efforts to deal with challenges facing these organisations.

10. Promotion of clusters and networks. The promotion of enterprise clusters and networks is a widely used approach to industrial strategy across sectors in many parts of the world, but this is not the case in South Africa. Lessons may be drawn in this regard from the Nigerian and Taiwanese legislations.

11. Make-up of Boards of SME promotion agencies. Another distinguishing feature between South Africa and countries such as India, Kenya, Malaysia and Nigeria, is the legislated make-up of their small business support agencies' Boards. In these countries, agency Boards have a high level of participation by various government Ministries and entities. This should assist in strengthening government oversight on small business promotion and, most importantly, ensuring effective coordination between government departments and entities, an ongoing weakness in the South African context.

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LIST OF ACRONYMS

DSBD	Department of Small Business Development
EU	European Union
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GEDI	Global Entrepreneurship Development Institute
GEI	Global Entrepreneurship Index
GEM	Global Entrepreneurship Monitor
GEN	Global Entrepreneurship Network
SBA	Small Business Administration
SBIR	Small Business Innovation Research
SEDA	Small Enterprise Development Agency
SME	Small and Medium Enterprise
SMME	Small, Medium and Micro Enterprise
SMEDAN	Small and Medium-scale Enterprise Development Agency of Nigeria
STTR	Small Business Technology Transfer
TEA	Total Early-stage Entrepreneurial Activity
UK	United Kingdom
USA	United States of America

A. BACKGROUND

The Department of Small Business Development (DSBD) has appointed Osiba Management to undertake a comparative analysis of SMME legislation from eight selected countries to the National Small Business Act No 102 of 1996, as amended in 2003 and 2004, to determine best practice and innovative approaches that South Africa could learn from, in order to enhance the amendment of the National Small Business Act. It is envisaged that the proposed comparative analysis will provide an understanding of the legislative and regulatory measures that various countries have adopted to stimulate, support and grow the SMME sector. The objective for the assignment, as stipulated in the terms of reference, is to provide a first systematic and comprehensive international benchmarking of South Africa's National Small Business Act, answering the following questions:

1. How does South Africa compare on major indicators of Small Business Acts against the eight chosen countries?
2. What do outcome indicators reflect about the relative strengths and weaknesses of South Africa's Small Business Act vis-à-vis the comparison countries?
3. Where are the largest deviations – positive and negative – from the benchmarks?
4. How can the eight country comparisons be useful for policy purposes, in particular regarding the review of South Africa's Small Business Act?

B. SELECTION OF COMPARISON COUNTRIES

The terms of reference for the assignment stipulated that eight (8) countries be selected, two each in **Africa, East & South Asia, Europe, and the Americas**. The terms of reference further stipulate that the selected countries be characterised by **high, middle and lower income**. Osiba Management noted in its proposal that one of the key considerations to be taken into account is **language**, especially given the stipulated duration for the study, which is two months. This limited time-span would make it critical for legislation in the various countries to be accessed quickly so that analysis could start without undue delay. Osiba Management noted that where legislation is not available in English, this would prove challenging and time-consuming, thus delaying the assignment. To avoid any delays arising from the language barrier, the comparison country selection process prioritised those countries where English is the official language, but without entirely excluding those where it is not. In its original submission for the assignment, Osiba Management proposed to include the following eight countries in its analysis:

Table 1: Original list of proposed countries

Africa	East & South Asia	Europe	The Americas
Egypt and Kenya (Possible alternative: Nigeria)	India and Malaysia (Possible alternative: China)	Turkey and UK (Possible alternative: Romania)	Brazil and Canada (Possible alternatives: USA & Chile)

This proposed choice of countries was based on the following considerations:

1. They had to fall within the four regions stipulated by the Department of Small Business Development (Africa, East & South Asia, Europe, and the Americas)
2. They had to fall within the income categories stipulated by the Department – high, (upper middle)/middle, low¹
3. Availability of original legislation or a translation thereof in English.

Following its appointment to undertake the assignment, Osiba Management revised the criteria for the selection of countries by introducing five additional criteria, taking the total number of selection criteria to eight. The five additional criteria are:

4. Ranking on the 2016 Global Entrepreneurship Index compiled by the Global Entrepreneurship Development Institute (GEDI)², which ranks 132 countries. The Index sheds light on the level of efficiency of national start-up ecosystems through an analysis of 34 individual and institutional variables.
5. Position on the Global Entrepreneurship Monitor 2016-17 ranking of 64 countries, focusing on the Total Early-stage Entrepreneurial Activity (TEA) rate, which measures the percentage of the adult population, aged 18 to 64 years, that are in the process of starting or who have just started a business.³
6. Position on the World Bank's 2016 Doing Business rankings⁴
7. Ranking on the World Economic Forum's 2016 Global Competitiveness Index⁵
8. Size of the country's small business sector, measured by its contribution to the country's GDP⁶

¹ The World Bank rankings for March 2017 were used for this purpose (source: <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519>, accessed 28 May 2017)

² The Global Entrepreneurship and Development Institute (GEDI) is a research organisation that advances knowledge on links between entrepreneurship, economic development, and prosperity. The Institute was founded by entrepreneurship scholars from George Mason University (USA), University of Pécs (Hungary), and Imperial College London (UK). The Global Entrepreneurship Index (GEI) is a joint project between GEDI and the 160-country Global Entrepreneurship Network (GEN).

³ Global Entrepreneurship Monitor 2016-17 Report

⁴ Doing Business 2016: Measuring Regulatory Quality and Efficiency (World Bank Group)

⁵ The Global Competitiveness Report 2015–2016 (World Economic Forum)

⁶ Global Entrepreneurship Monitor 2016-17 Report

In addition, after carrying out an initial review of small business legislation in the stipulated regions, Osiba Management proposed the inclusion of the **European Union** (EU) in the review, because of its “Small Business Act”, a set of small business policy and legislation guidelines for member countries of the Union, therefore making it applicable to several countries – large and small, developed and less developed – and is available in English. It should be noted that although the EU refers to its set of guidelines as a “Small Business Act”, they do not constitute legislation in a strict sense. However, several of its guidelines have legislative relevance and there is evidence that countries beyond the EU have incorporated some of these guidelines in their small business legislation. The relevance of the EU guidelines for this assignment is that they point to areas that should be addressed by both small business policy and legislation and are therefore a useful starting point and guide for a comparative study such as this one. The EU guidelines will thus constitute the overarching framework for this assignment, with the various country laws providing specific comparisons for South Africa.

Table 2 presents a matrix of all countries that were considered for possible selection using the above criteria. As it clearly shows, only one of the countries included in the final list, namely Kenya, falls below the 100-mark on the GEI ranking. South Africa is ranked at 52, the highest ranking in Africa.

Table 2: Matrix of all countries considered for possible selection

Region	Country / Jurisdiction	Income ranking	2016 GEI rank (Score)	2016 Doing Business rank (Score)	SME contribution to GDP ⁷ (Yr)	2016 TEA rank ⁸	2016 GCI rank (Score)	Legislation in English?	Remarks
Africa	Egypt	Lower middle	89 (27.3)	131 (54.43)	80% (2015)	17	116 (3.66)	No	Not selected because legislation in English could not be sourced through online searches.
	Kenya	Lower middle	104 (22.1)	108 (58.24)	25% (2016) ⁹	-	99 (3.85)	Yes	Significant SME contribution to GDP, legislation in English, and largest economy in East Africa.
	Nigeria	Lower middle	85 (28.1)	169 (44.69)	50%+ ¹⁰	-	124 (3.46)	Yes	High SME contribution to GDP and availability of legislation in English.
	Rwanda	Low	113 (18.3)	62 (68.12)	Not indicated	-	58 (4.29)	No	Not selected because legislation in English could not be sourced through online searches.
East and South Asia	India	Lower middle	98 (24.9)	130 (54.68)	17% (2013) ¹¹	31	55 (4.31)	Yes	A large economy with strong ties to South Africa's, average TEA rate, English legislation
	Malaysia	Upper middle	56 (37.0)	18 (79.13)	35.9% (2014)	62	18 (5.23)	Yes	Not selected because its legislation is very similar to South Africa's and would offer limited lessons.
	Singapore	High	11 (66.0)	1 (87.34)	+50% ¹²	-	2 (5.68)		Not selected because legislation could not be accessed through online search. Assistance requested from SME Agency Spring Singapore.
	Taiwan	High	6 (69.7)	11 (80.55)	29% (2014)	43	15 (5.28)	Yes	Strong performance on most criteria, and legislation available in English.

⁷ Unless otherwise indicated, data on SME contribution to GDP was sourced from the Global Entrepreneurship Monitor 2016-17 report

⁸ The Global Entrepreneurship Monitor 2016-17 report does not include Kenya, Nigeria, Rwanda and Singapore, hence no TEA rates for these countries

⁹ Source: "Key barriers to Kenya's SMEs growth – study", <http://www.capitalfm.co.ke/business/2016/06/key-barriers-to-kenyas-smes-growth-study> (accessed 28 May 2017)

¹⁰ Source: "Small firms are the backbone of the Nigerian economy", Africa Economic Analysis, <http://www.africaeconomicanalysis.org/articles/gen/smallhtm.html>, (accessed 28 May 2017)

¹¹ Source: "SMEs employ close to 40% of India's workforce, but contribute only 17% to GDP", The Economic Times SmallBiz, June 9, 2013, http://economictimes.indiatimes.com/small-biz/policy-trends/smes-employ-close-to-40-of-indias-workforce-but-contribute-only-17-to-gdp/articleshow/20496337.cms?utm_source=AMPusers&utm_medium=emailshare&utm_campaign=socialsharebuttons&from=mdr (accessed 28 May 2017)

¹² Source: "Grow Your Business" brochure, SPRING Singapore

Europe	EU	-	-	-	-	-	-	Yes	-
	Turkey	Upper middle	28 (52.7)	55 (69.16)	53.9% (2015)	14	51 (4.37)	No	Not selected because legislation is not available in English. This was confirmed by a Turkey-based economic development expert.
	UK	High	9 (67.7)	6 (82.46)	52% (2015)	40	10 (5.43)	Yes	Strong performance on most criteria, and legislation available in English.
The Americas	Brazil	Upper middle	92 (26.1)	116 (57.67)	27% (2015)	10	75 (4.08)	Yes	One of SA's leading benchmark partners, income level and English translation of legislation.
	Canada	High	2 (79.5)	14 (80.07)	27% (2015)	12	13 (5.31)	Yes	Not selected because legislation focuses on a single issue – SME financing.
	Chile	High	16 (62.1)	48 (71.49)	20% (2015)	7	35 (4.58)	No	Not selected because legislation in English could not be sourced through online searches.
	USA	High	1 (86.2)	7 (82.15)	54% (2015)	24	3 (5.61)	Yes	Top of the list on virtually all criteria.

Based on the analysis in table 2, the resulting list of jurisdictions for the study is as below. These jurisdictions, with the exception of the USA, were presented to the Project Committee at the Department of Small Business Development at a project inception meeting held on Tuesday 23 May 2017, and were approved.¹³ It was agreed that the USA was a strong candidate for selection as well, and should remain under consideration.

Table 3: Final list of countries / jurisdictions selected for review

Region	Jurisdiction / country	Name of legislation
Africa	1. Kenya	• The Micro and Small Enterprise Act, 2012
	2. Nigeria	• Small & Medium-Scale Enterprises Development Agency of Nigeria Act, 2003
East and South Asia	3. India	• The Micro, Small and Medium Enterprises Development Act, 2006
	4. Malaysia	• Small and Medium Industries Development Corporation Act 1995
	5. Taiwan	• Act for Development of Small and Medium Enterprises (2016 revision)
Europe	6. European Union	• Think Small First: A Small Business Act for Europe, 2008
	7. United Kingdom	• Small Business, Enterprise and Employment Act, 2015
The Americas	8. Brazil	• National Statute of Microenterprise and Small Business, 1999
	9. USA	• Small Business Act (year not stated)

C. LIMITATIONS OF THE STUDY

It must be noted that because the assignment comprised a desktop study, the analysis that follows is based on what is written in each jurisdiction's legislation and is not a validation of actual implementation. It was beyond the scope of this study to ascertain whether all the stipulations in each jurisdiction's legislation were actually implemented in practice and, if so, what their effect on the small business environment were.

D. INITIAL ANALYSIS

1. DESCRIPTION OF THE LEGISLATION

The purpose of the legislation gives a clear indication of its focus. The categorisation of the different jurisdictions' laws, as presented in the next section, is based on how the various jurisdictions describe their laws, as presented in the table below.

¹³ Strong interest in including the USA was expressed at the meeting and the choice between Canada and USA was discussed. On subsequent research, Osiba Management opted to select the USA and not Canada, based on the reasons presented in table 2 above, especially also given that the USA was one of the original alternatives proposed by Osiba Management in the Americas.

Table 4: Stated purpose of country legislations

Jurisdiction	Purpose of the law
South Africa	To amend the National Small Business Act, 1996, so as to repeal all provisions pertaining to Ntsika Enterprise Promotion Agency; to provide for the establishment of the Small Enterprise Development Agency; to make provision for the incorporation of the Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institution into the Agency to be established; to provide for the necessary transitional arrangements to this effect; and to provide for matters connected therewith (2004 Amendment) ¹⁴ .
Brazil	On the status of the micro-enterprise and small business, offering differentiated legal treatment, simplified and favoured (status) provided for in arts. 170 and 179 of the Federal Constitution.
European Union	The “Small Business Act” aims to improve the overall policy approach to entrepreneurship, to irreversibly anchor the “Think Small First” principle in policymaking from regulation to public service, and to promote SMEs’ growth by helping them tackle the remaining problems which hamper their development.
India	An act to provide for facilitating the promotion, development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.
Kenya	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.
Malaysia	To provide for the establishment and incorporation of the Small and Medium Industries Development Corporation, and for matters connected therewith.
Nigeria	An Act to establish the Small and Medium Scale Enterprises Development Agency to be charged with the responsibility for promoting and facilitating the Development Programmes in the Small and Medium Scale Industries sub-sectors and for connected purposes.
Taiwan	This Act is enacted for the furtherance of sound development of small and medium enterprises by helping them improve their operation environments, promoting mutual cooperation, and assisting them in striving for growth with their own efforts.

¹⁴ The purpose of the original (1996) Act was “to provide for the establishment of the National Small Business Council and the Ntsika Enterprise Promotion Agency; and to provide guidelines for organs of state in order to promote small business in the Republic; and to provide for matters incidental thereto”. In 2003 the 1996 Act was amended to, “repeal all provisions pertaining to the National Small Business Council, to empower the Minister to facilitate and establish an Advisory Body to represent the interests of small business; to make the Public Finance Management Act, 1999, applicable to the Agency; to make further provision in respect of the functions of the Agency; to do away with the requirement of calling for nominations for directors of the Board by notice in the *Gazette*; to repeal the provisions pertaining to alternate directors; and to substitute the Schedule to that Act, in order to reflect the current economic position; and to provide for matter connected therewith”

United Kingdom	An Act to make provision about <i>improved access to finance for businesses</i> and individuals; to make provision about <i>regulatory provisions relating to business</i> and certain voluntary and community bodies; to make provision about <i>the exercise of procurement functions by certain public authorities</i> ; to make provision for the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants; to make provision about the regulation of the provision of childcare; to make provision about information relating to the evaluation of education; to make provision about the regulation of companies; to make provision about company filing requirements; to make provision about the disqualification from appointments relating to companies; to make provision about <i>insolvency</i> ; to make provision about the law relating to employment; and for connected purposes.
United States	It is the declared policy of the Congress that the Federal Government, through the Administrator of the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this Act, to increase their ability to compete in international markets. The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this Act to enhance, not alter, their respective roles.

2. CATEGORISATION BASED ON FOCUS OF LEGISLATION

Based on the above description of the focus of the various jurisdictions' legislation, they can be categorised in four ways:

Table 5: Categorisation of country small business laws

Focus of legislation	Description	Examples
Agency establishment (administrative) focus	Legislation focuses solely on the establishment and operation of an agency dedicated to SMME development	Malaysia, Nigeria, South Africa
Broader small business development focus	Legislation focuses on small business development more broadly, rather than on agency	Brazil, EU, Taiwan
Combination/hybrid focus	Legislation focuses on both small business development broadly and the establishment of a dedicated SMME agency	India, Kenya, USA
Embedded legislation	Small business aspects embedded within broader legislation that goes beyond small business development in focus	UK

E. THE EUROPEAN UNION FRAMEWORK FOR SMALL BUSINESS POLICY AND LEGISLATION

As previously mentioned, the European Union is included in the study not because it is a country but because its “Think Small First: A Small Business Act for Europe” offers a useful framework for understanding what issues country small business policies and legislation should address. It articulates its aim thus: “The ‘Small Business Act’ aims to improve the overall policy approach to entrepreneurship, to irreversibly anchor the “Think Small First” principle in policymaking from regulation to public service, and to promote SMEs’ growth by helping them tackle the remaining problems which hamper their development. These principles...are essential to bring added value at EU level, create a level playing field for SMEs and *improve the legal and administrative environment* throughout the EU”¹⁵ (emphasis added).

Accordingly, certain of its principles have been adopted by some countries even beyond the Union. We see, for instance, that the United Kingdom’s and India’s small business legislation deal with the issue of late payment to small businesses, some of the key areas of recommendation in the EU’s framework. This analysis therefore begins by presenting an overview of the Union’s “Think Small First” framework. It then traces its elements across the various countries’ small business legislations, highlighting where these elements occur in a country legislation, and covering other aspects unique to each country’s legislation. The EU framework presents ten principles, namely¹⁶.

Table 6: High-level EU small business legislation framework principles

Principle	Summary of key issues covered	Country legislation with this aspect
1. Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded	Promoting entrepreneurial culture, inter alia, through enterprise education, entrepreneurship campaigns and mentoring; and facilitating easy transfer of business to new owners through enabling taxation, mentoring and other support	South Africa
2. Ensure that honest entrepreneurs who have faced bankruptcy quickly get a second chance	Promoting a “second chance” policy, promote a positive attitude in society towards giving entrepreneurs a fresh start, ensure speedy completion of business winding up, and treating re-starters similar to new start-ups	
3. Design rules according to the “Think Small First” principle	Minimising business costs and burdens of policies and regulations, carrying out impact assessments on new laws and regulations, and implementing special dispensations, including exemptions, for microenterprises.	Brazil, UK, Taiwan
4. Make public administrations responsive to SME needs by making things as simple as possible for them	Setting administrative burden reduction targets, simplifying legislation and business licences, reducing business registration fees and shortening registration time, avoiding unnecessary information requests from SMEs,	Brazil, India, UK

¹⁵ European Commission, “Think Small First”: A “Small Business Act” for Europe

¹⁶ For details of proposed and existing measures at EU and at Member State level, see Appendix 1.

		particularly microenterprises, and reducing frequency of information requests, improving ease of communication on burdensome rules and procedures.	
5.	Adapt public policy tools to SME needs: facilitate SMEs participation in public procurement and better use State Aid for SMEs	Reduction of bureaucracy and improved transparency and information flows on procurement opportunities, subdivision of contracts to encourage SME participation, avoidance of onerous information requirements in procurement, and encouraging dialogue and understanding between SMEs and large buyers.	Brazil, India, Taiwan, UK, USA
6.	Facilitate SME access to finance and develop a legal and business environment supportive to timely payments in commercial transactions	Developing competitive venture capital markets, developing SME investment readiness programmes, developing financing programmes to close specific funding gaps, removing corporate tax impediments to investment.	Brazil, India, Kenya, Malaysia, Taiwan, UK
7.	Help SMEs to benefit more from the opportunities offered by the Single Market	Helping SMEs to participate in global supply chains and to use European standards, minimising cross-border trade-related administrative burdens, and advising SMEs to defend themselves against unfair commercial practices.	
8.	Promote innovation and upgrading of skills in SMEs	Promoting the mobility of apprentices, enabling firms to self-assess their e-skills needs, supporting research, development and innovation capacity of SMEs, fostering SME participation in national and cross-border innovative clusters, and in knowledge transfer and intellectual property commercialisation, and ensuring easy access by SMEs to funding for entrepreneurship, innovation and knowledge transfer.	Brazil, India, Kenya, Nigeria, Taiwan, USA
9.	Enable SMEs to turn environmental challenges into opportunities	Facilitating SME access to environmental and energy efficiency programmes and expertise, and supporting eco-innovation.	
10.	Encourage and support SMEs to benefit from the growth of markets	Facilitating access to key export markets through measures including improved SME information (e.g. on trade barriers in foreign markets), using bilateral and multilateral mechanisms to seek foreign market opening and promote trade, offering foreign market-related training programmes to SMEs, and encouraging coaching of SMEs by large companies.	Brazil ¹⁷ , Kenya, Taiwan, USA

Against the background of the EU Small Business Act framework discussed briefly above, small business legislation in South Africa and the eight comparative countries is presented next, starting with South Africa.

¹⁷ Tax exemption of export revenue for enterprises under the Simples Nacional system (see footnote 18).

1. THE ORIGINS OF THE NATIONAL SMALL BUSINESS ACT

The origin of the country's small business legislation can be traced to the government's 1995 White Paper on national strategy for small business promotion, which presented a number of issues that the country's envisaged future small business legislation had to cover (table 7). It must be noted that the White Paper envisaged three separate pieces of legislation, with the national Small Business Act being one of them, and the two others being a Transaction and Procurement Act and a Small Business Finance Act. In the end, only the Small Business Act was formulated and promulgated, and the other two were not. Taken together, the originally envisaged areas of legislative intervention were more comprehensive and far sighted, covering several aspects that are covered by some of the comparative countries' laws, than the national Small Business Act turned out to be. It can therefore be argued that key elements of the overall small business legislation were not promulgated as was originally intended, and this left a critical void in the overall legal environment for the small businesses in the country. It is not clear why these other pieces of legislation were never promulgated. A case can still be made that as the only legislation that ultimately saw the light of day, the national Small Business Act should close the gaps that resulted from the non-promulgation of the other proposed pieces of legislation.

Table 7: Laws and legislative interventions envisaged in the 1995 White Paper on Small Business Strategy

Envisaged laws and other legislative intervention	Originally envisaged focus of the law or legislative intervention	Comment
A National Small Business Act	Establishment of the Small Business Development Agency (today's SEDA) and other statutory bodies, definition of SMMEs, and SMME membership of business associations as a precondition for eligibility for State support.	The National Small Business Act deals only with the establishment of SEDA and outlines its activities in very broad terms. It also defines small businesses in a separate schedule.
A Transaction and Procurement Act	Laying down conditions and principles on set-asides for small enterprises, producers, non-discriminatory public-sector procurement rules and incentives for big business subcontracting to small enterprises	The legislation was never developed and promulgated.
A Small Business Finance Act	Steps to encourage financial institutions to become more active in the SMME market, facilitation of deposit-taking by lender-NGOs, recognition of certain non-conventional collateral types and widening of the scope for more specialised lending and investment institutions focusing on SMMEs.	The legislation was never developed and promulgated.
Streamlining regulatory conditions	To assure the appropriateness of existing and proposed rules and regulations for the small business sector, in the fields of taxation, labour, zoning and building controls, tendering procedures, training requirements, health and occupational conditions, limitations of competition, strengthening small business access to raw materials and other inputs controlled by monopolistic suppliers.	Early impacts assessments undertaken on certain laws affecting small businesses and later the Red Tape Reduction Programme.
Improving access to legal assistance	Facilitate access to legal assistance for small enterprises by reforming the Small Claims Court system (increasing the number of access points, raising the level of claims falling within the Court's jurisdiction to about R30 000, integrating the Court more closely with the legal framework, thereby providing access to interdict procedures, and enabling members of closed corporations to utilise the services of the Small Claims Court, among others.	No specific measures were taken.
Other aspects of assistance	Simplification and standardisation of documents, including in the areas of business registration and licensing, financial and loan applications, tender document, export documentation and other commercial documents, simplified tax return forms for small businesses and the collection of industrial data and other statistics.	No specific measures taken.

Source: 1995 *White Paper on national strategy for the promotion of small business in South Africa* (Sections 4.1.1 to 4.2.5)

2. PURPOSE OF THE NATIONAL SMALL BUSINESS ACT

South Africa's small business legislation was promulgated in the National Small Business Act of 1996, and amended in 2003 and 2004. The 2004 amendment of the Act states its purpose as being "to repeal all provisions pertaining to Ntsika Enterprise Promotion Agency; to provide for the establishment of the Small Enterprise Development Agency; to make provision for the incorporation of the Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institution into the Agency to be established; to provide for the necessary transitional arrangements to this effect; and to provide for matters connected therewith". Thus, the principal objective of the Act is to establish the Small Enterprise Development Agency and to provide for matters relating to the governance, functions and operation of the Agency. All of the provisions of the original (1996) Act, in the main, remain unchanged.

3. OBJECTIVE AND FUNCTIONS OF THE SMALL BUSINESS DEVELOPMENT AGENCY

Section 9A of the Act presents the objectives of the Agency, while section 10 outlines its functions¹⁸. Its objectives are to (a) design and implement development support programmes; (b) promote a service delivery network that increases the contribution of small enterprises to the South African economy and promotes economic growth, job creation and equity; and (c) generally, strengthen the capacity of (i) service providers to support small enterprises, and (ii) small enterprises to compete successfully domestically and internationally. The Act states the Agency's functions as being to:

- (a) Implement the policy of the national government for small enterprise development
- (b) Design and implement a standard national delivery network that must uniformly apply throughout the Republic in respect of small enterprise development, integrating all government-funded small enterprise support agencies across all spheres of government
- (c) Design and implement small enterprise development support programmes in order to:
 - (i) Facilitate the building of sustainable and competitive enterprises
 - (ii) Facilitate the promotion of entrepreneurship
 - (iii) Facilitate the creation of an enabling operating environment for small enterprises
 - (iv) Facilitate access by small enterprises to non-financial resources, capacity-building services, products and services

¹⁸ The 2003 Amendment to the 1996 principal Act had amended Section 9 by inserting "to expand, co-ordinate and monitor the provision of training, advice and counselling to small business in accordance with the National Small Business Support Strategy" and "to facilitate and co-ordinate research relating to support programmes by the Agency".

- (v) Facilitate international and national market access for products and services of small enterprises
 - (vi) Facilitate, develop, co-ordinate and foster partnerships across all spheres of government, the private sector and relevant stakeholders that may assist the Agency to achieve its objectives
 - (vii) Promote a service delivery network to facilitate access and outreach to development support for small enterprises
 - (viii) Facilitate and co-ordinate research relating to small enterprise support programmes
 - (ix) Provide advice, information, analysis and support in the implementation of a Small Enterprise Development Policy
 - (x) At the request of the Director-General, investigate, advise on and comment on the effect of existing and proposed legislation on small enterprises and to report to the Director-General thereon
 - (xi) Improve the understanding of the public regarding the contribution of small enterprises to domestic economic growth, job creation and general welfare;
- (d) Establish provincial structures to ensure the effective implementation of its functions.

4. COMPOSITION OF THE AGENCY'S BOARD

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The composition of the Small Enterprise Development Agency's Board is markedly different to those of comparative countries whose legislation covers this aspect, namely India, Kenya, and Nigeria. This is discussed later under the findings. The South African legislation simply states the numerical composition of the Agency's Board – not less than seven and not more than fifteen members – and the criteria to be taken into account in selecting, namely:

- (a) The Board must represent a broad cross-section of the population of South Africa and comprise persons who reflect the South African society with special attention to race, gender, disability, geographical spread and organisations based in rural areas
- (b) Members who have experience in business
- (c) Members who on account of their training or experience— (i) are knowledgeable about trade, industry, finance or the economy; (ii) have legal knowledge; and (iii) are knowledgeable in the management of a small enterprise.

The Act empowers the Minister to prescribe any other criteria in respect of the appointment of members. The 1996 Act has a schedule containing definitions of small businesses. One notable provision is the stipulation that “the Board must at least once a year hold consultative meetings with stakeholders, beneficiaries and provincial representatives to discuss the activities and performance of the Agency”

[13E(6)]. The rest of the legislation covers mostly administrative and procedural issues relating to the functioning of the Agency and its Board.

G. SMALL BUSINESS LEGISLATION IN BRAZIL

Small business legislation in Brazil was promulgated as Law No. 9,841 of 5 October 1999, also known as The National Statute on Microenterprise and Small Business, titled: *“On the status of the micro-enterprise and small business, offered differentiated legal treatment, simplified and favored (status) provided for in arts (articles) 170 and 179 of the Federal Constitution”*. As the name clearly indicates, the main thrust of Brazilian small business legislation is to provide the basis for a special legal dispensation for small businesses, as stipulated in the country’s Constitution. The legislation states, as an important point of departure, that articles 170 and 179 of the Federal Constitution ensures micro and small enterprises “differentiated legal treatment and simplified administrative (treatment in) tax, social security, labor, credit and business development”¹⁹. The objective of the legislation is to foster the development and competitiveness of micro and small businesses, as a strategy for generating jobs, income distribution, social inclusion, reducing informality and strengthening the economy. It is noteworthy that this special dispensation for small businesses is enshrined in the country’s highest law, the Constitution. The main provisions of the Act are as follows:

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1. BUSINESS CLASSIFICATION

The law classifies the target enterprises into three categories:

- (a) An individual microentrepreneur, with annual gross revenue of up to R\$ 60,000.00
- (b) A microenterprise, with annual gross revenue equal to or less than R\$ 360,000.00
- (c) A small business: annual gross revenue exceeding R\$ 360,000.00 and equal to or less than R\$ 3,600,000.00

2. DIFFERENTIATED TREATMENT

Any new law that imposes obligations on small businesses is required to clearly spell out the differential treatment applicable to small businesses, failing which it cannot not be applied to this category of businesses. Three bodies are tasked with overseeing the differentiated treatment of micro and small enterprises: (a) the National Simples Steering Committee (see footnote 18), (b) the Permanent Forum on Micro and Small Enterprises, and (c) the Committee for the Management of the National Network for Simplification of Registration and Legalization of Businesses.

¹⁹ While it might be the case that in practice there might exist a certain element of differentiation for small businesses in some respects in South Africa, this would not be as a result of any known legislative prescription.

3. COMPANY REGISTRATION AND LEGALISATION

The law requires that the process of registering and legalising a company be simplified and unified, meaning that there should be a single point for submission of requisite documents, without the need to subsequently register separately with other government entities such as tax and social security agencies.

4. SPECIAL TREATMENT FOR TAX PURPOSES

Businesses of any kind (except those engaged in specifically prohibited activities), which have annual revenue not exceeding R\$ 3.6 million, may opt for what is called the “Simples Nacional” (National Simples)²⁰. The implication of Simples Nacional for micro and small enterprises is that eight taxes leviable on these businesses are collected using a single instrument (“guide”). For the individual microentrepreneur, the three leviable taxes are collected with a single instrument, and payment is in fixed monthly amounts, regardless of the enterprise’s gross revenue. The individual microentrepreneur is exempt from the rest of the taxes payable by the other two categories of small businesses. No Federal government entity may impose any ancillary tax obligations related to the taxes included in the Simple, in addition to those stipulated by the National Simples Steering Committee. Any fines imposed on small businesses, resulting from non-compliance with ancillary tax obligations imposed on them, will have their values automatically reduced.

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5. REGULATION OF THE INDIVIDUAL MICROENTREPRENEUR

The Individual Microentrepreneur, a legalised individual entrepreneur with annual gross revenue of up to R \$ 60,000.00 and opting for Simples Nacional, is prohibited from owning and operating more than one establishment or another business, whether in part or in full. This category of entrepreneurs may also have only one hired employee who earns the minimum wage or the floor wage for the category. The individual entrepreneur is allowed to carry out only those business activities that are included in the list of activities approved by the National Simples Steering Committee. This category of entrepreneur is exempt from paying all costs and fees related to the registration or licensing of the business, as well as contributions to trade unions. The entrepreneur is also exempt from regulation, technical requirements and inspections prescribed by professional bodies.

²⁰ Simples Nacional is a differentiated tax system applicable to businesses with annual gross revenue of up to R\$ 3.6 million (to increase to R\$ 4.8 million by 2018), aimed at making life easier for micro and small enterprises. Prior to the introduction of the Simples Nacional, small enterprises paid federal, state, and municipal taxes through separate instruments and at different times. Rates were also less favourable, sometimes similar to those applicable to large companies. Simples Nacional, which allows for the collection of all federal, state and municipal taxes a single instrument, introduced a simplified system for small enterprises. The tax rate is differentiated according to revenue, structured into bands up to the gross annual revenue of up to R\$ 3.6 million. The system covers large numbers of small enterprises across various sectors.

Entities providing public services are prohibited from increasing the charges payable by the individual entrepreneur simply because he or she has changed his or her status from an individual to a legal entity.

6. IMPOSING SANCTIONS ON SMALL BUSINESSES

The supervision of the micro and small enterprise and the individual micro-entrepreneur, in the labour, metrological, sanitary, environmental, safety, and land use and occupation aspects, should be primarily oriented (educational and non-punitive) except in cases where the activity or situation is not compatible with this procedure. Failure to comply with the criterion of double visit implies the nullity of the infraction notices. The organs and entities of the federal, state, district or municipal public administration must observe the principle of differentiated and favoured treatment for small businesses in order to establish the values of fines and other administrative sanctions.

7. PUBLIC PROCUREMENT

It is a requirement to give differentiated and favoured treatment to micro and small enterprises in the public tender process – at all levels of government – for purposes of promoting economic and social development, increasing the efficiency of public policies and encouraging technological innovation. To comply with this requirement, public entities are expected to:

- (a) Give small businesses bid exclusivity for purchases up to R\$ 80,000.00
- (b) Require bidders to subcontract micro and small enterprises
- (c) For acquisition of assets of a divisible nature, set a quota of up to 25% for the contracting of small businesses
- (d) In case of a bid tie, allow for the possibility of negotiation and give preference to contracting micro or small companies
- (e) Only require proof of fiscal compliance during the contracting stage, and make allowances for the business to remedy non-compliance.

8. TREATMENT OF EXPORTING SMALL BUSINESSES

Small businesses under the Simples Nacional system enjoy differentiated treatment in exporting of goods and services. Licensing, customs clearance, and exchange procedures must be simplified. Businesses may earn export revenues up to the ceiling of R\$3,600,000.00, on top of revenues earned in the domestic market, without being excluded from Simples Nacional on account of exceeding the stipulated revenue threshold.

9. SPECIAL DISPENSATION IN LABOUR RELATIONS

Small enterprises can be represented at the Labour Court by persons who know the facts of the matter, even if such persons do not have labour or corporate bond.

Small enterprises are exempted from several labour obligations and are allowed to form consortia to access specialist occupational health and safety services.

10. COLLABORATION

Small enterprises under the Simples Nacional system can form and join Special Purpose Companies for purposes of buying and selling in national and international markets.

11. CREDIT AVAILABILITY

Public banks are legally required to maintain specified lines of credit for small enterprises and to disclose the amounts available for that purpose and conditions for access, which should provide for simplified and expeditious handling of applications. Under the law a National Credit Guarantee System was established, to facilitate access to credit and other financial services for small enterprises. The law also allows the allocation of funds from the Workers' Assistance Fund to microcredit cooperatives.

12. INCENTIVES FOR INNOVATION

Government, development agencies, scientific and technological institutions, technological innovation centres, and support institutions dealing with innovation are required to set up special support programmes for micro and small enterprises. Public innovation and technology institutions are required to allocate a minimum of 20% of their research, development and technological capacity building resources to programmes aimed at supporting small businesses.

13. ACCESS TO JUSTICE

Small businesses are encouraged to seek alternative conflict resolution mechanisms, such as pre-conciliation, mediation and arbitration. Small business cases are encouraged to be dealt with through “special judgments”.

H. SMALL BUSINESS LEGISLATION IN INDIA

India's small business legislation, the Micro, Small & Medium Enterprises Development Act, 2006, states as its objective, “to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto”. It covers four key issues:

- (a) The establishment of the National Board for Micro, Small and Medium Enterprises
- (b) Classification of Enterprises, Advisory Committee and Memorandum of Micro, Small & Medium Enterprises
- (c) Measures for promotion, development and enhancement of competitiveness of micro, small and medium enterprises
- (d) Delayed payments to micro and small enterprises

1. THE NATIONAL BOARD FOR MICRO, SMALL AND MEDIUM ENTERPRISES

Headquartered at the country's capital, Delhi, the National Board is unique in both concept and composition, among all countries and jurisdictions analysed in this study. None of the other jurisdictions has a stand-alone Board of this sort, and the Board's high-level and almost exclusive public-sector make-up is not seen elsewhere. The Board, which is required to meet at least once every three months, has the following composition, all members being appointed by the Central Government.

Table 8: Composition of India's Board for micro and small enterprises

Member	Status
1. National Minister responsible for micro, small and medium enterprises	Chairperson, <i>ex officio</i>
2. Minister of State or National Deputy Minister, if any, responsible for micro, small and medium enterprises	Vice Chairperson Status not specified
3. Six Ministers of the State Governments responsible for small scale industries or micro, small and medium enterprises, appointed by the Central Government and representing specified regions of the country	<i>ex officio</i>
4. Three Members of Parliament – two elected by the House of the People, and one by the Council of States	Not specified
5. The Administrator of a Union territory, appointed by Central Government	<i>ex officio</i>
6. The Secretary ²¹ of the Ministry or Department of the Central Government responsible for micro, small, and medium enterprises	<i>ex officio</i>
7. Four Secretaries representing national Ministries of commerce and industry, finance, food processing industries, and labour and planning	<i>ex officio</i>
8. The Chairman of the Board of Directors of the National Bank of India	<i>ex officio</i>
9. The Chairman and managing director of the Board of Directors of the Small Industries Bank	<i>ex officio</i>
10. The Chairman of the Indian Banks Association	<i>ex officio</i>
11. One officer of the Reserve Bank, not below the rank of an Executive Director	Not specified
12. Two representatives of Central Trade Union Organisations	Not specified
13. One officer in the rank of Joint Secretary of Government in the Ministry or Department responsible for micro, small and medium enterprises	Board Secretary, <i>ex officio</i>

²¹ We presume this to be the equivalent of a Director-General in the South African context.

In addition to the above Central Government appointees, the Board Chairperson is required, for not less than two meetings in a year, to invite to the Board:

- (a) Ministers of the State Governments responsible for small scale industries or micro, small and medium enterprises, or
- (b) the Administrators of Union territories, and
- (c) Representatives of associations of micro, small and medium enterprises, as the Chairperson may deem necessary

Another noteworthy feature of the Board is that its *ex-officio* members have no fixed term limits. The legislation states that, “the term of office of an ex officio member of the Board shall continue so long as he holds the office by virtue of which he is such a member”. In other words, for as long as ex-officio members hold the positions that entitled them to be appointed to the National Board, they shall continue to serve on the Board. This feature cannot be compared to Boards found in other countries because, in virtually all cases they are Boards of specific governmental institutions, which this Indian Board is not. The functions of the National Board for Micro, Small and Medium Enterprises is stated with three functions:

- (a) To examine any factors affecting the promotion and development of micro, small and medium enterprises and to review the Central Government’s policies and programmes aimed at facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and their impact
- (b) To make recommendations on policies and programmes or on any other matter referred to it by the Central Government in relation to the promotion of the micro, small and medium enterprises
- (c) To advise the Central Government on the use of the Fund or Funds.

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2. THE ADVISORY COMMITTEE

In addition to the National Board for Micro, Small and Medium Enterprises, the Indian small business legislation establishes an Advisory Committee which fulfills a number of important functions. Firstly, Central Government is required by legislation to obtain the recommendation of the Advisory Committee before it can determine the size classification of enterprises. Secondly, the Advisory Committee examines any matter referred to it by the National Board and makes recommendations to the Board. Thirdly, the Advisory Committee advises State Governments on any matters on which they seek its advice.

Some of the issues the Advisory Committee may advise the Central and State Governments, or the National Board on are:

- (a) Level of employment per class or classes of enterprises
- (b) Level of investment in plant and machinery or equipment in a particular enterprise class or classes
- (c) The need for higher investment in plant and machinery or equipment for technological upgrading, employment generation and competitiveness enhancement in a particular enterprise class or classes
- (d) The promotion of entrepreneurship among micro, small or medium enterprises,
- (e) Internatinal standards for the classification of small and medium enterprises.

The membership of the Advisory Committee, which mirrors that of the National Board in terms of its predominantly public sector make-up, is as follows:

Table 9: Composition of India's Advisory Committee

Member	Status
1. The Secretary of the Central Government Ministry or Department responsible for small and medium enterprises	Chairperson <i>ex officio</i>
2. Not more than five officers of the Central Government possessing the necessary expertise in matters relating to micro, small and medium enterprises	<i>ex officio</i>
3. Not more than three representatives of State Governments	<i>ex officio</i>
4. One representative each of the associations of micro, small and medium enterprises	<i>ex officio</i>
5. Secretary of the Board is also Secretary of the Advisory Committee	<i>ex officio</i>

3. ENTERPRISE SIZE CLASSIFICATION

The size classification of enterprises is determined in terms of sector (manufacturing and services) and size of investment, as presented in table below. The legislation permits the government, in determining the size classes of enterprises, to vary the investment size criterion from time to time, and to consider and use other criteria such as employment or turnover.

Table 10: Enterprise size classification in India

Sector	Microenterprise	Small enterprise	Medium enterprise
Manufacturing	Investment in plant and machinery does not exceed twenty-five lakh ²² rupees.	Investment in plant and machinery is more than twenty-five lakh rupees, but does not exceed five crore rupees.	Investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees.
Services	Investment in equipment does not exceed ten lakh rupees.	Investment in equipment is more than ten lakh rupees but not exceed two crore rupees.	Investment in equipment is more than two crore rupees but not exceed five crore rupees.

²² 1 lakh = 100,000 units; 1 crore = 10,000,000 units

4. SUPPORT MEASURES FOR MICRO, SMALL AND MEDIUM ENTERPRISES

Chapter IV of the legislation authorises the Central Government to specify, from time to time, measures for the promotion, development and enhancement of the competitiveness of micro, small and medium enterprises, focusing on a number of areas:

- (a) Development of skills of employees, management and entrepreneurs
- (b) Technological upgrading
- (c) Marketing assistance
- (d) Provision of infrastructure facilities
- (e) Cluster development with a view to strengthening backward and forward linkages

While the legislation leaves the exact nature of support to be provided unspecified, it does make specific prescriptions with regard to credit policies and practices, and procurement practices. In relation to credit, the legislation stipulates that policies and practices shall be “progressive”, in order to “ensure timely and smooth flow of credit to micro, small and medium enterprises, and minimise the incidence of sickness among and enhance the competitiveness of such enterprises”. The responsibility to issue the necessary guidelines in relation to credit rests with the Reserve Bank. With reference to public procurement, the legislation authorises Central and State Governments to issue policies from time to time on preference for goods and services produced and provided by micro and small enterprises, by government Ministries or departments, or by government-aided institutions and public sector enterprises.

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5. DELAYED PAYMENT TO MICRO AND SMALL ENTERPRISES

Unlike all the other comparative jurisdiction’s legislation, the Indian legislation deals in much depth with the issue of late payment to small business suppliers. Chapter V of the legislation makes a number of stipulations on the subject and lays out the procedure for dealing with payment issues.

5.1 Establishment of Micro and Small Enterprises Facilitation Councils

The law provides for the establishment by State Governments, of one or more Micro and Small Enterprises Facilitation Councils within their jurisdictions, comprising of not less than three but not more than five members, constituted thus:

Table 11: Composition of India’s Micro and Small Enterprises Facilitation Councils

1.	Director of Industries (or whatever other title is used), or a person occupying a similar rank, in the State department responsible for small scale industries or micro, small and medium enterprises, who shall be the Chairperson of the Council.
2.	One or more office-bearers or representatives of associations of micro or small industry or enterprises in the State.
3.	One or more representatives of banks and financial institutions lending to micro or small enterprises; or
4.	One or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

5.2 Dealing with payment issues between supplier and buyer

The law stipulates that:

- (a) The buyer of goods and services is required by legislation to make payment on or before the date agreed upon with the supplier, which may in no case exceed for-five days from the day of acceptance or the day of deemed acceptance of the payment terms.
- (b) Should the buyer fail to meet the prescribed maximum 45-day payment limit, it will become liable to pay the supplier compound interest on the amount owed from the date immediately following the agreed-upon due date, at three times of the bank rate notified by the Reserve Bank. This obligation applies regardless of “anything contained in any agreement between the buyer and the supplier or in any law”.
- (c) Should a payment-related dispute arise between the supplier and the buyer, either of the two parties may refer the matter to the Micro and Small Enterprises Facilitation Council.
- (d) The Council will, in the first instance, seek to resolve the dispute through conciliation conducted either by itself or through a referral to an institution that offers alternative dispute resolution services.
- (e) Should conciliation fail to produce a settlement, the Council will take the matter to arbitration, conducted either by the Council itself, or referred to an institution that provides alternative dispute resolution services.
- (f) The Council or institution providing alternative dispute resolution services has jurisdiction to act in a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India.
- (g) Disputes must be decided within ninety days from the date of referral to the Council.
- (h) Where the Council or an alternative dispute resolution institution to which the dispute has been referred issues a decree, award or order in the matter, and the matter is appealed, the appellant court may only entertain the application after the appellant (not being the supplier) has deposited with the court seventy-five per cent of the amount awarded in terms of the decree, in a manner as directed by the court.

The court may then order that pending the finalisation of the appeal process, a percentage of the deposited amount, as the court deems reasonable under the circumstances of the case, be paid to the supplier, subject to any conditions the court may decide to impose.

5.3 Required reporting by the buyer

In cases where it is a legal requirement for the buyer's annual accounts to be audited, the Micro, Small & Medium Enterprises Development Act, 2006, prescribes that the buyer should furnish additional specified information in its annual statement of accounts:

- (a) The principal and the interest due thereon (to be shown separately) still owing to any supplier as at the end of each accounting year
- (b) The amount of interest paid by the buyer, specifying the portion of the total interest payment made to the supplier beyond the appointed day during each accounting year
- (c) The amount of interest accrued and remaining unpaid at the end of each accounting year
- (d) The amount of further interest remaining due and payable even in the succeeding years, until such time that all interest dues have actually been paid to the small enterprise.

5.4 Tax treatment of amounts owed to the supplier

The Micro, Small & Medium Enterprises Development Act, 2006, prohibits buyers from deducting any interest they owe or have paid, for purposes of computing income under the Income Tax Act, 1961. This provision trumps any contrary provision contained in the Income Tax Act, 1961 or any other law.

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5.5 Penalties for contravening the payment provisions

Intentionally contravening or attempting to contravene any of the relating to reporting on late payments is punishable. A first conviction is punishable with a fine of up to one thousand rupees and a second of subsequent conviction is punishable with a fine that may not be less than one thousand rupees and may be as high as ten thousand rupees. It is specifically prohibited for any court of a lower rank to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

I. SMALL BUSINESS LEGISLATION IN MALAYSIA

1. PURPOSE AND FOCUS OF THE LEGISLATION

Of the eight countries under review Malaysia is the most similar to South Africa in terms of the focus and content of its small business legislation. Similar to South Africa's National Small Business Act 1996, Malaysia's Small and Medium Industries Development Corporation Act 1995, the country's small business legislation, focuses principally on establishing and regulating the activities of the country's small business

support agency, the Small and Medium Industries Development Corporation (now called SME Corporation Malaysia).

The Act sets out its purpose thus: “... to provide for the establishment and incorporation of the Small and Medium Industries Development Corporation, and for matters connected therewith”. Where there is a slight, but significant, difference between South Africa and Malaysia, is in the composition of the Board of Malaysia’s SME Corporation. The legislation provides for the composition of the Board to include representatives of the Ministries of International Trade and Industry, Finance, and the Economic Planning Unit of the Prime Minister's Department. The prescribed Board composition, with all members appointed by the Minister responsible for International Trade & industry, under whose aegis the Corporation is established and operates, is as follows:

Table 12: Composition of the Board of SME Corporation Malaysia

(a) A Chairman ²³
(b) A Deputy Chairman who shall be a representative from the Ministry of International Trade and Industry
(c) A representative of the Ministry of Finance
(d) A representative of the Economic Planning Unit of the Prime Minister's Department
(e) The Chief Executive Officer of the Corporation
(f) Such other members, not exceeding six, as the Minister may determine

2. FUNCTIONS OF THE CORPORATION

Once again, similar to the South African legislation and unlike the case of Nigeria, Malaysia’s Small and Medium Industries Development Corporation Act outlines the functions of SME Corp Malaysia in broad terms. The legislation assigns the Corporation ten broad functions:

Table 13: Functions of SME Corporation Malaysia

(a) To promote and co-ordinate the development of small and medium industries in Malaysia
(b) To undertake studies related to the development of small and medium industries
(c) To undertake promotional activities in the country to promote the growth of small and medium industries
(d) To establish a comprehensive database and information system on small and medium industries development programmes
(e) To become the centre for collection, reference and dissemination of information related to small and medium industries

²³ Unlike India’s legislation, which prescribes who might be the Chairperson, Malaysia’s legislation has no such prescription, but prescribes the representative from the Ministry of International Trade and Industry as the Deputy Chairperson.

(f)	To provide technical support and management counselling services with the co-operation of other agencies involved in the enhancement of small and medium industries
(g)	To promote mutual co-operation among small and medium industries through amalgamation of businesses, technical co-operation, establishment of mutual fund or co-operative enterprise and the procurement of common equipment
(h)	To encourage industrial linkages with large industries
(i)	To promote human resource development in the small and medium industries
(j)	To do all such matters as may be incidental to or consequential upon the discharge of its functions, from time to time

3. POWERS OF THE CORPORATION

To enable it to effectively discharge its mandate and functions, the legislation grants the Corporation powers “...to do all things reasonably necessary for, or expedient or incidental to, the discharge of its functions under this Act”, specifically the following:

- (a) To establish and maintain branch offices with the approval of the Minister
- (b) To establish a comprehensive database and information system on small and medium industries development programmes
- (c) To appoint agents or obtain services for the purpose of carrying out its function under this Act
- (d) To acquire and hold venture capital in any company with the approval of the Minister
- (e) To organise promotional activities for small and medium industries such as participation in trade exhibitions, seminars and conferences in Malaysia and abroad
- (f) To publish or sponsor the publication of periodicals, booklets and other information materials in any media
- (g) To charge a fee for the use of any facilities or services provided by the Corporation.

In addition to the foregoing powers, the Corporation also has the power to borrow, with the approval of the Minister and concurrence of the Minister of Finance; to appoint committees “for any purpose arising out of or connected with any of its functions and powers”, with the prescription that such Committees, which may comprise “such other persons as the Corporation thinks fit”, shall include at least one member of the (Board of) the Corporation. The committee has legal sanction to invite people with special knowledge to attend and give input at any of its meetings, provided such person shall not be entitled to vote at such meeting.

4. THE SMALL AND MEDIUM INDUSTRIES DEVELOPMENT FUND

The Act assigns the Corporation the responsibility to establish a Small and Medium Industries Development Fund as a recipient of all monies, from the government and other sources, required for

running the administrative operations of the Corporation. The Act specifically permits the Corporation to earn revenue for “services provided or operation of any projects, schemes or enterprises”.

5. PAYMENT ISSUES

Although in not as much detail and depth, and without similar innovation as seen in India’s small business legislation, Malaysia’s legislation also differs from South Africa’s legislation in addressing the issue of late payment. Section 24 of the Act stipulates as one of the grounds for laying a charge against an employee of the Corporation that the person “has failed to make any payment, or is or was responsible for any delay in the payment, of moneys to any person to whom such payment is due under any law or under any contract, agreement or arrangement entered into between that person and the Corporation”.

J. SMALL BUSINESS LEGISLATION IN KENYA

1. FOCUS, OBJECTS AND PURPOSE OF THE LEGISLATION

Kenya’s small business legislative framework is spelled out in the country’s Micro and Small Enterprises Act, No. 55 of 2012, whose aim is “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” (First Schedule). The Act is broadly divided into two parts. The main section, the First Schedule, deals with the establishment and affairs of the Micro and Small Enterprises Authority, the country’s small business development agency, and the Micro and Small Enterprises Development Fund. The Second schedule deals with business associations and umbrella organisations. The object and purpose of the Act is “to provide a legal and institutional framework for the promotion, development and regulation of micro and small enterprises by”. It seeks to achieve this through:

- (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
- (e) Promoting representative associations

Kenya’s legislation is unique among comparison countries in dealing with organised business bodies.

2. DEFINITION OF MICRO AND SMALL ENTERPRISES

Definition of micro and small enterprises is not the focus of the legislation, therefore the definitions below appear under the section “Interpretation”, among other terms being interpreted. The Act specifically defines a micro and small enterprise thus:

Table 14: Definition of micro and small enterprises in Kenya

	Criterion	Micro	Small
Trade	Turnover	Less than 500,000 shillings	Between 500,000 and 5million shillings
	Employment	Less than ten people	Between ten and fifty people
	Total assets and investment	Determined by Cabinet Secretary (Minister) from time to time	
Manufacturing	Investment in plant and machinery or registered capital (for small business – as well as)	Does not exceed 10 million shillings	Between 10million and 50million shillings
Services and farming	Equipment investment or registered capital (for small business – as well as)	Does not exceed 5million shillings	Between 5million and 20million shillings

3. REGULATION OF MICRO AND SMALL ENTERPRISES AND THEIR REPRESENTATIVE BODIES

The Act establishes an office of the Registrar of Micro and Small Enterprises responsible for the registration of micro and small enterprises and their associations and umbrella organisations. The Registrar is charged with the responsibility to deal with all affairs of associations or umbrella bodies including registration or deregistration, appointment of officers, governance, settlement of disputes among members or officers, regulating the membership, administrative and financial reporting affairs of associations or umbrella organisations. The Act specifies acts that amount to offences and sanctions therefor. An association or umbrella organisation that feels aggrieved by any act of the Registrar – refusal, suspension, or cancellation of registration – may lodge an appeal with the Tribunal (see later in the report) within thirty days of such act. An applicant that feels aggrieved by the decision of the Tribunal may appeal to the High Court within thirty days on points of law.

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4. ESTABLISHMENT OF THE MICRO AND SMALL ENTERPRISES AUTHORITY

The Act establishes the Micro and Small Enterprises Authority as the country's prime small business development agency. Its composition comprises:

Table 15: Composition of Kenya's Micro and Small Enterprises Authority Board

(a) A non-executive chairperson, being 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 responsible for micro and small enterprises development or his/her representative
(c) The Principal Secretary of the Ministry of Finance or his/her representative
(d) The Principal Secretary of the Ministry responsible for industrialization or his/her representative
(e) The Principal Secretary of the Ministry responsible for trade or his/her representative
(f) The Principal Secretary of the Ministry for youth or his/her representative

(d) Seven persons appointed by the Cabinet Secretary, nominated as follows:
i. 4 nominees from the umbrella organization representing associations in manufacturing, traders, services and agri-business
ii. 1 nominee of the most representative association of women engaged in micro and small enterprises
iii. 1 nominee of the most representative association of youth engaged in micro and small enterprises
iv. 1 nominee of the most representative association of persons with disability engaged in micro and small enterprises
(e) One nominee of the most representative private sector organization with national membership and having micro and small enterprise support programmes
(f) One nominee of the most representative umbrella organization of micro finance institutions
(g) One person, who is not a public officer, with knowledge and at least ten years' experience in micro and small enterprise development
(h) One nominee of the umbrella association of workers
(i) The Chief Executive officer

Only persons holding a minimum of a Kenya Certificate of Secondary Education or an equivalent qualification and who have at least five years of practical experience in matters related to micro and small enterprises qualify for nomination. The Micro and Small Enterprises Authority is charged with the responsibility to:

Table 16: Responsibilities of Kenya's Micro and Small Enterprises Authority

(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, harmonise 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) Mobilise 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

5. PROGRAMMES AND REPORTING OF THE MICRO AND SMALL ENTERPRISES AUTHORITY

The Act tasks the Micro and Small Enterprises Authority with the responsibility for the following set of programmes and specific activities:

(a) Advising on zoning and use of land – advise and liaise with the relevant authorities for earmarking and zoning of land for the development of micro and small enterprises.

(b) Development of infrastructure – 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.

(c) Capacity building programmes for micro and small enterprises – in partnership with others as necessary: (i) develop and administer certified demand-driven capacity building and entrepreneurship programmes; (ii) promote the technological modernization and development of micro and small enterprises; (iii) promote and provide business development services for micro and small enterprises.

(d) Development of markets and provision of marketing services – in order to promote the development of market for goods and services from micro and small enterprises, the Authority shall partner as necessary to: (i) provide technical assistance in the development of products; (ii) identify markets for products offered by micro and small enterprises and provide linkages between the micro and small enterprises and potential markets; (iii) organise trade fairs and shows in order to promote products offered by micro and small enterprises; (iv) conduct market research, survey and analysis.

(e) Technology transfer, acquisition, etc. – in order to promote technology transfer, acquisition and adaptation of new and modern technologies, the Authority has responsibility to:

Table 17: Technology transfer responsibilities of Kenya’s Micro and Small Enterprises Authority

(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 enterprise 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 utilisation 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.

In its annual report, the Micro and Small Enterprise Authority is required to cover, among others, “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... (and) a report on the growth and development of micro and small enterprises in the country”.

6. THE MICRO AND SMALL ENTERPRISE DEVELOPMENT FUND

Although the Kenyan legislation is not unique in establishing a Development Fund, the Fund in this case is different in that it is set up to provide direct access to finance to micro and small enterprises, rather than for purposes of covering the administrative and operational expenses of the implementing agency. The purpose of Kenya’s Micro and Small Enterprise Development Fund is to:

- (a) Finance the promotion and development of micro and small enterprises
- (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

Another unique feature of the Development Fund is that it can be accessed not only by enterprises themselves but also by others involved in the promotion of micro and small enterprises.

These include community-based organisations, nongovernmental organisations, associations or umbrella organisations, or any other institution involved in the promotion and development of the micro and small enterprise sector activities. These entities may apply to the Authority to access funds for their micro and small enterprise support programmes. Registered associations and umbrella organisations, specifically, may apply to access the Fund via loans, factoring, guarantee and micro-insurance, for the benefit of their members.

7. THE MICRO AND SMALL ENTERPRISES TRIBUNAL

For purposes of handling disputes relating to micro and small enterprises, the Act establishes a Micro and Small Enterprises Tribunal, constituted thus:

- (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
- (b) An advocate of the High Court of Kenya, who has experience of not less than seven years, nominated by the Law Society of Kenya
- (c) Two advocates with expertise in micro and small enterprise matters, one of whom shall be the Secretary of the Tribunal
- (d) Two persons who have demonstrated exemplary competence in the field of micro and small enterprise management.

Members of the Tribunal are appointed by the Cabinet Secretary (Minister) and are publicly notified through a Gazette Notice.

The Tribunal handles disputes involving micro and small enterprise Association members, administrators of estate of deceased Association members, and the Micro and Small Enterprise Authority. Disputes that fall within the jurisdiction of the Tribunal include:

Table 18: Disputes falling under the jurisdiction of Kenya's Tribunal

1. Commercial disputes involving micro and small enterprises	2. Unprocedural and illegal allocation, subdivision, subletting of a micro and small enterprise worksite
3. Failure to comply with the terms and condition of allocation of worksites	4. Mismanagement and misappropriation of funds
5. Election and management of associations	6. Any other dispute acceptable by the Tribunal ²⁴
7. Failure to comply with the constitution or rules of a micro and small enterprise association or umbrella organisation	

²⁴ These may include a refusal by the Registrar to grant registration of an association, the imposition of a condition, limitation or restriction on the registration of an association, the revocation, suspension or variation of registration certificate of an association, fees that an association is required by the Registrar to pay.

Persons that feel aggrieved by a decision or order of the Tribunal appeal against such decision or order to the High Court, within thirty days of the decision being handed down. Before the expiry of the thirty-day period for appeal, and while the appeal process is underway, no decision or order of the Tribunal may be enforced. The decision of the High Court on any appeal is final.

8. REGULATION OF BUSINESS DEVELOPMENT SERVICES PROVIDERS

The Kenyan small business legislation is the only one among the comparison countries to provide for the regulation and licensing of business development services providers serving micro and small enterprises. The regulations are issued by the Cabinet Secretary in consultation with the Micro and Small Enterprise Authority.

K. SMALL BUSINESS LEGISLATION IN NIGERIA

1. AGENCY ESTABLISHMENT AND MAKEUP

As its name, the *Small and Medium Scale Enterprises Development Agency of Nigeria Act*, suggests, Nigeria's small business legislation is largely administrative in nature, in that it focuses, in the main, on the establishment and operations of the Small and Medium Scale Enterprises Development Agency of Nigeria (SMEDAN). Its preamble states that it is "an Act to establish the Small and Medium Scale Enterprises Development Agency to be charged with the responsibility for promoting and facilitating the development programmes in the Small and Medium Scale Industries sub-sectors and for connected purposes". However, even though the Act is administrative in nature, it still exhibits some unique features that distinguish it from South Africa's small business legislation. A key differentiating feature is the makeup of the Governing Board of SMEDAN, which comprises a mix of key federal government ministries and institutions, and private sector bodies, **representatives of the country's** six geopolitical zones who, together with the Board Chairman, are appointed by the country's President. The members of the Governing Board are:

Table 19: Composition of SMEDAN's Governing Board

- | | |
|---|---|
| • The Federal Ministry of Industry | • The Development Banks for Small and Medium Scale Industries |
| • The Federal Ministry of Science and Technology | • The Bank of Industry |
| • The Federal Ministry of Finance | • The Manufacturers' Association of Nigeria |
| • The National Planning Commission | • The National Association of Small Scale Industries |
| • The Agricultural or Industrial Research Institutes | • The Agency's Director-General |
| • The Indigenous Fabricators and Manufacturers of Machinery | |

2. AGENCY FUNCTION AND POWERS

Part II, Section 8, of the Act lays out an elaborate list of the Agency's functions and powers. The difference between this and the South African legislation is the range of functions assigned to the Agency, which are to:

Table 20: SMEDAN functions

(a) Initiate and articulate ideas for small and medium scale industries policy thrusts.	(b) Serve as a vanguard agency and focal point for rural industrialisation, poverty alleviation and eradication, technology acquisition and adaptation, job creation and sustainable livelihood;
(c) Promote and facilitate development programmes, instruments and support services to accelerate development, modernisation, networking and linkage of small and medium scale industries.	(d) Mobilise internal and external resources, including technical assistance for small and medium scale industries, their support institutions, trade associations, and non-governmental organisation.
(e) Oversee, co-ordinate and monitor development in the small and medium industries sub-sector.	(g) Design, package and promote cottage and micro small and medium scale industrial projects
(f) Provide industrial extension services to small and medium scale industries, fabricators of machinery and beneficiaries of micro-credit loans.	(h) Establish liaison between research institutes, local fabricators and small and medium scale industries.
(i) Link small scale industrialists to sources of finance, technology, technical skill development and management.	(j) Facilitate and promote the development of standard designs and quality assurance for machinery and equipment, and commercialising them to end users
(k) Promote and provide access to industrial infrastructure, including estates and layouts, and incubators.	(l) Provide necessary assistance to small and medium scale industries in the marketing of their products.
(m) Promote ancillarisation, sub-contracting, clustering and networking relationship.	(n) Provide and promote strategic linkages within small and medium scale industries.
(o) Encourage and promote strategic linkages within small and medium scale industries, and between small and medium scale industries and large-scale industries.	(p) Establish and co-ordinate the institutional development and activities of Industrial Development Centres in Nigeria.
(q) Collaborate with the Agricultural Research and Mechanisation Centres and Agro-industrial Schemes in Nigeria	(r) Liaise with external agencies for support and development of small and medium scale industries in Nigeria.

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| <p>(s) List products that small and medium scale industries have substantial internal capacities to manufacture to meet domestic market for Federal Government's patronage and deletion or restriction on the schedule of importable goods</p> | <p>(t) Recommend to the Federal Government, from time to time, in consultation with other relevant agencies and organisations, on applicable tax and tariff regimes and other financial incentives for promoting the development of small and medium scale industries</p> |
| <p>(u) Monitor the implementation of and compliance with Federal Government directives, incentives and facilities for development of small function of the Agency in order to promote government policies in or outside Nigeria</p> | <p>(v) Carry out such other activities connected with or incidental to the other functions of the Agency in order to promote government policies in or outside Nigeria.</p> |
| <p>(w) Provide and facilitate technical and managerial training to small and medium scale industries.</p> | |

The Act is unique among comparison countries in giving the Agency powers to “demand and obtain relevant information, data and reports on activities relating to the promotion and development of small and medium scale industries from banks, research and development institutions and other support organisations”. The Act also requires the Agency to provide technical assistance to, among others, trade associations and non-governmental organisations. Lastly, the Act requires the Agency to promote “clustering and networking relationship”. No other comparative country’s legislation has these provisions, perhaps with the slight exception of the Kenyan legislation that provides for access to funding from the Micro and Small Enterprise Development Fund by associations and non-governmental organisations that deliver support programmes to micro and small enterprises.

L. SMALL BUSINESS LEGISLATION IN TAIWAN

Taiwan’s Act for Development of Small and Medium Enterprises, 1991 (2016 Revision) seeks to ensure the “furtherance of sound development of small and medium enterprises by helping them improve their operation environments, promoting mutual cooperation, and assisting them in striving for growth with their own efforts”.

1. DEFINITION OF SMALL AND MEDIUM ENTERPRISES

Taiwan’s legislation does not give any specific definition of small and medium enterprises, but treats the matter loosely by stating in Article 2:

The term "small and medium enterprises" used in this Act shall refer to the enterprises which have legally completed company registration or commercial registration under the Act and conform to the standards for identifying small and medium enterprises. The standards referred to in the preceding paragraph shall be drawn up by the central competent authority according to the category, capital stock, amount of operating revenue and the number of regular employees and shall be submitted periodically to the Executive Yuan for approval.

Other government authorities, which administer small and medium enterprise assistance and guidance may, in accordance with their respective operational requirements, formulate separate criteria with loose requirements for objects of assistance and guidance.

Also noteworthy is the fact that the Act gives other government authorities dealing with small and medium enterprises powers to set their own separate criteria that meet their specific requirements.

2. RESPONSIBLE AGENCY AND FUNCTIONS

Distinct from countries like South Africa, Kenya, Malaysia, Nigeria and US, and similar to Brazil and the UK, Taiwan's legislation doesn't establish any specific agency tasked with small business development. The Ministry of Economic Affairs is the central "competent authority" charged with the overall responsibility for small business promotion. Besides the Ministry, the legislation leaves it to "government at various levels (to) set up or designate a government agency to provide assistance and guidance" (Article 3). The Ministry of Economic Affairs at the central level, and other support agencies, where they are established, are tasked with the following functions in support of small businesses:

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Table 21: Functions of small business development institutions in Taiwan

Market research and development	<ul style="list-style-type: none"> • Provision of information • Creation of exclusive brands for small business products • Arrangement of marketing channels and/or development of potential markets
Rationalisation of business operations	<ul style="list-style-type: none"> • Research and development and development of new products • Modernization and renovation of production facilities and improvement of production technology • Improvement of the methods of operational management • Expansion of market and acquisition of necessary information • Conversion and adjustment of the field of business • Acquisition of resources and technical know-how for business operation

Promotion of mutual cooperation among small and medium enterprises

- Vertical amalgamation of businesses and establishment and promotion of the satellite-factory system
- Horizontal amalgamation of businesses and establishment and promotion of joint production and marketing systems
- Mutual fund or cooperative enterprise
- Technical cooperation and development of common technology
- Procurement of common equipment
- Establishment of strategic marketing points

Acquisition and securing of production resources and technology

- Formation and accumulation of capital
- Capital accommodation
- Acquisition of land, plant building, equipment, business sites and business information
- Personnel training and upgrading of labour productivity
- Securing the sources of agricultural and industrial raw materials and technical know-how
- Assisting small and medium enterprises to obtain fund from capital market
- Upgrading of the level of services and technical skill

Education and training of personnel

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3. PUBLISHING OF AN ANNUAL WHITE PAPER

The legislation requires the Ministry of Economic Affairs, as the central government authority tasked with small business promotion, to publish a white paper on small and medium enterprises at the end of each fiscal year, giving the status, and reviewing the results and future projections on the activities listed above.

4. ESTABLISHMENT OF A SMALL AND MEDIUM ENTERPRISE DEVELOPMENT FUND

Article 9 of the legislation establishes a Small and Medium Enterprise Development Fund, which is similar to that of Kenya in that its main purpose is to provide direct financial assistance to enterprises, rather than having a stronger focus on covering the expenses of the support agency. Some of the prescribed activities of the Fund, which represent direct support to small enterprises are:

- To take part in investment and development projects or provide financing assistance and offer joint guarantees with financial institutions, under the condition that such financial institutions or credit guarantee institutions cannot provide financing or guarantee under normal terms and conditions

- To invest in companies involved in small and medium enterprise development, or to invest in small and medium enterprises, together with companies involved small and medium enterprises, or with financial institutions and other identified investment institutions
- To provide financial support to the other institutions involved in small business development
- To undertake other activities relating to the furtherance of sound development of small and medium enterprises

Donations to the Small and Medium Enterprise Development Fund by members of the public or businesses are exempt from Income Tax.

5. REVIEW OF LEGISLATION AFFECTING SMALL BUSINESSES

The Act tasks the Ministry of Economic Affairs to carry out periodical reviews of the laws affecting small and medium enterprises, to assess their impact on these enterprises, and submit an annual review report to the Legislative Yuan (Legislature).

6. SMALL ENTERPRISE FINANCING AND CREDIT GUARANTEES

The Ministry of Economic Affairs is tasked with the responsibility, in order to meet the financing needs of small and medium enterprises, to coordinate with financial institutions and credit guarantee institutions to increase the provision of finance and guarantees to small and medium enterprises. The Ministry is required to enable credit guarantee institutions to meet their capital requirements for supporting small and medium credit guarantee institutions, by allocating funds to such institutions. The Ministry may also solicit donations on behalf credit guarantee institutions from private businesses, and financial institutions working with credit guarantee institutions are also expected to make some donations to these institutions. The Ministry is also directed by legislation to “actively help small and medium enterprises get loans from banks”, and to report annually on the results of these activities to the Legislative Yuan.

All banks are required to “elevate the ratio of financing facilities provided to small and medium enterprises” and to set up small and medium enterprises assistance centres in order to enhance the provision of services to small enterprises. The Ministry is tasked to coordinate various agencies to make sufficient funding available to provide special loans to small and medium enterprises, and to instruct sponsoring banks to provide special or emergency financing facilities or to extend loans to meet the funding requirements of enterprises implementing special projects or adapting to economic changes, and, where necessary, to increase the limits of such funding or guarantees. The envisaged special financing is to cover projects such as:

- (a) Projects aimed at reinforcing competitiveness
- (b) Research and development, pollution control or market expansion projects
- (c) Creation of new product(s) or upgrading of the quality of existing product(s)
- (d) Relocation of a factory in compliance with environmental protection requirements, urban planning, or road construction or other infrastructural projects sponsored by the government
- (e) Any other special projects as approved by the Ministry or other support agency.

The envisaged emergency financing is to provide:

- (a) Revolving funding facilities in support of production and sales during the period of significant economic crisis
- (b) Loans required for recovery from significant natural disasters
- (c) Other loans as required to cope with emergency events.

Small businesses affected by and suffering extensive damage from natural disaster are to be assisted, in coordination with fiscal authorities to obtain tax exemption or reduction or related remedies.

7. OPERATIONAL MANAGEMENT, MARKET AND PRODUCT DEVELOPMENT, AND EXPORTING

The legislation tasks SME promotion authorities to establish or assist the private sector to establish SME guidance and service centres, and to cooperate with relevant public and private institutions to provide SMEs with several support services, including business diagnostics, marketing and production technology improvement, operational management and financial structure, training of management or technical personnel, and production and market information and consultation services.

To improve their operating efficiency and competitiveness, support agencies may assist SMEs to jointly engage in activities such as production, marketing, procurement, transportation, cooperation in technology development, and research and development. The Ministry of Economic Affairs may work jointly with relevant institutions, universities and colleges to train professionals in the fields of operation diagnosis and business administration so as to provide SMEs with guidance and support services. SME support agencies may provide assistance to various industrial associations or industrial and commercial organisations which have a dedicated service unit responsible for providing services to SMEs.

To encourage SMEs to manufacture quality and/or high value-added products or services, and to expand into export markets, support agencies are to provide, in conjunction with relevant institutions, technical and marketing guidance and SMEs to participate in overseas exhibitions, acquire market information, advertise jointly, register trademarks and patents, or establish joint distribution warehouses

abroad. Qualifying SMEs may also apply to the Small and Medium Enterprise Development Fund to subsidise the expenses incurred in product and market developments.

To assist SMEs with research and development, legislation calls for the establishment of institutes or facilities for exclusive use by SMEs conducting research, testing and development of technical skills and/or new products. SMEs may apply to use, for a fee, the equipment and facilities of the said institutes to conduct experiments and research activities.

8. ESTABLISHMENT OF SME DEVELOPMENT COMPANIES

The Ministry of Economic Affairs may establish or assist in the establishment of SME development companies to invest directly or indirectly in the SMEs that have development potential and to provide consulting services in connection with domestic and/or overseas technical cooperation, market and product development or investment. The Ministry may coordinate with the competent authority in charge of banking under the Banking Act for approval of the participation of banks in the said SME development company so as to enable them to directly provide the necessary services. The government's SME Development Fund may invest capital into SME development companies.

9. SPECIAL TAX TREATMENT

Similar to an extent to Brazil, whose legislation calls for “differential and favoured” treatment of micro and small enterprises, the Taiwan legislation calls for measures to be taken to avoid “unfair treatment (of small-scale enterprises) in respect of financial and taxation systems and other related matters”. The legislation also grants special tax treatment to small and medium enterprises and investors in those enterprises under the following situations:

Table 22: Tax treatment of SMEs in Taiwan, under specific circumstances

1. Investor avails land to an SME in an industrial zone as part of capital investment in the SME	Special tax treatment on the incremental value of the land where an investor provides land in an industrial zone as capital investment in a small or medium enterprise, which in turn agrees to allow the investor to pledge its shares as security for tax payment
2. Plant relocation by a small or medium enterprise	Taxation at the lowest rate on the land increment where an SME sells or transfers its original factory to an industrial zone or an industrial land designated in accordance with the act for Encouragement of Investment, where specific conditions apply ²⁵

²⁵ (a) Where the original factory land does not meet with the zoning requirements upon implementation of the urban planning or zoning plan; (b) where the relocation of factory or plant, approved by a competent authority, is

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|---|---|
| 3. SME investment in research and development | <p>To promote SME innovation and research and development, an SME investing in research and development may select to get the amount of tax credit up to 30% of current year income tax payable by applying one of two methods: (a) Tax credit of up to 15% of R&D expenses, applied to the current year taxable income, or (b) tax credit up to 10% of R&D expenses, applicable to the annual taxable income over three years, starting from the current year.</p> <p>Depreciation on equipment used for R&D purposes, where the service life of the equipment is more than two years, may be accelerated by one half (1/2) of the number of years applicable.</p> |
| 4. Shares issued to an SME in exchange for its intellectual property rights | <p>To promote diffusion and application of innovation and R&D results, new shares issued to an SME in exchange for its intellectual property rights, by an enterprise that is not listed on the Taiwan Stock Exchange, Over the Counter (OTC), or the Emerging Stock Board, shall be excluded from the SME's current year taxable income.</p> |
| 5. Response to changes in the economic conditions and promotion of domestic employment | <p>During difficult economic conditions:</p> <p>(a) An SME that commits to certain amount of capital expansion, employs a certain number of additional staff and increases its aggregate gross salary payments, can deduct up to 130% of the annual gross salary payments to the additional domestic employees from its current year taxable income.</p> <p>The SME can deduct from its current year's taxable income up to 150% of the annual gross salary payments to additional employees who are 24 years of age or younger.</p> <p>(b) An SME that raises the average salary paid to its domestic junior employees, can deduct up to 130% of the incremental annual gross salary payments, excluding statutory basic wage adjustments, from its current year's taxable income.</p> |

10. PUBLIC PROCUREMENT

The legislation stipulates that governments at various levels and government-owned enterprises are to assist small and medium enterprises to acquire business opportunities by publicly announcing procurement or public works projects.

a result of difficulties in making necessary improvements to comply with the requirements for pollution control, public safety or maintenance of natural landscape; and (c) where the relocation of factory or plant is implemented under the initiative of the government.

11. DISCRETION TO ESTABLISH POLICY DELIBERATION COMMITTEE

The legislation gives the Executive Yuan (legislative authority) the discretion to establish a Small and Medium Enterprise Policy Deliberation Committee to be in charge of planning and reviewing the small and medium enterprise development policy.

M. SMALL BUSINESS LEGISLATION IN THE UNITED KINGDOM

1. FOCUS AND PURPOSE OF THE LEGISLATION

Unlike other comparison countries, all of which have dedicated, stand-alone small business legislation, the United Kingdom's small business legislation forms part of composite legislation, the *Small Business, Enterprise and Employment Act 2015*. As the name clearly suggests, the legislation governs the areas of enterprise and employment, in addition to small business affairs. Its broad scope is encapsulated in the legislation's preamble, which states that it is:

An Act to make provision about improved access to finance for businesses and individuals; to make provision about regulatory provisions relating to business and certain voluntary and community bodies; to make provision about the exercise of procurement functions by certain public authorities; to make provision for the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants; to make provision about the regulation of the provision of childcare; to make provision about information relating to the evaluation of education; to make provision about the regulation of companies; to make provision about company filing requirements; to make provision about the disqualification from appointments relating to companies; to make provision about insolvency; to make provision about the law relating to employment; and for connected purposes.

In this report only those aspects that directly address small business issues are covered, while recognising that other provisions may also have a bearing on small business, as they address issues incidental to running any business. Accordingly, this report covers the following sections of the Act:

Part 1: Access to finance

Part 2: Regulatory reform

Part 3: Public sector procurement

2. ACCESS TO FINANCE

2.1 Prevention of prohibition of assignment of receivables

The legislation grants “the appropriate authority” power to invalidate, completely or under certain conditions²⁶, certain restrictive terms of business contracts, specifically the prevention of assignment to a third (non-contracting) party of the right to be paid under the contract. Prevention of assignment of receivables can be a major obstacle to small businesses seeking to access finance by pledging receivables as security for funding being sought, where they have no or inadequate alternative security. This is thus an important provision of the Act in relation to access to finance.

2.2 Publication of information on late payment and provision for penalties on breach

The legislation addresses another critical financing issue for small businesses, the payment practices of businesses. It permits the imposition of a requirement on companies “to publish...prescribed information about (a) the company’s payment practices and policies relating to relevant contracts of a prescribed description, and (b) the company’s performance by reference to those practices and policies”. This is a key requirement, addressing the important problem of late payment to small businesses. Importantly, the provision exempts from the requirement to publish the prescribed information companies that qualify as micro-entities, small companies, and medium-sized companies. The prescribed information may include, among others, information:

- (a) About the reporting company’s standard payment terms and whether these are part of any code of conduct or code of ethics of the company
- (b) About the company’s non-standard payment terms
- (c) About the processing and payment of invoices
- (d) Reference to such codes of conduct or standards as may be prescribed and as are applicable to companies generally or to companies of a prescribed description
- (e) Disputes relating to the payment of invoices, including any dispute resolution mechanism that the company uses
- (f) About payments owed or paid by the company due to late payment of invoices, including interest payment on invoices paid late

²⁶ The Act provides that the prevention may (i) have no effect at all or (ii) have no effect only in relation to persons of a prescribed description or (iii) have effect in relation to persons of a prescribed description only for prescribed purposes.

The regulations may further require that such information must be approved or signed by a specified person, published in a prescribed form, and provide for a prescribed breach of the regulation to be an offence punishable by a fine.

2.3 Provision of information about the business to credit reference agencies

This element relates specifically to provision of information by small and medium sized businesses. It authorises the Treasury to make regulations imposing a duty on (a) designated banks to provide information about their small and medium sized business customers to designated credit reference agencies, and (b) designated credit reference agencies to provide information about small and medium sized businesses to finance providers. The duty to provide the prescribed information only applies where there is a specific request for the information from a credit reference agency to a bank, or vice versa, and where the affected business has specifically agreed that the requested information may be provided to the credit reference agency or bank requesting it. In each case, it is a requirement that the regulation describes the information that should be supplied.

The legislation also regulates the provision of information on small and medium sized businesses to “designated finance platforms”²⁷, and stipulates that where a small or medium sized business has unsuccessfully applied to a designated bank for a loan or other credit facility, the Treasury may impose a duty on the bank to provide specified information about the business to designated finance platforms, provided that the affected business agrees to its information being provided to the designated finance platforms. The bank being requested for the information may also be authorised by regulation to ask the business for any of the specified information that the bank does not already have.

The Treasury regulations may specify the types of loans and credit facilities that give rise to this duty, the circumstances in which an application for finance is to be considered unsuccessful, and the finance platforms to which information must be provided. A finance platform receiving the prescribed information on a business may be required by Treasury regulation to provide specified information to all finance providers requesting access to the information, and to provide specified information about a particular business to a finance provider²⁸, provided the finance provider has requested the information and the business has agreed to its information being provided to the finance provider.

²⁷ A designated finance platform is defined as a person that provides a service for the exchange of information between finance providers and businesses that require finance, as designated as such by Treasury.

²⁸ A finance provider is defined as a body corporate that (a) lends money or provides credit in the course of a business, (b) arranges or facilitates the provision of debt or equity finance in the course of a business, or (c) provides, arranges or facilitates invoice discounting or factoring in the course of a business.

Importantly, the identity of the affected business is protected by the requirement that the information on the business must be provided “in such a form that no individual business, and no person associated with the business, can be identified” (subsection 5). For these regulations to apply, the finance provider or business must agree to the platform’s terms and conditions and the finance provider must comply with specified requirements about the use and disclosure of the information. The regulations may also further make provisions concerning the length of time that information must be kept by the finance platform and its removal therefrom.

Regulation may either permit or prohibit finance platforms from charging fees to small and medium sized businesses. Lastly, regulation may grant a small and medium sized business the right to approach a court of law for an order to rectify, block, erase or destroy data held about it by a designated credit reference agency. For purposes of the foregoing provisions, for a small or medium sized business to be classified as such, it must have an annual turnover of less than £25 million, carry out commercial, but not regulated, activities as its principal activity, and must not be owned or controlled by a public authority.

3. REGULATORY REFORM

Although not specifically focusing on small businesses per se, this element of the legislation is nonetheless relevant to small businesses in as far as it seeks to streamline company registration – its initial establishment and subsequent registration for VAT, corporation tax, and PAYE – an important element of reducing the burden of regulatory red tape affecting these businesses. The legislation directs the Secretary of State to ensure the establishment, by no later than 31 May 2017, of a company registration system that enables all of the required registration information to be delivered on a single occasion to a single recipient, and by electronic means.

4. DEFINITION OF SMALL AND MICRO BUSINESS

The Act defines a small business as one that employs less than 50 staff and has turnover or balance sheet of an amount less than or equal to the small business threshold. Micro business is one that employs fewer than 10 staff and has turnover or balance sheet totalling to an amount less than or equal to the micro business threshold.

5. TREATMENT OF HOME BUSINESSES

The legislation amends a section in the Landlord and Tenant Act 1954, to remove its application to home businesses. The amendment states:

Where the tenant's breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property, consists solely of carrying on a home business, this Part of this Act does not apply to the tenancy, even if the immediate landlord or the immediate landlord's predecessor in title has consented to the breach or the immediate landlord has acquiesced in the breach.

For purposes of the above amendment, a home business tenancy is defined as one under which: (a) a dwelling is let as a separate dwelling, (b) the tenant or, where there are joint tenants, each of them, is an individual, and (c) the terms of the tenancy: (i) require the tenant or, where there are joint tenants, at least one of them, to occupy the dwelling as a home (whether or not as that individual's only or principal home), (ii) permit a home business to be carried on in the dwelling, or permit the immediate landlord to give consent for a home business to be carried on in the dwelling, and (iii) do not permit a business other than a home business to be carried on in the dwelling. A "home business" is defined as a business of a kind which might reasonably be carried on at home, with the exception of businesses that involve the supply of alcohol for consumption on licensed premises which form all or part of the dwelling.

6. PUBLIC SECTOR PROCUREMENT

The Act provides for the authorisation of the Minister for the Cabinet Office or the Secretary of state to impose certain duties relating to public procurement. Such regulations could cover issues including exercising procurement functions in an efficient and timely manner, and the process of entering into procurement contracts. Perhaps more pertinent and important to small business, is inclusion in the provision of the duty to make available – without charge – relevant information or documents and any process required to be completed in order to bid for a contract. The prohibition of charging for information and documents is relevant to the South African situation, where there is widespread use of the practice of charging a fee for tender documents, which might prohibit small businesses from competing for government work. The legislation also provides for the acceptance by procurement authorities of invoices by electronic means and a prohibition of charging a fee for processing such invoices. Procurement authorities are also required to publish reports on compliance with procurement regulations. Such reporting could have the effect of promoting public accountability on measures taken to increase small business access to public procurement. Thus, although not exclusively applicable to small businesses, provisions similar to these could have significant impact on opening up public procurement to small businesses in the South African context.

N. SMALL BUSINESS LEGISLATION IN THE UNITED STATES

1. PURPOSE OF THE LEGISLATION

The US Small Business Act (1958, as amended in 2016) is premised on and seeks to give effect to the US government's policy to give support and assistance to the country's small businesses to increase their ability to compete in international markets by:

- (a) Enhancing their ability to export
- (b) Facilitating technology transfer
- (c) Enhancing their ability to compete effectively and efficiently against imports
- (d) Increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade
- (e) Disseminating information concerning State, Federal, and private programmes and initiatives to enhance the ability of small businesses to compete in international markets
- (f) Ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations

It is also driven by recognition of and seeks to respond to certain deficiencies in the country's business ownership landscape. There is recognition of concentration of ownership and control in the economy, which has left certain groups owning and controlling little productive capital, because, among others, they have limited opportunities to own small businesses. It is further recognised that broadening small business ownership among these groups serves the country's interests by promoting their increased participation in the free enterprise system of the United States. Lastly, it is recognised that the development of business ownership is greatly facilitated through the creation of a small business development programme that provides a range of support services, and that Government contracts can be used as an effective tool for development of business ownership among those that own control little productive capital, while at the same time benefitting the country by encouraging the expansion of the supplier base, thereby encouraging competition among suppliers. The groups in reference include Black Americans, Hispanic Americans, Native Americans, Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities. The legislation also recognises that "women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender", and seeks to remove barriers faced by women entrepreneurs. A summary of the key provisions of the Small Business Act is presented next.

2. ESTABLISHMENT AND FUNCTIONS OF THE SMALL BUSINESS ADMINISTRATION

The legislation establishes a dedicated small business development agency called the Small Business Administration (SBA). The SBA is unique among the agencies of comparison countries which tend to fall under a central government ministry, in that it falls directly under the general direction and supervision of the country's President. The Act specifically stipulates that the SBA "shall not be affiliated with or be within any other agency or department of the Federal Government". The Act gives the head of the SBA, the Administrator, two broad reporting responsibilities:

(a) To establish and maintain an external small business economic data base for the purpose of providing the Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector. For this purpose, the Administrator is required to publish, on a regular basis, national and, to the extent feasible, regional small business economic indices, giving detailed enterprise-level data including:

Table 23: Prescribed content of the US Small Business Administration report

• Employee layoffs and new employment	• Number of legal form of new business establishments
• Number of business formations and failures	• Sales, new orders, and back orders
• Investment in plant and equipment	• Changes in inventory and rate of inventory turnover
• Sources and amounts of capital investment (debt, equity, and internally generated funds)	• Debt to equity ratios
• Exports	• Number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm
• Concentration ratios	

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(b) To publish an annual report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the foregoing data.

The Act also establishes certain dedicated Offices and Programmes within the SBA, including:

- (a) **Office of Hearings and Appeals** whose responsibility is to impartially decide matters relating to programme decisions of the Administrator.
- (b) **Office of Women's Business Ownership** responsible for the administration of programmes for the development of women-owned businesses.
- (c) **Office of International Trade** to implement programmes to increase the number of small businesses that export and the volume of exports by small businesses. Prescribed activities include establishing annual goals for the Office relating to: (i) enhancing the exporting capability of small businesses and small manufacturers, (ii) facilitating technology transfer, (iii) enhancing programmes and services to

assist small businesses and small manufacturers to compete effectively and efficiently in foreign markets, (iv) increasing the ability of small businesses to access capital, and (v) disseminating information concerning Federal, State, and private programmes and initiatives.

- (d) **Office of Rural Affairs** to (a) strive to achieve an equitable distribution of financial assistance available from the SBA to small businesses located in rural areas, (b) compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups, (c) provide information to industries, organisations, and State and local governments concerning the assistance available to rural small businesses through the SBA and through other Federal departments and agencies, (d) provide information to industries, organizations, educational institutions, and State and local governments concerning programmes administered by private organisations, educational institutions, and Federal, State, and local governments which improve the economic opportunities of rural citizens, and (e) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.
- (e) **HUBZone²⁹ Programme** – to provide for Federal contracting assistance to qualified HUBZone small businesses.
- (f) **Veterans Programmes** – to be responsible for businesses owned by military veterans.
- (g) **Women’s Business Centre Programme** offering financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small businesses owned and controlled by women, providing: (i) financial assistance, (ii) management assistance, and (iii) marketing assistance.

3. SMALL BUSINESS DEFINITION

The Small Business Act defines a small business, including those involved in farming and agriculture related industries, broadly as one which is independently owned and operated and which is not dominant in its field of operation. Besides this broad definition, the Act leaves it to the SBA Administrator to specify detailed definitions or standards by which a business may be determined to be a small business. These standards may use number of employees, dollar volume of business, net worth, net income, a combination of these criteria, or other appropriate criteria. The Act provides the following guidance in determining size standards, “When establishing or approving any size standard ... the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator”.

²⁹ HUBZone stands for historically under-utilised businesses zone.

4. PUBLIC PROCUREMENT

4.1 General small business procurement

Federal agencies are required, “to the maximum extent practicable”, to (a) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers; (b) structure their contracting requirements to facilitate competition by and among small businesses, taking all reasonable steps to eliminate obstacles to their participation; and (c) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.

4.2 Sole source and restricted competition contract awards

Under certain specific conditions³⁰ the Act permits sole source contracts to be awarded to:

- (a) Small businesses owned and controlled by service-disabled veteran
- (b) Economically disadvantaged small business owned and controlled by women
- (c) Small businesses owned and controlled by women in substantially underrepresented industries

The Act also permits contracts to be awarded on a restricted competition basis to service-disabled veterans and women. Conditions for such award include that there is reasonable expectation that not less than two small businesses owned and controlled by individuals within the target group will submit bids, and that the award can be made at a fair market price. For women-owned businesses additional conditions include that each of the bidding small businesses is not less than 51 percent owned by one or more women who are economically disadvantaged and that each of the bidders is certified by a Federal agency, a State government, the SBA Administrator, or a national certifying entity approved by the SBA Administrator as a small business concern owned and controlled by women. This latter requirement, namely certification, may be waived if the Administrator determines that the small business operates in an industry in which small businesses owned and controlled by women are substantially underrepresented.

4.3 Contracts for sale of government property

The Act stipulates that, with respect to sale of government property, that small businesses shall receive any such contract if, in the determination of the SBA Administrator and the disposal agency, the award is

³⁰ The applicable conditions include: situations where there is no reasonable expectation that two or more small businesses owned and controlled by the specific target group will submit bids, size of contract, possibility to award the contract at a fair market price.

in the interest of assuring that a fair proportion of the total sales of government property be made to small businesses.

4.4 Contracting preference for small businesses in major disaster areas

The Act provides for contracting preference for small businesses located in a disaster area if the small business will perform the work required under the contract in the disaster area. A disaster area is one for which the President has declared a major disaster, during the period of such declaration.

4.5 Reporting on procurement contracts awarded to small businesses

Heads of all Federal agencies are required to submit to the SBA Administrator annually a report describing:

- (a) The extent of the participation by small businesses generally, small businesses owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and small businesses owned and controlled by women in the procurement contracts of that agency during the reporting fiscal year.
- (b) Whether the agency achieved the small business procurement goals established for it during the reporting fiscal year.
- (c) Any justifications for a failure to achieve such goals.
- (d) A plan for corrective action to be taken, with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

5. SMALL BUSINESS FINANCING

The Act empowers the SBA to make loans, either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis, for a variety of business purposes. Loans of \$100,000 or less may be issued under a programme called the “low documentation (LOWDOC) loan program” – only through lenders with significant experience in making small business loans – as a means to reduce administrative burdens associated with small business borrowing. The Act also authorises the SBA Administrator to provide export finance and instruments such as letters of credit, revolving lines of credit, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. The Administrator is directed to “aggressively market its export financing program to small businesses”.

6. RESEARCH AND DEVELOPMENT ASSISTANCE

The Act recognises that research and development (R&D) is a major factor in the growth and progress of industry and the national economy, and that the expense of carrying on research and development programmes is beyond the means of many small businesses. Consequently, small businesses face difficulties in acquiring the benefits of research and development programmes conducted by government, thereby placing them at a competitive disadvantage and weakening the competitive free enterprise system and preventing the orderly development of the national economy. For these reasons, it is the policy of the Congress to give assistance to small businesses to enable them to undertake and to obtain the benefits of research and development. For this purpose, the Small Business Act tasks the SBA:

- (a) To assist small businesses to obtain Government contracts for research and development
- (b) To assist small businesses to obtain the benefits of research and development performed under Government contracts or at Government expense
- (c) To provide technical assistance to small businesses related to research and development
- (d) To develop and maintain a source file and an information programme to assure each qualified and interested small business the opportunity to participate in Federal small business innovation research programmes and small business technology transfer programmes
- (e) To coordinate with participating agencies a schedule for release of SBIR (Small Business Innovation Research) and STTR (Small Business Technology Transfer) solicitations, and to prepare a master release schedule so as to maximise small business opportunities to respond to solicitations
- (f) To independently survey and monitor the operation of SBIR and STTR programmes within participating Federal agencies
- (g) To report not less than annually to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives on the SBIR and STTR programmes of Federal agencies and the SBA's information and monitoring efforts related to the SBIR and STTR programmes.

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7. PROHIBITION OF DUPLICATION OF ACTIVITIES

The Act specifically prohibits the Small Business Administration from duplicating the work or activity of any other department or agency of the Federal Government, unless such work or activity is expressly provided for in the Small Business Act.

The four key questions that this comparative analysis sought to answer are:

- (a) How does South Africa compare on major indicators of Small Business Acts against the eight chosen countries?
- (b) What do outcome indicators reflect about the relative strengths and weaknesses of South Africa's Small Business Act vis-à-vis the comparison countries?
- (c) Where are the largest deviations – positive and negative – from the benchmarks?
- (d) How can the eight country comparisons be useful for policy purposes, in particular regarding the review of South Africa's Small Business Act?

The European Union (EU) small business legislation framework presented as the foundational basis for this analysis is a useful guide to determining what a country's small business policy and legislation should typically cover. Although not exhaustive, it covers most of the pertinent aspects for a more comprehensive small business legislation. Using the ten EU principles, it can be shown that South Africa's small business legislation lacks a number of elements that are covered in several other countries' small business laws. However, as the earlier discussion shows, this was not intended to be the case at the outset of small business policy formulation. The 1995 White Paper on national small business strategy shows clearly that it was envisaged that small business legislation and related interventions emanating from the strategy would have much broader scope than the Small Business Act ultimately covered. Table 24 presents a summary comparison of the eight countries using the EU framework in more detail. The following can be seen as key areas of differentiation between South Africa's small business legislation and those of other countries:

1. Sharing of credit information between financiers and credit reference agencies (UK) – the legislated sharing of client credit information, subject to the client's approval, plays an important role in helping SMMEs build a credit profile, which, in turn, is an important factor in accessing credit. 'Thin files', that is, limited credit information on the borrower, is one of the key inhibitors to access to credit for SMMEs. At a Credit and Decision Analytics Conference hosted by credit agency Compuscan on 6-8 September 2017 in Cape Town, it became clear that one of the key challenges in enabling credit provision to SMMEs is the reluctance by lenders to share positive credit information on their clients, for fear that their good clients might be poached by competitors. This unwillingness to share positive information significantly disadvantages prospective SMME borrowers because their credit files remain 'thin'. Legislating the sharing of not just negative but also positive credit information is a critical step in assisting SMMEs build their credit history, which in turn improves their chances of accessing credit.

2. Prevention of prohibition of session of receivables (UK) – the ability to cede their receivables in order to access credit is an important access to finance enabler for SMMs, yet cession of government contracts is prohibited in South Africa. To facilitate access to finance, UK small business legislation prevents prohibition of cession of receivables, granting power to invalidate, completely or under certain conditions, certain restrictive terms of business contracts, specifically the prevention of assignment to a non-contracting party of the right to be paid under the contract.

3. National Simples Scheme (Brazil) – simplification of procedures for small businesses is an important measure to ease the administrative and cost burden imposed on these businesses by government legislation, regulations and compliance procedures. Brazilian small business legislation places strong emphasis on general simplification for micro and small enterprises and strongly promotes differentiated and favoured treatment of these enterprises. This is similar to the treatment envisaged in South Africa's 1995 White Paper on small business strategy, which did not find its way into the country's national Small Business Act. This emphasis in Brazil's legislation is worth emulating in South African legislation.

4. Dealing with late payment (India, Malaysia and UK) – late payment is generally acknowledged as one of the key challenges facing SMMs. The negative cash flow effects of late payment can and do sometimes result in business closure, with serious consequences for employment creation. India's Micro and Small Enterprise Facilitation Council and its alternative dispute resolution mechanism are noteworthy innovations in this context. In India and the UK, small business legislation takes a firm stance on reporting relating to late payment. India's tax treatment of overdue amounts owing to a small business supplier, and penalties for contravening the late payment provisions are all important legislative instruments. Malaysia's legislation, too, stipulates that an employee of SME Corporation can be charged for failing to make payment, or for being responsible for any delay in the payment. These are all important innovations in dealing with a major challenge faced by SMEs.

5. Special tax treatment (Taiwan) – the granting of special tax treatment, under specified conditions, in cases where (a) an investor avails land to an SME in an industrial zone as part of capital investment in the SME, (b) an SME relocates its plant, (c) an SME invests in research and development, (d) shares are issued to an SME in exchange for its intellectual property rights, and (e) an SME faces changes in the economic conditions and promotes domestic employment, demonstrates the innovative use of taxation as a tool to achieve certain specific goals relating to SME development, technology diffusion and employment promotion.

6. Research and development and technology transfer (USA) – more than any of the comparison countries, the USA’s legislation places extensive emphasis on promoting research and development and technology transfer as instruments to strengthen the competitiveness of SMEs. South Africa’s general investment in R&D is considered relatively low by international standards, and SMEs are no exception. Important lessons can be learnt from the USA’s approach to promoting R&D and technology transfer among SMEs.

7. Special treatment of designated groups in government procurement (USA) – USA legislation makes extensive provision for special treatment of military veterans, women, ethnic minorities and other designated groups in government procurement. These include set-asides, sole supplier sourcing, restricted competition contract awards, and preferential treatment for SMEs in disaster zones. The legislated reporting requirements placed on federal agencies in relation to their small business procurement practices are also noteworthy.

8. Accreditation and licensing of business development service providers (Kenya) – Kenya’s legislation is unique in providing for the regulation and licensing of business development services providers serving micro and small enterprises. In the South African context, where questions continue to be raised about the universal quality of business development services, particularly business advising, this provision is worth noting.

9. Regulation of business associations (Kenya) – Kenya is also unique in providing extensively for the regulation of business associations. South Africa’s 1995 White Paper makes reference to membership of business associations, chosen by SMEs themselves, being a pre-requisite for eligibility for State support but this was not carried through to the national Small Business Act. In the face of challenges that have beset some of the country’s leading business organisations in the past, questions have been raised as to whether some kind of regulation of these bodies should be considered. The Kenyan legislation would be worth looking at in this regard.

10. Promotion of clusters and networks (Nigeria and Taiwan) – the promotion of enterprise clusters and networks is a widely used approach to industrial strategy across sectors in many parts of the world, but this is not the case in South Africa. Lessons may be drawn in this regard from the Nigerian and Taiwanese legislations.

11. Make-up of Boards of SME promotion agencies (Kenya, Malaysia, Nigeria) – another distinguishing feature between South Africa and countries such as India, Kenya, Malaysia and Nigeria, is the make-up of

their small business support agencies' Boards, which have a high level of participation by various government Ministries and entities. This should assist in strengthening government oversight on small business promotion and, most importantly, ensuring effective coordination between government departments and entities, an ongoing weakness in the South African context.

Table 24: Country comparison using the EU small business legislation framework principles

Principle	Summary of key issues covered	Country with legislation incorporating this aspect
Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded	Promoting entrepreneurial culture	<ul style="list-style-type: none"> • South Africa's legislation specifically tasks its small business development agency, SEDA, with the responsibility to "facilitate the promotion of entrepreneurship". • Kenya's legislation also mentions "promoting an entrepreneurial culture" in the country. India's legislation also refers to the promotion of entrepreneurship among micro and small enterprises.
Ensure that honest entrepreneurs who have faced bankruptcy quickly get a second chance	Promoting a "second chance" policy, promote a positive attitude in society towards giving entrepreneurs a fresh start, ensure speedy completion of business winding up, and treating re-starters similar to new start-ups	<ul style="list-style-type: none"> • Although the UK's legislation deals with the issue of insolvency, this is not specifically in the context of small business promotion. Thus, none of the comparative countries deal specifically with this issue in their small business legislation. • South Africa's legislation, as is the case with other countries, does not deal with this issue.
Design rules according to the "Think Small First" principle	Minimising business costs and burdens of policies and regulations, carrying out impact assessments on new laws and regulations, and implementing special dispensations, including exemptions, for microenterprises.	<ul style="list-style-type: none"> • South Africa's legislation, specifically tasks SEDA to "investigate, advise on and comment on the effect of existing and proposed legislation on small enterprises..." • Brazil, however, goes much further than all comparison countries with its National Simples scheme, which prescribes "differential and favoured" treatment of micro and small enterprises in a wide range of areas. This is the best example among all comparison countries.
Make public administrations responsive to SME needs by making things as simple as possible for them	Setting administrative burden reduction targets, simplifying legislation and business licences, reducing business registration fees and shortening registration time, avoiding unnecessary information requests from SMEs, particularly microenterprises, and reducing frequency of information requests, improving ease of communication on burdensome rules and procedures.	<ul style="list-style-type: none"> • Brazil is the leader among the 8 comparison countries when it comes to the focus on simplification in its legislation, covering a number of areas – company registration, tax administration, labour relations, exporting, imposition of regulatory sanctions, public procurement and access to justice. • Although not specific to SMEs, UK legislation deals with simplification by requiring "a company registration system that enables all of the required registration information to be delivered on a single occasion to a single recipient, and by electronic means" and also the acceptance of electronic invoices, at no fee. • The USA's low documentation scheme for financing less than \$100,000 also deals with simplification. • South Africa's legislation does not deal specifically with simplification.

Adapt public policy tools to SME needs: facilitate SMEs participation in public procurement and better use State Aid for SMEs	Reduction of bureaucracy and improved transparency and information flows on procurement opportunities, subdivision of contracts to encourage SME participation, avoidance of onerous information requirements in procurement, and encouraging dialogue and understanding between SMEs and large buyers.	<ul style="list-style-type: none"> • South Africa’s legislation does not deal at all with the issue of public procurement. • The USA is the best example in this area, with strong emphasis on small business set-asides, contract unbundling, and preferential, single source, and restricted procurement. • Brazil’s “differentiated and favoured” treatment applies to procurement too. For instance, where there is a bid tie, preference goes to smaller businesses. • Taiwan legislation requires public authorities to assist SMEs by publicising procurement opportunities. • UK legislation requires procurement information and documents to be made available – without charge – to small business. • The UK and the USA require authorities to report annually on their small business procurement performance, including (in the USA) reasons for inadequate performance and remedial action to be taken to improve performance.
Facilitate SME access to finance and develop a legal and business environment supportive to timely payments in commercial transactions	Developing competitive venture capital markets, developing SME investment readiness programmes, developing financing programmes to close specific funding gaps, removing corporate tax impediments to investment.	<ul style="list-style-type: none"> • South Africa’s small business legislation does not deal with access to finance as this is a separate function handled by an agency established under separate legislation. The country’s legislation is also silent on the important issue of timely payment to SMEs. • India provides the best example of dealing with payment problems – it is unique in establishing a Micro & Small Enterprise Facilitation Council to deal with payment disputes, setting time limits (max. 45 days) for payment, requiring the buyer reporting on payment performance, disallowing tax deductions of late payment interest expense and imposing penalties for failure to report fully on this aspect. • Malaysia’s legislation stipulates as one of the grounds for laying a charge against an employee of the SME Corporation that the person “has failed to make any payment, or is or was responsible for any delay in the payment, of moneys to any person to whom such payment is due under any law or under any contract, agreement or arrangement entered into between that person and the Corporation”. • Taiwan, has unique examples of tax treatment for SMEs and companies investing in SMEs or using intellectual property from SMEs. • All other countries’ legislations deal extensively with access to finance issues.
Help SMEs to benefit more from the opportunities offered by the Single Market	Helping SMEs to participate in global supply chains and to use European standards, minimising cross-border trade-related administrative burdens, and advising SMEs to defend themselves against unfair commercial practices.	

Promote innovation and upgrading of skills in SMEs	Promoting the mobility of apprentices, enabling firms to self-assess their e-skills needs, supporting research, development and innovation capacity of SMEs, fostering SME participation in national and cross-border innovative clusters, and in knowledge transfer and intellectual property commercialisation, and ensuring easy access by SMEs to funding for entrepreneurship, innovation and knowledge transfer.	<ul style="list-style-type: none"> • The USA provides the best example of assisting SMEs in innovation through its extensive SBIR and STTR programmes which facilitate R&D and technology transfer from public institutions. • Kenya tasks its SME agency with a range of activities to support innovation among and technology transfer to SMEs. Its Micro and Small Enterprise Development is also required to finance innovation and technology transfer. • Brazil requires public entities to allocate a minimum of 20% of their research, development and technological capacity building resources to programmes aimed at supporting small businesses. • Legislation of other countries too, with the exception of UK and Malaysia, specifically mentions technology transfer and upgrading, technology commercialisation, and research and development. • South African legislation makes not reference to innovation, R&D and technology transfer and commercialisation.
Enable SMEs to turn environmental challenges into opportunities	Facilitating SME access to environmental and energy efficiency programmes and expertise, and supporting eco-innovation.	<ul style="list-style-type: none"> • The USA has a special financing programme for SMEs acquiring energy-efficient technology • No other country's legislation, including South Africa's, deals with this aspect.
Encourage and support SMEs to benefit from the growth of markets	Facilitating access to key export markets through measures including improved SME information (e.g. on trade barriers in foreign markets), using bilateral and multilateral mechanisms to seek foreign market opening and promote trade, offering foreign market-related training programmes to SMEs, and encouraging coaching of SMEs by large companies.	<ul style="list-style-type: none"> • South Africa's legislation refers, without any detail, to facilitating international market access for products and services of small enterprises • USA legislation establishes the Office of International Trade within the SBA, tasked with assisting SMEs in international trade, and requires SBA to offer export finance and other credit instruments to SMEs. • Brazilian small businesses under the Simples Nacional system enjoy differentiated treatment in exporting of goods and services with regards to licensing, customs clearance, and exchange procedures. In addition, businesses may earn export revenues up to the ceiling of R\$3,600,000.00, on top of revenues earned in the domestic market, without being excluded from Simples Nacional on account of exceeding the stipulated revenue threshold.

APPENDIX: EU SMALL BUSINESS ACT FRAMEWORK

Principle	Action proposed by EU Small Business Act at EU level	Action proposed by EU Small Business Act at EU Member State level
1. Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded	<ul style="list-style-type: none"> Promoting entrepreneurial culture and facilitating exchanges of best practice in enterprise education “European SME Week”— an umbrella for many campaign-type events across Europe “Erasmus for Young Entrepreneurs” initiative, enabling nascent entrepreneurs to learn from experienced host entrepreneurs EU network of female entrepreneur ambassadors, promote mentoring schemes to inspire women to set up their own businesses and promote entrepreneurship among women graduates. 	<ul style="list-style-type: none"> Introduce entrepreneurship as a key competence in school curricula, particularly in general secondary education, and ensure that the importance of entrepreneurship is correctly reflected in teacher training Ensure that taxation (in particular gift tax, taxation of dividends and wealth tax) does not unduly hamper the transfer of businesses Put in place schemes for matching transferable businesses with potential new owners Provide mentoring and support for business transfers, female entrepreneurs, and for immigrants who wish to become entrepreneurs.
2. Ensure that honest entrepreneurs who have faced bankruptcy quickly get a second chance	<ul style="list-style-type: none"> Continue to promote a second chance policy by facilitating exchanges of best practice between Member States 	<ul style="list-style-type: none"> Promote a positive attitude in society towards giving entrepreneurs a fresh start, for example through public information campaigns Aim to complete all legal procedures to wind up the business in the case of non-fraudulent bankruptcy within a year Re-starters to be treated similar to new start-ups, including in support schemes.
3. Design rules according to the “Think Small First” principle	<ul style="list-style-type: none"> EU-specific, with little application elsewhere 	<ul style="list-style-type: none"> Minimise business costs and burdens of policies and regulations, including by using self- or coregulation (with the private sector) Subject new legislative and administrative actions to the “SME Test” by carrying out rigorous impact assessment³¹ Include SME organisations in consultations before making legislative or administrative proposals that will impact on businesses Consider specific measures for small and micro-enterprises, including transition periods and exemptions from reporting requirements
4. Make public administrations responsive to SME needs by making things as simple as possible for them	<ul style="list-style-type: none"> Set specific targets for the reduction of administrative burdens on business Consider measures to simplify legislation for the benefit of SMEs 	<ul style="list-style-type: none"> Reduce business registration fees and reduce the time required to set up a business to less than one week Reduce and simplify business licences and permits, setting a maximum period of 1 month for granting licences and permits, except in cases justified by serious risks to people or the environment Refrain from asking SMEs for information which is already available within the administration, except for updates Ensure microbusinesses are not asked to participate in government statistical surveys more than once every three years, where the needs for statistical and other types of information do not require otherwise

³¹ A contemporary South African equivalent of this would be the Socio-Economic Impact Assessment Statement (SEIAS)

		<ul style="list-style-type: none"> Establish a contact point to which stakeholders can communicate rules or procedures which are considered to unnecessarily hinder SME activities Set up single points of contact, where businesses can obtain all relevant information and complete all necessary procedures and formalities electronically.
5. Adapt public policy tools to SME needs: facilitate SMEs participation in public procurement and better use State Aid for SMEs	<ul style="list-style-type: none"> Provide guidance on how to reduce bureaucracy, improve transparency and information and ensure a level playing field for SMEs in public procurement Further facilitate access to information on procurement opportunities through EU websites dedicated to public procurement 	<ul style="list-style-type: none"> Set up electronic portals to widen access to information on public procurement opportunities below the EU thresholds Encourage subdivision of contracts where appropriate and make sub-contracting opportunities more visible Remind contracting authorities of their obligation to avoid disproportionate qualification and financial requirements Encourage constructive dialogue and mutual understanding between SMEs and large buyers through activities such as information, training, monitoring and exchange of good practice Refocus State Aid policy to better address SME needs, including the design of better targeted measures.
6. Facilitate SME access to finance and develop a legal and business environment supportive to timely payments in commercial transactions	<ul style="list-style-type: none"> Facilitate cross-border investment in order to strengthen European venture capital markets Assist Member States to develop high quality investment readiness programmes 	<ul style="list-style-type: none"> Develop financing programmes that address the funding gap between €100 000 (R1,633,061) and €1 million (R16,330,614)³², in particular with instruments that combine features of debt and equity Remove regulatory and tax obstacles preventing venture capital funds operating in the Single Market from investing on the same terms as domestic funds³³ Ensure that corporate taxation encourages investment Make full use of funding available under EU programmes in support of SMEs.
7. Help SMEs to benefit more from the opportunities offered by the Single Market	<ul style="list-style-type: none"> Involve relevant stakeholders in actions to help SMEs participate in global supply chains Increase EU financial support to promote SME participation and defence of their interests in standardisation and to improve SME information on, and use of, European standards Make the Community Trade Mark system more accessible, in particular by significantly reducing Community Trade Mark fees Harmonise consumer protection rules and minimise administrative burdens to make cross border trade easier for SMEs 	<ul style="list-style-type: none"> Encourage National Standards Bodies to reduce the cost of access to standards Ensure that the composition of the standardisation committees is fair Encourage National Standards Bodies... to carry out campaigns to encourage SMEs to make better use of standards and provide feedback on their content Provide SMEs with advisory services including support to defend themselves against unfair commercial practices.

³² Rand figures as at 29 October 2017

³³ A South African equivalent of this would be to allow regional (SADC) funds to invest in South Africa on the same terms as South African funds, thus making finance available on the same terms regardless of country of its origin.

	<ul style="list-style-type: none"> Encourage European standards bodies to reduce the cost of access to standards, set up “SME Helpdesks” in coordination with representatives of SME Associations, and systematically publish abstracts of European standards with unrestricted access and in different languages. 	
8. Promote innovation and upgrading of skills in SMEs	<ul style="list-style-type: none"> Promote the mobility of apprentices Supporting the development of an online e-Skills and Career Portal to enable firms to self-assess their e-skills needs and find out how to develop the careers and qualifications of their staff and publish an online e-Business Guide to help SMEs self-diagnose their e-business needs Implement measures to assist Member States to support research, development and innovation Boost the emergence of high growth enterprises by supporting the research and innovation capacity of SMEs, by increasing the coordination of national programmes and initiatives Develop a cluster strategy including initiatives to encourage transnational cluster cooperation, facilitating cluster access to new markets and taking measures to encourage greater participation of SMEs in innovative clusters Support SME participation in knowledge transfer, through funding the commercialisation of intellectual property Encourage active participation of SMEs in the framework of the activities carried out by the European Institute of Innovation and Technology (EIT), to enable them to benefit from the knowledge transfers fostered by the EIT. 	<ul style="list-style-type: none"> Encourage SMEs to internationalise and grow, including through participation in innovative clusters Promote the development of SME competences in research and innovation, for example, through simplified access to public research infrastructure, use of R&D services, recruitment of skilled employees and training Open up national research programmes where this is of mutual benefit to SMEs from other Member States and contribute to SME access to transnational research activities, e.g. through joint programming Ensure easy access by SMEs to funding related to entrepreneurship, innovation and knowledge
9. Enable SMEs to turn environmental challenges into opportunities	<ul style="list-style-type: none"> Facilitate SME access to the Eco-Audit and Management Scheme (EMAS) through lighter environmental procedures, reduced fees, and the option of cluster registration Finance a network of environment and energy efficiency experts in the Enterprise Europe Network to advise SMEs on eco-efficient operations, market potential and funding for more efficient operations Develop new forms of support for innovative start-ups and SMEs in the field of eco-innovation, with a view to facilitating market access, technology transfer, use of standards and access to finance 	<ul style="list-style-type: none"> Provide incentives for eco-efficient businesses and products (e.g. tax incentive schemes and prioritising subsidies for funding sustainable business) in line with the Community Guidelines on State Aid for Environmental Protection and make use of the simplified approach to environmental aid for SMEs developed in the GBER Make full use of funding allocated in Cohesion Policy programmes for the support of eco-friendly products and processes in SMEs.
10. Encourage and support SMEs to benefit from the growth of markets	<ul style="list-style-type: none"> Establish Market Access Teams in key export markets bringing together Member States’ trade counsellors and EU business organisations, to improve SME information on trade barriers in markets outside the EU 	<ul style="list-style-type: none"> Encourage coaching of SMEs by large companies in order to bring them to international markets.

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- Actively seek the opening up of third country markets through WTO negotiations and bilateral agreements
 - In particular, seek the opening up of non-EU country procurement markets, leading to mutual and reciprocal benefits, through its bilateral and multilateral negotiations
 - Promote trade facilitation both in the context of the WTO and in bilateral negotiations
 - Facilitate EU SME access to the markets of candidate and other neighbouring countries, in particular through the Enterprise Europe Network and by promoting the “Think Small First” principle in these countries, including through exchanges of good practice based on the European Charter for Small Enterprises and the Small Business Act
 - Establish European Business Centres in selected markets
 - Launch a ‘Gateway to China’ scheme, focusing on establishing an Executive Training Programme in China to enable European SMEs to be more competitive in the Chinese market
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