

## CHAPTER 24:12

### **SMALL AND MEDIUM ENTERPRISES ACT**

*Acts 16/1983, 17/1988, 24/1990, 3/1997, 22/2001 (s. 4), 6/2011.*

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**AN ACT to promote and develop micro-, small and medium enterprises in Zimbabwe, whether operating in the formal or informal sector of the national economy, for sustainable development; to establish an**

**MSME Advisory Council and to provide for its functions and powers; to provide for the formulation, establishment and implementation of schemes to assist MSMEs, to create a fund to help finance such schemes; and to provide for matters incidental to and connected with the foregoing.**

[Long title amended by Act 6 of 2011]

[Date of commencement: 16th November, 1984.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Small and Medium Enterprises Act [*Chapter 24:12*].

[Short title amended by Act 6 of 2011]

#### 2 Interpretation

In this Act—

“advance” means a loan in any form made by SMEDCO, and includes an arrangement whereby SMEDCO becomes or has become guarantor or surety for the performance by a borrower of an obligation;

[Definition inserted by Act No. 6 of 2011]

“Advisory Council” means the Micro-, Small and Medium Enterprises Advisory Council established by section 2B;

[Definition inserted by Act No. 6 of 2011]

“Board” means the SMEDCO Board referred to in section 4;

[Definition substituted by Act 6 of 2011]

“borrower” means any person to whom an advance has been made by SMEDCO and includes—

- (a) any surety for an advance;
- (b) any mortgagor under a duly registered hypothecation;

[Definition inserted by Act No. 6 of 2011]

“chief executive officer” means the chief executive officer of SMEDCO appointed in terms of section 22;

[Definition inserted by Act No. 6 of 2011]

“Corporation” .....

[Definition repealed by Act No. 6 of 2011]

“co-operative” means—

- (a) a co-operative company registered in terms of the Companies Act [*Chapter 24:03*]; or
- (b) a co-operative society registered in terms of the Co-operative Societies Act [*Chapter 24:05*]; or
- (c) any other association of persons which has as its object the promotion of the economic interests of its members in accordance with co-operative principles;

“designated article” means any tool, implement, machinery or equipment designated by SMEDCO in terms of section 41A as security for any loan advanced by it;

[Definition inserted by Act No. 6 of 2011]

“Fund” means the MSME Fund established by section 2G;

[Definition inserted by Act No. 6 of 2011]

“member” in relation to—

- (a) SMEDCO means the chairperson and any other member of the Board referred to in section 5(1); and
- (b) the Advisory Council means a member of the Advisory Council referred to in section 2B(1);

[Definition substituted by Act 6 of 2011]

“micro-enterprise, small enterprise or medium enterprise” (hereafter in this Act referred to by the acronym “MSME” or its plural “MSMEs”) means a business entity, whether corporate or unincorporated, which, together with any of its branches or subsidiaries—

- (a) is managed by one person or jointly by two or more persons; and
- (b) carries on business predominantly in a sector or subsector of the economy specified in the first column of the Fourth Schedule; and
- (c) meets the criteria for classification as a micro-enterprise, small enterprise or medium enterprise specified in the second, third and fourth columns of the Fourth Schedule opposite the sector or subsector concerned (or any other criteria relating to maximum employees, maximum total annual turnover or maximum gross value of assets excluding immovable property as may be prescribed generally or for the purpose of any scheme); and
- (d) qualifies as a micro-enterprise, small enterprise or medium enterprise by application of the formula set out in the Fifth Schedule to the criteria specified in the Fourth Schedule;

[Definition inserted by Act 6 of 2011]

“Minister” means the Minister of Small and Medium Enterprises and Cooperative Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

[Definition substituted by Act 6 of 2011]

“private shareholder” means a person, other than the State, to whom one or more shares are issued in terms of subsection (2) of section *twenty-three B*;

[Definition inserted by Act No. 3 of 1997]

“scheme” means a scheme established in terms of Part IB for the assistance or development of MSMEs and co-operatives;

[Definition inserted by Act No. 6 of 2011]

“Small and Medium Enterprises Development Corporation” (hereafter in this Act referred to by the acronym “SMEDCO”) means the Corporation established by section 3;

[Definition inserted by Act No. 6 of 2011]

“small commercial or industrial enterprise” .....

[Definition repealed by Act No. 3 of 1997]

## **2A Government to promote development of MSMEs**

(1) The Government shall endeavour to create an economic and regulatory environment that promotes MSMEs in order to develop and enhance their contribution to national development.

(2) The objective specified in subsection (1) shall be implemented, subject to this Act, through appropriate administrative and legislative measures, including—

- (a) ensuring proper coordination and implementation of national policies, legislation and programmes that have a direct impact on the development of MSMEs; and
- (b) facilitating the entry by MSMEs into widening spheres of economic activity; and
- (c) facilitating the provision of training and advisory services to enhance the managerial and entrepreneurial capacities of persons who own or manage MSMEs; and
- (d) fostering joint ventures, partnerships and other forms of business linkages and associations between, on the one hand, MSMEs, and, on the other hand, statutory corporations and local authorities, and commercial and industrial organisations; and
- (e) ensuring that, when tendering out contracts for the supply to the State of goods and services, not less than twenty-five *per centum* of the value of goods or services to be procured are procured (whether by way of the contract or any subcontract thereunder) by MSMEs:

Provided that an MSME benefiting from such contracts and subcontracts shall benefit on terms not less favourable than any other contractor or subcontractor;

- (f) advancing the interests of MSMEs in bilateral, regional and international trade and investment; and
- (g) facilitating access by MSMEs to capital and finance.

(3) The objective specified in subsection (1) may be implemented generally in favour of all MSMEs or for any particular class of them, and additionally may be implemented with special consideration to women, young persons of or under the age of thirty-five years, disabled persons as defined in the Disabled Persons Act [*Chapter 17:01*] and persons residing in communal areas.

[Subsection inserted by Act 6 of 2011]

## **PART IA**

### **MICRO-, SMALL AND MEDIUM ENTERPRISES ADVISORY COUNCIL**

[Part IA (sections 2B - 2C) inserted by Act 6 of 2011]

## **2B Establishment, Constitution and Procedure of Micro-, Small and Medium Enterprises Advisory Council**

(1) There is hereby established a council to be known as the Micro-, Small and Medium Enterprises Advisory Council, consisting of not less than ten and not more than fifteen members appointed by the Minister in accordance with the Sixth Schedule and after approval by the President.

(2) The appointment, composition, qualifications, procedure and any other matters relating to the Advisory Council are set out in the Sixth Schedule.

(3) The Ministry shall provide the Secretariat and other support services required by the Advisory Council to enable it to exercise its functions.

## **2C Functions of Advisory Council**

(1) Subject to this Act, the functions of the Advisory Council shall be to—

- (a) advise the Government, local authorities, SMEDCO and other statutory bodies on issues relating to MSMEs; and
- (b) assist, through the provision of advice, in the formulation and implementation of schemes; and
- (c) evaluate the effect of schemes on MSMEs and report the result of its evaluation to the Minister; and

- (d) evaluate the effect of existing and proposed legislation on MSMEs and report its findings to the Minister; and
  - (e) carry out any other function that may be conferred or imposed upon the Advisory Council by or under this Act or any other law; and
  - (f) make a public report on any activities undertaken by the Advisory Council that the Council may undertake under paragraphs (c), (d) and (e); and
  - (g) consider any matter referred to it by the Minister; and
  - (h) prepare for submission to the Minister a full written report incorporating its recommendations in respect of any matter that was under its consideration in terms of this subsection..
- (2) The Advisory Council may conduct a public inquiry into any matter under its consideration, for which purpose the Council shall have the same powers as commissioners under the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, with any necessary changes, in relation to such an inquiry and to a person summoned to give evidence at the inquiry.

## PART IB

### SCHEMES

[Part IB (sections 2D - 2F inserted by Act 6 of 2011)]

#### 2D Establishment of Schemes

- (1) SMEDCO may establish one or more schemes for the provision of assistance to—
  - (a) any class of MSME or MSMEs generally; or
  - (b) persons who intend to establish any MSME.
- (2) The assistance to be provided under a scheme may take any one or more of the following forms—
  - (a) financial assistance, including the guaranteeing or underwriting of loans;
  - (b) facilitating access to capital;
  - (c) facilitating renovation, expansion and modernisation of infrastructure;
  - (d) the acquisition of tools, implements, machinery and equipment;
  - (e) facilitating and coordinating training programmes;
  - (f) promoting innovation and technical development;
  - (g) providing support services and information;
  - (h) assisting in creating and accessing markets and competing in tenders for the procurement of goods and services;
  - (i) facilitating and coordinating the development of business infrastructure; .
  - (j) facilitating the establishment or setting aside of premises or areas for the establishment and development of particular classes of MSMEs; or any other forms of assistance which, in the opinion of the Minister, will help in the establishment and development of the MSMEs concerned or MSMEs generally.
- (3) Every scheme shall be embodied in a draft notice referred to in subsection (5) which—
  - (a) shall identify the scheme by a name which is descriptive of the scheme; and
  - (b) state clearly the assistance to be provided under the scheme; and
  - (c) provide for—
    - (i) the classes of MSMEs which or persons who will be eligible for assistance under the scheme; and
    - (ii) the terms and conditions subject to which assistance may be granted under the scheme; and
  - (d) shall be subject to approval by the Minister and the Minister responsible for finance.
- (4) Without derogating from subsections (1) and (2), a scheme may provide for any of the following matters—
  - (a) the repayment, for the benefit of the Fund or SMEDCO, of loans advanced under the scheme or the value of the assistance granted to MSMEs under the scheme;
  - (b) the management and conduct of MSMEs that benefit from the scheme;
  - (c) the termination or suspension of assistance granted to any MSME under the scheme, and the repayment of loans or of the value of assistance advanced or granted under the scheme, where the MSME in question fails to comply with the terms and conditions subject to which the assistance was granted under the scheme.
- (5) Before a scheme is established under this section, the Minister shall, after approving it—
  - (a) cause it to be embodied in a draft notice for publication as a statutory instrument; and
  - (b) lay the draft notice before the House of Assembly, and
  - (c) if the House makes no resolution against the publication of the notice within the next seven sitting days after it is so laid before it, cause it to be published in the Gazette.

(6) Where a scheme has been embodied in a notice and published as a statutory instrument, subsections (1) to (5) shall apply to the amendment or revocation of that scheme.

## **2E Moneys required for implementation of schemes**

(1) Moneys required for the implementation of any scheme, including the cost of administering the scheme, shall be obtained from any or all of the following—

- (a) the Micro-, Small and Medium Enterprises Fund established by section 2G;
- (b) moneys appropriated for the purpose of any scheme by Parliament;
- (c) moneys payable to SMEDCO in terms of section 24(a), whether for the purpose of any specific scheme or for schemes generally.

(2) Where a scheme is terminated—

- (a) the moneys which are held by the Fund or by SMEDCO for the purposes of that scheme shall form part of the Fund or of the funds of SMEDCO, as the case may be;
- (b) any loan advanced by the Fund or SMEDCO shall continue to be serviced and repaid by the borrowers as if the scheme had not been terminated, and, after being repaid to the Fund or SMEDCO, shall form part of the Fund or of the funds of SMEDCO, as the case may be;
- (c) the moneys which were appropriated by Parliament for the purposes of any scheme shall form part of the Fund unless the Minister responsible for finance directs that all or part of the moneys be refunded to the Consolidated Revenue fund;
- (d) any loan raised by the SMEDCO for the purpose of any scheme shall continue to be serviced and repaid by SMEDCO;
- (e) the moneys which were obtained for the purposes of any scheme partly from moneys appropriated by Parliament and partly from SMEDCO shall form part of the funds of SMEDCO, unless, in respect of the portion appropriated by Parliament, the Minister responsible for finance directs that all or part of such portion be refunded to the Consolidated Revenue Fund.

## **2F Guarantees in connection with schemes**

(1) If a loss is incurred by the SMEDCO in the implementation or administration of a scheme, whether in respect of advances made, assistance given or debts due to the SMEDCO, the amount of the loss shall be paid by the Minister to SMEDCO from moneys appropriated for the purpose by Parliament, and in such event SMEDCO may, subject to the written approval of the Minister responsible for finance, waive its rights of recovery against the borrower concerned in favour of the Minister:

Provided that, if loans by the State to SMEDCO are written down by an amount equal to the amount of the loss, the Minister shall not make such payment.

(2) For the purposes of calculating any loss referred to in, and to be made good under, subsection (1), interest which is payable to SMEDCO and the costs of administration incurred by SMEDCO in connection with such loss shall be included.

## **PART IC**

### **MICRO-, SMALL AND MEDIUM ENTERPRISES FUND**

[Part IC (sections 2G-2O) inserted by Act 6 of 2011]

## **2G Establishment of Micro-, Small and Medium Enterprises Fund**

(1) There is hereby established a fund to be known as the Micro-, small and Medium Enterprises Fund.

(2) The Fund shall consist of—

- (a) such moneys as may be payable to the Fund from moneys appropriated by Parliament; and
- (b) advances made to the Fund in terms of section 2H; and
- (c) moneys paid or repaid to the Fund by beneficiaries in terms of a scheme; and
- (d) grants or donations to the Fund made with the approval of the Minister and the Minister responsible for Finance; and
- (e) any other moneys to which the Fund may be lawfully entitled.

(3) The Fund shall be vested in the Board of SMEDCO and, subject to this Act, shall be administered by the chief executive officer in accordance with such directions as the Board may, with the approval of the Minister, issue from time to time.

## **2H Advances to Fund**

(1) If in any financial year the income of the Fund, together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund out of moneys appropriated for the purpose by Act of Parliament in order to meet the deficiency.

(2) Advances in terms of subsection (1) shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

## **2I Objects of Fund**

- (1) The objects for which the Fund is established shall be—
- (a) to promote and facilitate the establishment and development of MSMEs;
  - (b) to carry on micro-finance business in relation to MSMEs, that is—
    - (i) accepting withdrawable or repayable deposits on demand or after a fixed period or after notice; and
    - (ii) employing withdrawable or repayable deposits, in whole or in part, to make loans and provide facilities to or for the benefit of MSMEs and co-operatives; and
  - (c) to encourage savings and the use of formal banking facilities by MSMEs and co-operatives; and
  - (d) to manage and provide developmental financing for transformation of rural communities, poverty reduction, employment creation and economic development.
- (2) The Fund shall, apart from providing direct funding to MSMEs, also provide wholesale finance to micro-finance institutions registered under the Banking Act [*Chapter 24:20*].

## **2J Application of Fund**

Without derogating from the generality of section 21, the Fund may be applied to—

- (a) the granting of assistance under, and the meeting of any costs incurred in connection with, any scheme;
- (b) research which is calculated to promote the establishment and development of MSMEs, or any class of MSMEs;
- (c) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;
- (d) loans or grants to any organisation which, in the opinion of the Board, exists to promote the establishment and development of MSMEs, or any class of MSMEs;
- (e) meeting any expenses arising from the establishment and maintenance of the Fund;
- (f) any purpose which, in the opinion of the Board, is likely to promote the establishment and development of MSMEs, or any class of MSMEs.

## **2K Annual budgets and reports**

- (1) In respect of each financial year, the Board shall prepare for the Minister's approval—
- (a) a revenue and recurrent expenditure budget for the Fund; and
  - (b) a capital budget for the Fund; showing the purposes for which expenditure is to be made and the estimated amount that will be expended on each such purpose.

(2) The Minister shall consult the Minister responsible for finance before approving a capital budget prepared in terms of subsection (1)(b).

(3) The Board shall cause annual reports to be prepared on the operations of the Fund, and shall cause copies of the reports to be submitted to the Comptroller and Auditor-General within thirty days of the end of the financial year of the Fund.

## **2L Limits on expenditure from Fund**

(1) Subject to subsection (2), the expenditure incurred by the Fund in any financial year shall not exceed the amounts specified in the budgets approved by the Minister for that financial year in terms of section 2K, and the expenditure on any purpose for which an amount has been budgeted in terms of section 2K shall not exceed the amount shown in the budget concerned for that purpose in terms of that section.'

(2) The Board, with the approval of the Minister, may authorise any saving on any purpose for which an amount has been budgeted in terms of section 2K to be applied to meet any deficiency occurring on any other such purpose.

## **2M Accounts and audit of Fund**

(1) The Board shall cause proper books of accounts of the Fund to be kept, together with adequate financial and other records in relation thereto, and, within three months after the end of the financial year to which the accounts relate, shall arrange for the accounts to be submitted to the comptroller and Auditor-General for audit in terms of subsection (2).

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him or her by section 8 of the Audit Office Act [*Chapter 22:03*] as though the assets of the Fund were public moneys or State property.

## **2N Holding of Fund**

(1) All moneys received for the account of the Fund shall be paid into a banking account with a banking institution registered under the Banking Act [*Chapter 24:20*] and shall not be withdrawn except by or with the authority of the chief executive officer.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Board may determine with the approval of the Minister and the Minister responsible for finance.

## 2O Financial year of Fund

The financial year of the Fund shall be the period of twelve months ending on the 31st December in each year.

[Part IC (sections 2G-2O inserted by Act 6 of 2011]

## PART II

### SMALL AND MEDIUM ENTERPRISES DEVELOPMENT CORPORATION AND SMALL AND MEDIUM ENTERPRISES DEVELOPMENT CORPORATION BOARD

#### 3 Establishment of Small and Medium Enterprises Development Corporation

There is hereby established a corporation, to be known as the Small and Medium Enterprises Development Corporation, which shall be a body corporate and shall, in the name of the Small and Medium Enterprises Corporation, be capable of suing and being sued and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

[Section amended by Act 6 of 2011]

#### 4 Establishment of Small and Medium Enterprises Development Corporation Board

The operations of SMEDCO shall, subject to this Act, be controlled by a board, to be known as the Small and Medium Enterprises Development Corporation, Board constituted in terms of this Part.

[Section amended by Act 6 of 2011]

#### 5 Constitution of Board

- (1) The Board shall consist of not fewer than five and not more than eleven members of whom—
  - (a) the Minister shall appoint not more than six, choosing them for their ability and experience in commerce or industry or for their suitability otherwise for appointment as members; and
  - (b) the private shareholders shall be entitled to elect the number specified in the first column of the Third Schedule corresponding to the percentage of SMEDCO's issued share capital for the time being held by the private shareholders, as specified opposite thereto in the second column of that Schedule.
- (2) When appointing—
  - (a) all of the members referred to in paragraph (a) of subsection (1), the Minister shall consult the President and act in accordance with such directions as the President may give him.
  - (b) two of the members referred to in paragraph (a) of subsection (1), the Minister shall, in addition to the consultation referred to in paragraph (a) of this subsection, consult such other Ministers as he considers have responsibilities that are related to the functions of SMEDCO.
- (3) An election of members referred to in paragraph (b) of subsection (1) shall take place at an annual meeting of private shareholders held in terms of regulations made under section *forty-four*.
- (4) Subject to subsection (5)—
  - (a) the Minister may appoint any person as an alternate to any member referred to in paragraph (a) of subsection (1);
  - (b) the private shareholders may elect any person as an alternate to any member referred to in paragraph (b) of subsection (1);

and such person—

- (i) shall act as a member only when the member to whom he is alternate is for any reason unable to exercise his functions on the Board; and
- (ii) when acting as a member, shall exercise the functions of the member to whom he is an alternate:  
Provided that an alternate to the chairman or deputy chairman of the Board shall not exercise the functions of the chairman or deputy chairman, as the case may be.

(5) No person shall be appointed or elected as an alternate to a member in terms of subsection (4) unless he is qualified for appointment or election as a member in terms of this Act.

(6) In appointing a person as an alternate to a member in terms of subsection (4), the Minister shall be bound by the same requirements for appointment as are applicable, in terms of paragraph (a) of subsection (1) and of subsection (2), to the appointment of members.

[Section substituted by Act No. 3 of 1997 and amended by Act 6 of 2011]

#### 5A Chairman and deputy chairman of Board

(1) The Minister shall appoint one member as chairman of the Board and another member as deputy chairman of the Board, and the deputy chairman shall exercise the functions of the chairman during any period that the chairman is unable to do so.

(2) The chief executive officer, if he is a member, shall not be appointed chairman or deputy chairman of the Board.

[Section inserted by Act No. 3 of 1997]

## **6 Terms and conditions of office of members**

(1) Unless he vacates his office earlier, a member shall hold office for a period of three years from the date of his appointment or election, as the case may be:

Provided that, if at the first election of members after the date of commencement of the Small Enterprises Development Corporation Amendment Act, 1996, the private shareholders elect two or more members, one such member, who shall be chosen by lot, shall hold office for two years from the date of his election.

(2) On the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been reappointed or his successor has been appointed;

Provided that a member shall not hold office in terms of this subsection for a period exceeding six months.

(3) A member who resigns or retires shall be eligible for reappointment or re-election to the Board.

(4) Subject to this Act, an alternate member shall continue as such for so long as the member to whom he is alternate holds office.

(5) Members shall hold office on such terms and conditions as the Board, with the approval of the Minister, may fix.

[Section substituted by Act No. 3 of 1997]

## **7 Disqualifications for appointment as member**

No person shall be qualified for appointment or election as a member and no person shall be qualified to hold office as a member who—

- (a) is not a citizen of Zimbabwe permanently resident in Zimbabwe; or
- (b) has, or is married to a person who has, a financial interest in any business, or is, or is married to a person who is, engaged in any activity connected with any business, if, in the opinion of the Minister, such financial interest or activity is likely to interfere with the impartial discharge by that person of his duties as a member; or
- (c) has in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
- (d) has, within the period of five years immediately preceding the date of his proposed appointment, been sentenced in any country to a term of imprisonment of or exceeding six months imposed without the option of a fine and has not received a free pardon.

[Section amended by Act 3 of 1997]

## **8 Vacation of office by member**

A member shall vacate his office and his office shall become vacant—

- (a) after giving the Board such period of notice of intention to resign as may be fixed in his terms and conditions of service of, if no such period has been fixed, after the expiry of one month after the date he gives such notice or after the expiry of such other period of notice as he and the Board may agree; or
- (b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country; or
- (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section *seven* to hold office as a member; or
- (d) if, in the case of a member elected by the private shareholders, his appointment is revoked in terms of regulations made under section *forty-four*; or
- (e) if he is required in terms of section *nine* to vacate his office; or

[Section substituted by Act No. 3 of 1997]

## **9 Board may require member to vacate office**

The Board, with the approval of the Minister, may require a member to vacate his office if the member—

- (a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any term or condition of his office fixed in terms of subsection (2) of section *six*; or
- (c) is mentally or physically incapable of efficiently exercising his functions as a member; or
- (d) has been absent, without the Board's permission, from three consecutive meetings of the Board, of which he has been given not less than seven days' notice, and there was no just cause for his absence.

[Section substituted by Act No. 3 of 1997]

## **10 Filling of vacancies on Board**

On the death of, or vacation of office by a member referred to—

- (a) in paragraph (a) of subsection (1) of section *five*, the Minister shall, subject to this Act, appoint a person to fill the vacancy for the unexpired period of the member's term of office;

- (b) in paragraph (b) of subsection (1) of section *five*, the private shareholders shall, subject to this Act, elect a person to fill the vacancy for the unexpired period of the member's term of office:

Provided that, if the unexpired period of the member's term of office is less than six months, the Minister or the private shareholders, as the case may be, need not fill the vacancy until the period has expired.

[Section substituted by Act No. 3 of 1997]

## **11 Meetings and procedure of Board**

(1) The Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit:

Provided that a meeting of the Board shall be held not less than three times in each financial year of SMEDCO.

(2) The chairman of the Board may himself at any time and shall, at the request in writing of not less than two members, convene a special meeting of the Board, which meeting shall be convened for a date not less than seven days nor more than thirty days after receipt of such request.

(3) If at a meeting of the Board the chairman and the deputy chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(4) A majority of members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall, subject to section *fourteen* have one vote on each question before the Board and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same force and effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

## **12 Committees of Board**

(1) For the better exercise of its functions the Board Committees of may establish one or more committees in which may be vested and on which may be imposed such of the functions of the Board as the Board, with the consent of the Minister, may direct:

Provided that—

(i) the vesting or imposition of any such functions in a committee shall not divest the Board of such functions; and

(ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions.

(2) The procedure of a committee of the Board shall be fixed by the Board.

(3) The chairman of the Board may at any time and place convene a meeting of a committee of the Board.

(4) The Board—

(a) shall appoint to any committee established in terms of subsection (1) not less than one member of the Board, who shall be chairman of the committee;

(b) may appoint as members of any committee established in terms of subsection (1), on such terms and conditions as the Board may fix, persons who are not members of the Board.

## **13 Remuneration and expenses of members of Board and of committees**

Members of the Board and of committee of the Board shall be paid from the funds of SMEDCO—

(a) such remuneration, if any, as the Board, with the approval of the Minister, may from time to time fix for such members generally; and

(b) such allowances, if any, as the Board, with the approval of the Minister, may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Board or of the committee concerned, as the case may be.

[Section substituted by Act No. 3 of 1997 and amended by Act 6 of 2011].

## **14 Members to declare connection with companies and firms dealing with SMEDCO**

(1) If a member or his spouse—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with SMEDCO; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company, co-operative or association of persons applying or negotiating for a contract with SMEDCO; or

(c) owns immovable property or a right in immovable property or a direct or indirect pecuniary interest in a company, co-operative or association of persons which results in his private interests coming or appearing to come into conflict with his duties as a member;

the member shall forthwith disclose the fact to the Board.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in that subsection.

(3) The chief executive officer shall not take any part in the consideration or discussion of and, where he has been appointed a member, shall not vote on, any question before the Board which relates to the terms and conditions of his appointment as general manner.

[Section amended by Act 6 of 2011]

## 15 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

- (a) the Board consisted of fewer than the number of persons for which provision is made in subsection (1) of section five; or
- (b) a disqualified person acted as a member at the time the decision was taken or the act was done or authorized.

## 16 Execution of contracts and instruments by SMEDCO

An agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the SMEDCO by any person or persons generally or specially authorized by the Board for that purpose.

## 17 Minutes of proceedings of Board and committees

(1) The Board shall cause minutes of all proceedings and decisions taken at a meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

## PART III

### FUNCTIONS OF SMEDCO

## 18 Functions of SMEDCO

(1) Subject to this Act, the functions of SMEDCO shall be—

- (a) to encourage and assist in the establishment of co-operatives and MSMEs;
- (b) to provide assistance, whether in the form of financial assistance, management counselling and training, information, advice or otherwise, to co-operatives and small commercial or industrial enterprises;
- (c) to administer the Micro-, Small and Medium Enterprises Fund established in terms of section 2G.

[Paragraph substituted by Act 6 of 2011]

- (c1) to implement schemes established in terms of Part B;

[Paragraph inserted by Act 6 of 2011]

- (d) to do all things which by this Act or any other enactment are required or permitted to be done by the Corporation.

(2) SMEDCO may itself exercise the functions referred to in subsection (1), or may exercise them through companies, private business corporations, co-operatives or other entities established by it for the purpose.

[Subsection inserted by Act 6 of 2011]

## 19 Powers of SMEDCO

(1) Subject to this Act, SMEDCO shall, for the better exercise of its functions, have the power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

(2) In the performance of its functions in terms of this Act, SMEDCO may deal differently with different persons, co-operatives and enterprises.

[Section amended by Act 6 of 2011]

## 20 Principles to be observed by SMEDCO

SMEDCO shall conduct its business on sound commercial lines, having regard to the national interest of Zimbabwe, and shall ensure that in each financial year its income is sufficient—

- (a) to meet the expenditure of SMEDCO properly chargeable to revenue in that year; and
- (b) to enable SMEDCO to make provision for any taxes, duties or rates for which it is liable; and
- (c) to permit the redemption on due date of SMEDCO's debentures and other loan capital; and
- (d) to enable SMEDCO to make such appropriations to its general reserve in terms of section twenty-seven as may be necessary or desirable.

[Section substituted by Act No. 3 of 1997 and amended by Act 6 of 2011]

## **21 Reports of SMEDCO**

(1) In addition to any annual report which SMEDCO is required to submit to the Minister in terms of the Audit and Exchequer Act [*Chapter 22:03*], SMEDCO—

- (a) shall submit to the Minister such other reports as the Minister may require;
- (b) may submit to the Minister such other reports as the Board may deem advisable; in regard to the operations, undertakings and property of SMEDCO.

(2) SMEDCO shall give to the Minister such information relating to the operations, undertakings or property of SMEDCO as the Minister may at any time require.

(3) The Minister may lay a report submitted to him by SMEDCO in terms of subsection (1) before Parliament.

[Section amended by Act 6 of 2011]

## **22 Appointment of chief executive officer**

(1) SMEDCO—

- (a) shall appoint, subject to this Act and on such terms and conditions as the Board thinks fit, a person approved by the Minister to be chief executive officer in whom, subject to the control of the Board, shall be vested the management of the operations, undertakings and property of SMEDCO;
- (b) may, with the approval of the Minister, assign to the chief executive officer such of the functions of SMEDCO as the Board thinks fit.

(2) Members, other than the chairman and deputy chairman of the Board, shall be eligible to be appointed chief executive officer, and if the chief executive officer is not a member on his appointment as general manager, he shall be eligible to be appointed a member, other than chairman or deputy chairman of the Board, in terms of section *five*.

(3) Without the authority of the Minister, no person shall be appointed as chief executive officer if he is not a citizen of Zimbabwe permanently resident in Zimbabwe.

(4) The appointment of the chief executive officer shall be terminated if he would be required in terms of paragraph (b) or (c) of section *eight* to vacate his office had the provisions of that section and of paragraphs (b) and (c) of section *seven* applied to him.

(5) Any assignment of functions in terms of paragraph (b) of subsection (1)—

- (a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;
- (b) may be revoked by the Board at any time;
- (c) shall not preclude the exercise of the functions by the Board itself.

(6) Where the chief executive officer is not a member, he shall have the right to attend meetings and take part in the proceedings of the Board as if he were a member but shall not have a vote on any question before the Board.

[Section amended by Act 6 of 2011]

## **23 Minister may give SMEDCO directions in national interest**

(1) The Minister, after consultation with the Board, may give to SMEDCO such directions of a general character relating to the exercise by it of its functions as appear to the Minister to be requisite in the national interest.

(2) SMEDCO shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

[Section amended by Act 6 of 2011]

## **PART IIIA**

### **ISSUE OF SHARES AND DEBENTURES BY SMEDCO**

[Part IIIA sections 23A – 23D inserted by Act No. 3 of 1997]

## **23A Authorised share capital of SMEDCO**

(1) The authorised share capital of SMEDCO shall be such number of shares of such value as shall be fixed by the Board, with the approval of the Minister and the Minister responsible for finance.

(2) With the approval of the Minister and the Minister responsible for finance, the Board may by resolution increase the authorised share capital of SMEDCO.

(3) Where the Board has fixed or increased the authorised share capital of SMEDCO in terms of this section, the Minister shall cause notice thereof to be published in the *Gazette*.

[Section inserted by Act No. 3 of 1997 and amended by Act 6 of 2011]

## **23B Allotment, issue and transfer of shares of SMEDCO**

(1) The Board shall allot such number of its shares to the State, subject to such terms and conditions, as are determined by the Minister and the Minister responsible for finance

(2) Subject to subsection (5), the remainder of SMEDCO's shares may be issued to the State and additionally, or alternatively, to persons other than the State in such circumstances and subject to such terms and condi-

tions as may be determined by the Board, with the approval of the Minister and the Minister responsible for finance.

(3) The terms and conditions under which SMEDCO's shares are allotted or issued to the State may include terms and conditions—

- (a) for payment to be made out of moneys appropriated for the purpose by Act of Parliament; or
- (b) after consultation with the Board, for the value of all or any of the shares to be set off against loans previously granted to SMEDCO by the State; or
- (c) for all or any of the shares to be allotted or issued in consideration for the writing off of loans previously granted to SMEDCO by the State; or
- (d) for all or any of the shares to be allotted or issued in consideration for capital grants previously made to SMEDCO by the State.

(4) Subject to subsection (5), SMEDCO's shares may be transferred by the holders subject to such terms and conditions as may be prescribed or as may be determined by the Minister and the Minister responsible for finance in consultation with the Board:

Provided that no new restrictions shall be imposed on the transferability of any share while that share is held by a person other than the State.

(5) At all times at least fifty-one *per centum* of SMEDCO shall be limited to the amount, if any, unpaid on the share.

[Section inserted by Act No. 3 of 1997 and amended by Act 6 of 2011]

### **23C Liability of shareholders**

The liability of the holder of a share issued by SMEDCO shall be limited to the amount, if any, unpaid on the shares.

[Section inserted by Act No. 3 of 1997 and amended by Act 6 of 2011]

### **23D Issue of debentures**

(1) SMEDCO may issue debentures, which may be taken up in such circumstances and under such terms and conditions as the Minister and the Minister responsible for finance may determine.

(2) Debentures may be issued by SMEDCO to the State in respect of any loan previously granted by the State to SMEDCO.

(3) Subject to subsection (2), debentures taken up by the State shall be paid for out of moneys appropriated for the purpose by Act of Parliament.

(4) SMEDCO's debentures may be transferred subject to such terms and conditions as may be determined by the Minister and the Minister responsible for finance in consultation with the Board:

Provided that no new restrictions shall be imposed on the transferability of any debenture while that debenture is held by a person other than the State.

[Section inserted by Act No. 3 of 1997 and amended by Act 6 of 2011]

## **PART IV**

### **FINANCIAL PROVISIONS RELATING TO SMEDCO**

### **24 Capital of SMEDCO**

The capital of SMEDCO shall consist of—

- (a) the share capital of SMEDCO; and
- (b) any other moneys or assets that may vest in or accrue to SMEDCO as capital, whether in the course of its operations or otherwise.

[Section substituted by Act No. 3 of 1997]

### **25 Revenues of SMEDCO**

The revenues of SMEDCO shall consist of any moneys, other than moneys referred to in section *twenty-four*, that may accrue to SMEDCO, whether in the course of its operations or otherwise.

[Section substituted by Act No. 3 of 1997]

### **25A Dividends**

Where in a financial year the revenues of SMEDCO are more than sufficient—

- (a) to meet the expenditure of SMEDCO properly chargeable to revenue in that year; and
- (b) to enable SMEDCO to make provision for any taxes, duties or rates for which it is liable; and
- (c) to permit the redemption on due date of SMEDCO's debentures and other loan capital; and
- (d) to enable SMEDCO to make such appropriations to its general reserve in terms of section *twenty-seven* as are necessary or desirable;

SMEDCO shall pay out of the surplus such dividends to its shareholders as the Board may determine in relation to that year.

[Section substituted by Act No. 3 of 1997]

## **25B Investments and loans by SMEDCO**

Moneys not immediately required by SMEDCO may be invested in such manner as the Board may determine, subject to any directions given to the Board by the Minister acting on the advice of the Minister responsible for finance.

[Section substituted by Act No. 3 of 1997]

## **26 SMEDCO to make certain charges to revenue account**

(1) SMEDCO shall charge to its revenue account all charges which, in the normal conduct of business, are regarded as proper to be charged to revenue account and, in so doing, shall make in each financial year proper provision for—

- (a) the depreciation or diminution in value of assets; and
- (b) the payment of interest on and all other charges and expenses incurred in connection with loans and debentures; and

[Paragraph amended by Act No. 3 of 1997]

- (c) the redemption of loans at due times to the extent that such redemption exceeds provision for depreciation.

(2) In charging to its revenue account all charges which in the normal conduct of business are regarded as proper to be charged to revenue account as provided in subsection (1), SMEDCO may, in each financial year, make provision for—

- (a) meeting, in whole or in part, increases in the cost of replacing assets to an extent approved by the Minister after consultation with the Minister responsible for finance;
- (b) making payments to an insurance fund established by SMEDCO to meet, in whole or in part, such liabilities of SMEDCO as the Minister may approve; and
- (c) making payments to a pension fund to meet, in whole or in part, superannuation liabilities of SMEDCO.

## **27 Establishment and operation of reserve fund**

(1) SMEDCO may establish a reserve fund to which, subject to this Part, may be appropriated from a surplus of income over expenditure at the end of its financial year such sums as the Board may approve.

(2) Subject to this Part, moneys in the reserve fund established in terms of subsection (1) may be used for such purposes as the Board may consider expedient for the proper exercise by SMEDCO of its functions, including the development of its assets.

(3) The Board shall comply with any directions which the Minister may give in relation to the management of the reserve fund established in terms of subsection (1).

## **28 Meeting of deficiencies**

(1) If in any financial year the income of SMEDCO, together with any surplus income brought forward from a previous financial year, is insufficient to enable SMEDCO to meet the charges and to make the provisions required by section *twenty-six*, the deficiency shall, unless the Minister otherwise directs, be met from the reserve fund established in terms of section *twenty-seven*.

(2) .....

(3) .....

[Subsections repealed by Act 3 of 1997]

## **29 Financial year of SMEDCO**

The financial year of SMEDCO shall be the period of twelve months ending on the 30th June in each year or on such other date as may be prescribed.

## **30 Accounts of SMEDCO**

(1) SMEDCO shall keep proper accounts and other records relating thereto in respect of all its operations, undertakings and property, including such particular accounts and records as the Minister may direct.

(2) SMEDCO shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

## **31 Audit of accounts of SMEDCO**

(1) SMEDCO shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts of SMEDCO kept in terms of subsection (1) of section *thirty* shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2) of section *thirty* and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view or the state of the financial affairs of SMEDCO.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the operations, undertakings and property of SMEDCO as the Minister may consider expedient.

(5) If, in the opinion of the auditors appointed in terms of subsection (1)—

- (a) they have not obtained the information and explanations they require; or
- (b) any accounts and records relating thereto have not been properly kept by SMEDCO; or
- (c) SMEDCO has not complied with the provisions of this Part;

the auditors shall include in the report made in terms of subsection (3) or (4), as the case may be, statements to that effect.

### **32 Powers of auditors**

The auditors appointed in terms of subsection (1) of section *thirty-one* shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating thereto kept by SMEDCO or its agents and to require from any member or person employed by SMEDCO or its agents such information and explanations as in their opinion are necessary for the purpose of their audit.

## PART V

### GENERAL

### **33 Exemption from liability of SMEDCO and members**

No liability shall attach to SMEDCO or to any member for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance by SMEDCO, the Board, a committee of the Board, the chief executive officer or any employee or agent of SMEDCO of any function of SMEDCO, the chief executive officer or the Board in terms of this Act or any other law:

Provided that this section shall not be construed so as to prevent any person from recovering, by action in a court of competent jurisdiction, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

### **34 Indemnity of members and officers of SMEDCO**

SMEDCO shall indemnify every member of the Board or of a committee of the Board and the general manager and every auditor, employee or agent of SMEDCO against any costs incurred by him in—

- (a) defending any proceedings, whether civil or criminal, which arise out of his duties as member, chief executive officer, auditor, employee or agent of SMEDCO, as the case may be, and in which judgment is given in his favour or he is acquitted, as the case may be; and
- (b) making any application to court on behalf of SMEDCO.

### **35 Investigation into affairs of SMEDCO**

(1) The Minister may at any time cause an investigation to be made into the affairs of SMEDCO by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

### **36 Proceedings on failure of chief executive officer, Board or Corporation to comply with Act**

(1) If at any time the Minister is satisfied that the chief executive officer, the Board or SMEDCO has failed to comply with the provisions of this Act, he may, by notice in writing, require the chief executive officer, the Board or SMEDCO, as the case may be, to make good the default within a specified time.

(2) If the chief executive officer, the Board or SMEDCO fails to comply with a notice issued in terms of subsection (1), the Minister may apply to the High Court for an order compelling the chief executive officer, the Board or SMEDCO, as the case may be, to remedy the default and the High Court may make such order on the application as it thinks fit.

### **37 Notes of hand**

(1) Any loan or financial assistance may be granted by SMEDCO on the security of a note of hand if the loan or financial assistance is for a period not exceeding five years.

(2) Where a loan or financial assistance on the security of a note of hand is to be secured against any land or registered real right, SMEDCO shall send a notice to the Registrar of Deeds setting forth—

- (a) the amount granted or to be granted; and
- (b) a description of the land or the right in question and the number and date of the title deed or other document evidencing title to such right; and
- (c) the name of the owner of the land or right;

together with the title deed or other document held by the person to whom the loan or financial assistance is granted or to be granted or, if it is not possible to send such title deed or other document, a certificate to that effect from SMEDCO.

(3) On receipt of a notice in terms of subsection (2), the Registrar of Deeds shall make an appropriate entry in respect of the land or right and such entry shall—

- (a) constitute an hypothecation of the land or right, as the case may be; and
- (b) rank from the date the entry is made by the Registrar of Deeds and for an amount stated therein, together with interest at the rate fixed by SMEDCO current from time to time which is payable in relation to such loan or financial assistance.

(4) If the whole or any part of a loan or financial assistance granted on the security of a note of hand is repaid and the note of hand is not cancelled, SMEDCO may grant further loans or financial assistance against that note:

Provided that—

- (i) the total amount of any such further loans or financial assistance, together with any part of such previous loan or financial assistance which has not been repaid, shall not exceed the amount specified in the note; and
- (ii) any such further loans or financial assistance, together with interest thereon, shall be secured by the note as if it had formed part of the original loan or financial assistance.

(5) This section shall not be construed as precluding a loan or financial assistance from being secured against any land or registered real right by means of a mortgage bond.

### **38 Remedies of SMEDCO against defaulting debtor**

(1) If—

- (a) at any time any sum of money, whether principal or interest, due in respect of any loan or financial assistance granted by SMEDCO is unpaid; or
  - (b) any loan or financial assistance or any part thereof
    - (i) has not been used within a reasonable period for the purpose for which it was granted; or
    - (ii) has been used for a purpose other than that for which it was granted; or
    - (iii) has not been carefully and economically expended;
- or
- (c) the security for any loan or financial assistance is declared executable by order of a competent court or is attached in pursuance of a judgment of a competent court; or
  - (d) it comes to the notice of SMEDCO that any asset secured to SMEDCO has been or is about to be
    - (i) attached in pursuance of a judgment of a competent court; or
    - (ii) removed from the place where it is ordinarily kept; or
    - (iii) disposed of in any way without the written consent of SMEDCO;
- or
- (e) the person to whom the loan or financial assistance was granted vacates, abandons, relinquishes possession of or is dispossessed of the security to which the loan or financial assistance relates; or
  - (f) there is a breach of any other condition of the loan or financial assistance granted;

the loan or financial assistance concerned or to which the security relates, together with any interest thereon, shall immediately become payable to SMEDCO and SMEDCO may sue for and recover the whole or any part of that loan or financial assistance, and whether or not it sues for the loan or financial assistance, it may refuse to pay any part of the loan or financial assistance which has been approved but not yet paid.

(2) In any case in which security is to be given, including any security by way of a notarial bond or note of hand, SMEDCO may stipulate that it shall be a condition of the loan or financial assistance that if the loan or financial assistance becomes repayable in terms of subsection (1), SMEDCO, in addition to the powers conferred by subsection (1), shall be entitled, subject to subsection (3), after a period of ten days has elapsed since the posting of a registered letter of demand addressed to the person to whom the loan or financial assistance was granted at his last known address or at the address given by him in his application for the loan or financial assistance, to enter upon and take possession of the whole or any part of the security concerned and dispose of such security in accordance with the Second Schedule.

(3) SMEDCO shall be entitled to exercise the powers conferred upon it in accordance with any condition referred to in subsection (2) as soon as it has posted a registered letter of demand to the person to whom the loan or financial assistance was granted in terms of that subsection where any event referred to in paragraph (c), (d) or (e) of subsection (1) occurs:

Provided that SMEDCO shall not dispose of any security so seized until the period of ten days has elapsed since the posting of the registered letter of demand.

(4) Where any security for any loan or financial assistance has been declared executable or attached as mentioned in paragraph (c) of subsection (1), any demand in terms of subsection (2) shall have the effect of suspend-

ing the execution or attachment of the property and, if the Sheriff or messenger of court is in possession of the property, he shall forthwith deliver it to SMEDCO:

Provided that this subsection shall not apply where the security has been so declared executable or attached at the instance of a person who held the property as pledgee or had a right of retention or such other security in respect of the property concerned

(5) Notwithstanding this section, SMEDCO shall not, in the exercise of the powers conferred by this section—

(a) enter any premises—

- (i) of the person to whom the loan or financial assistance was granted and the demand in terms of subsection (2) made without the consent of that person, unless such entry is necessary for the purpose of protecting or seizing any security referred to in subsection (2); or
- (ii) of a person other than the person referred to in subparagraph (i), without the consent of that person;

(b) take possession of or dispose of any security referred to in subsection (2) which consists of—

- (i) immovable property over which a duly registered mortgage bond in favour of some person other than SMEDCO exists, without the written consent of the holder of such bond; or
- (ii) movable property which some person other than SMEDCO holds as pledgee or in respect of which he has a right of retention or other such security without the consent of such other person.

### **39 Leasing of movable property by SMEDCO**

(1) Where the method of assistance rendered by SMEDCO to any MSME or co-operative is by leasing any movable property and—

(a) the property concerned has—

- (i) been used for a purpose other than the purpose for which it was leased; or
- (ii) not been carefully or economically utilized; or
- (iii) been removed from the place where it is ordinarily kept without the written consent of SMEDCO;

or

(b) the co-operative or MSME abandons or in any way relinquishes possession of the property concerned; or

(c) there is a breach of any other condition of the lease;

SMEDCO may sue for and recover the whole or any part of the rental owing to SMEDCO by the MSME or co-operative, as the case may be.

(2) In addition to the powers conferred by subsection (1), SMEDCO shall be entitled to stipulate that it shall be a condition of the lease that if any of the events referred to in paragraphs (a), (b) or (c) of subsection (1) occurs, SMEDCO may, upon giving ten days' notice to that effect, enter upon the premises of the MSME or co-operative, as the case may be, and repossess the property concerned.

### **40 Cession of rights by co-operative**

(1) A co-operative may, notwithstanding anything to the contrary contained in its memorandum, if any, and articles of association, regulations or by-laws, as security for any loan or financial assistance, cede to SMEDCO all the rights and title to—

- (a) the amount of subscribed but unpaid capital; and
- (b) the amount of any debts owing to the co-operative.

(2) A cession in terms of subsection (1) shall be in such form as SMEDCO may determine and, in the case of a cession referred to in paragraph (a) of subsection (1), shall be accompanied by a list, certified under the hand of the chairman and secretary of the co-operative or by any persons purporting to act in those capacities, showing as at the date of cession—

- (a) the names and addresses of all persons holding shares in the co-operative; and
- (b) the number of shares registered in the name of each such person and the amount paid up in respect thereof; and
- (c) the nominal value of such shares:

Provided that where a co-operative has previously furnished SMEDCO with a list mentioned in this subsection, it shall not be necessary, at the option of SMEDCO, on subsequent applications for a loan or financial assistance for the co-operative to furnish such list if it furnishes a list of any changes to the list previously furnished.

(3) A list furnished in terms of subsection (2) as read with any changes thereto furnished to SMEDCO, shall be *prima facie* evidence that the persons mentioned therein are liable to pay the amount stated therein.

(4) The signing of a cession in terms of subsection (1) by the chairman and secretary of the co-operative or by any persons purporting to act in those capacities shall, notwithstanding anything to the contrary contained in any law or in the memorandum, if any, and articles of association, regulations or by-laws of the co-operative, bind

the co-operative and, to the extent of any amount unpaid on their shares, its members also, and shall empower SMEDCO—

- (a) to prohibit by written notice addressed to the secretary of the co-operative at the address as recorded in the books of SMEDCO the transfer of any shares on which calls are still due; and
- (b) to call up and collect unpaid capital; and
- (c) to collect any amount due and owing by any person to the co-operative, to give valid receipts for the payment and to institute action to enforce payment thereof.

(5) If SMEDCO has, in terms of paragraph (a) of subsection (4), prohibited the transfer of shares in a co-operative, any purported transfer without the written consent of SMEDCO of a share in that co-operative while the co-operative owes SMEDCO any money in respect of any loan or financial assistance granted to it, shall be void.

#### **41 Special remedies in respect of co-operative**

- (1) If a co-operative which is indebted to SMEDCO—
  - (a) is dissolved for any reason whatsoever; or
  - (b) is removed from the register kept by the registrar of such societies; or
  - (c) so changes its character as no longer to be a co-operative; or
  - (d) fails to observe the terms and conditions of the grant of the loan or financial assistance to which the debt relates; or
  - (e) fails to pay any amount which becomes due and payable to SMEDCO;

the loan or financial assistance shall immediately become repayable to SMEDCO and SMEDCO may—

- (i) sue for and recover the whole or any part of the debt;
- (ii) whether or not it sues for the debt, refuse to pay any part of the loan or financial assistance which has been approved but not yet paid;
- (iii) where a cession has been made in terms of section *forty*, after giving seven days' notice by registered letter addressed to the secretary of the co-operative at the address recorded in the books of SMEDCO, exercise in such order as it may determine any one or more of the powers conferred by subsection (4) of section *forty*.

(2) Subsections (2), (3), (4) and (5) of section *thirty-eight* and the Second Schedule shall apply, *mutatis mutandis*, in relation to any loan or financial assistance granted or to be granted to a co-operative.

(3) If any person whose liability to pay any subscribed but unpaid capital has accrued in terms of the memorandum if any, and articles of association, regulations or by-laws of the co-operative fails upon written demand being made by SMEDCO to pay such amount within fourteen days after the date of the demand, SMEDCO may apply to a court for an order for the seizure and realization of so much of the immovable and movable property of that person as may appear to be necessary to make good such amount, together with the costs incurred by such seizure and realization:

Provided that—

- (i) the method of realizing the property of any person under the powers conferred by this subsection shall follow as nearly as possible the method prescribed for the realization of any security in terms of section *thirty-eight* as read with the Second Schedule;
- (ii) SMEDCO, in having recourse to the remedies provided by this subsection, shall in every case realize all the movable property available before realizing immovable property.

(4) The persons liable to pay any subscribed but unpaid capital shall be the persons whose names appear on the list of shareholders furnished by the co-operative at the time of signing the cession referred to in subsection (3) of section *forty* as read with any changes thereto furnished to SMEDCO, and any such person shall be liable to the extent stated in that list unless he satisfies SMEDCO that his name should not have appeared on the list or that the amount specified on the list in relation to him is incorrect:

Provided that if any shares have, after the signing of such cession, been transferred with the written consent of SMEDCO, then the transferee and not the person mentioned in the list shall be liable unless the transferee satisfies SMEDCO that he should not be so liable.

(5) All amounts collected by SMEDCO in terms of this section shall be applied to liquidate or reduce the debt of the co-operative to SMEDCO, and upon liquidation thereof the cession shall be cancelled and returned, together with any surplus moneys, to the co-operative or its legal representative.

#### **41A When articles purchased by or for borrowers become designated articles**

(1) When making an advance to a borrower for the purchase of tools, implements, machinery or equipment, or to pay for tools, implements, machinery or equipment already purchased, SMEDCO may cause to be registered in its favour a notarial mortgage bond in relation to the tools, implements, machinery or equipment concerned, and the tools, implements, machinery or equipment concerned shall thereupon become designated articles for the purposes of this Part.

(2) Designated articles shall cease to be such and the notarial bond thereon shall be discharged on the date when the whole amount of the debt owing to the SMEDCO in relation to the designated articles has been paid by the borrower or by any other person.

(3) No stamp duty or other tax shall be payable by SMEDCO to the State in relation to the registration of the bond referred to in subsection (1).

[Section inserted by Act 6 of 2011]

#### **41B Limitation on right to dispose of designated articles**

(1) A borrower who is in possession of designated articles shall not, except with the written consent of SMEDCO, sell, hire, pledge, exchange, lend, donate or otherwise encumber or dispose of them or willingly allow them to be taken out of his or her possession.

(2) SMEDCO may consent to the sale of a designated article on condition that the whole or a part of the price to be paid for the designated article shall be paid to SMEDCO in reduction of the debt relating to such designated article, and in that event ownership in the designated article shall not pass to any person until the condition has been fulfilled.

(3) SMEDCO may consent to the sale or exchange of a designated article on condition that the article is replaced by another tool, implement, machinery or equipment, and in that event any tool, implement, machinery or equipment acquired by the borrower as a replacement for the designated article shall itself become a designated article.

(4) If a borrower in possession of a designated article disposes of it in contravention of this section, he or she shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section inserted by Act 6 of 2011]

#### **41C Loss of designated article not to affect liability of borrowers**

The loss or depreciation in value of a designated article shall not in any way affect the borrower's liability for the repayment to SMEDCO of the full amount of his or her debt to SMEDCO.

[Section inserted by Act 6 of 2011]

#### **41D Marking, care and inspection of designated articles and**

returns by borrowers a borrower who is in possession of a designated article shall—

- (a) mark the designated article in any manner that SMEDCO may direct;
- (b) take proper care of the designated article and comply with any directions SMEDCO may give him or her in regard to its care and treatment;
- (c) whenever called upon to do so by SMEDCO—
  - (i) produce the designated article for inspection by an agent or employee of SMEDCO at such time and place as SMEDCO may direct; and
  - (ii) submit to SMEDCO a return showing the information required by SMEDCO in relation to the designated article;
- (d) notify SMEDCO immediately if any designated article—
  - (i) is damaged, lost, stolen or destroyed; or
  - (ii) is seized in execution or otherwise removed from his or her possession, whether lawfully or otherwise.

[Section inserted by Act 6 of 2011]

#### **41E Seizure and sale of designated articles**

(1) If a borrower who is in possession of a designated article—

- (a) fails to observe any condition lawfully imposed by SMEDCO in regard to the article; or
- (b) contravenes any provision of this Act in regard to the article; or
- (c) gives false information to SMEDCO in any return required to be made in regard to the article under section 41D(c)(ii); SMEDCO may, by application to a court of competent jurisdiction, sue for either or both of the following—
  - (i) the recovery of the designated article;
  - (ii) the payment of any sum outstanding on the amount secured by the notarial mortgage bond in relation to that article.

(2) SMEDCO may sell by public auction or private treaty a designated article which it has recovered in terms of subsection (1)(c)(i).

(3) SMEDCO shall apply the proceeds of a sale in terms of subsection (2), after deducting any costs incurred in the recovery and sale of the designated article concerned—

- (a) firstly in liquidating the debt relating to that designated article;
- (b) thereafter in paying the surplus, if any, to the borrower or to his or her legal representative.

(4) If, after a sale in terms of subsection (2), the proceeds are insufficient to liquidate the debt relating to the designated article concerned, SMEDCO may take such further lawful steps as it thinks fit for the recovery of any unsatisfied balance of the debt.

[Section inserted by Act 6 of 2011]

#### **41F Effect of borrower's insolvency on designated articles**

(1) If the estate of a borrower who is in possession of a designated article is surrendered: sequestered or assigned, or if a borrower, being a body corporate, is placed in liquidation, the trustee, assignee or liquidator, as the case may be, shall have no claim against SMEDCO in respect of any part of the debt repaid by the borrower which relates to the designated article, nor, except as is provided by subsection (4), shall the designated article constitute an asset in the borrower's estate.

(2) Except where a certificate is issued by SMEDCO in terms of subsection (4), the trustee, assignee or liquidator, as the case may be, of a borrower referred to in subsection (1) shall deliver to SMEDCO, within thirty days from the date of the surrender, sequestration, assignment or liquidation, as the case may be, all designated articles which were in the possession or under the control of the borrower, and SMEDCO shall, at the earliest favourable opportunity, cause the designated articles to be sold and the proceeds of the sale applied in all respects as if the designated articles were securities seized in terms of section 38(2):

Provided that any surplus from the proceeds of the sale, after satisfaction of the debt relating to the designated article, shall be paid to the Master of the High Court, trustee, assignee or liquidator, as the circumstances may require.

(3) If the proceeds of the sale of a designated article in terms of subsection (2) are insufficient to satisfy the debt relating to that designated article, SMEDCO may prove a claim against the borrower in respect of the unsatisfied balance of that debt.

(4) If—

- (a) the trustee, assignee or liquidator, as the case may be, makes an arrangement to the satisfaction of SMEDCO for the payment of the balance of the debt relating to a designated article; or
- (b) SMEDCO elects not to deal with a designated article in terms of subsection (2);

SMEDCO shall issue a certificate to that effect, whereupon the designated article shall vest in the estate of the borrower:

Provided that such article shall be deemed to have been pledged to SMEDCO as security for the due fulfilment by the borrower of his or her obligations under the loan in the same manner as if it had been delivered to SMEDCO as a pledge.

[Section inserted by Act 6 of 2011]

#### **42 Offices of SMEDCO**

(1) The head office of SMEDCO shall be in Harare.

(2) The Board may, with the approval of the Minister, establish branch offices inside Zimbabwe in places outside Harare.

#### **43 Offences and penalties**

(1) Any person who—

- (a) being a member of the Board or of a committee of the Board or the chief executive officer or an employee or agent of SMEDCO, receives, directly or indirectly, any fee or reward, other than is authorized in terms of this Act, from any person in respect of or in connection with any loan or assistance by SMEDCO or an application therefor; or
- (b) in respect of or in connection with any loan or assistance by SMEDCO or an application therefor, gives or offers any fee or reward to any member of the Board or of a committee of the Board or to the chief executive officer or employee or agent of SMEDCO for the purpose of influencing or inducing him to act in conflict with his duty in terms of this Act; or
- (c) acts as a valuator in connection with any property offered as security for a loan or assistance by SMEDCO, if such person, or to his knowledge any other person related to him in the third or a closer degree of consanguinity, has any pecuniary or other interest in such matter, whether as a partner, creditor, debtor or otherwise; or
- (d) in any application to SMEDCO for a loan or assistance, or in respect of or in connection with any loan or assistance granted by SMEDCO, alleges any fact that is substantially incorrect, knowing it to be incorrect or, with intent to defraud, fails to disclose any of his assets or liabilities; or
- (e) being a member of the Board or of a committee of the Board or the chief executive officer or an auditor, employee or agent of SMEDCO, makes, verifies or transmits to the Minister any statement, account or report in terms of this Act, knowing any fact alleged in such statement, account or report to be incorrect; shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(2) Any person who—

- (a) is or has been a member of the Board or a committee of the Board or the chief executive officer or an employee or agent of SMEDCO or who has attended any meeting of the Board or of a committee of the Board and who discloses, otherwise than in the course of his official duties or functions, any information regarding the transactions or affairs of any applicant for a loan or assistance by SMEDCO; or
  - (b) is a member of the Board and who takes part in the consideration or discussion of, or votes on, any question in contravention of section *fourteen*; or
  - (c) fails without just cause to comply with a requirement of an auditor in terms of section *thirty-two*;
- shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

#### **44 Regulations**

(1) The Minister, after consultation with the Board and the Advisory Council, may make regulations prescribing anything which in terms of this Act is to be prescribed or which, in his opinion is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form and manner in which any application shall be made to SMEDCO;
- (b) the appointment of inspectors and their functions, including powers of entry and search and powers to inspect records and documents;
- (c) the reduction of the share capital of SMEDCO;
- (d) meetings of private shareholders;
- (e) the election of members and alternate members to the Board by private shareholders and the revocation of the appointment of such members and alternate members;
- (f) the application, subject to such modifications as may be specified, of any of the provisions of the Companies Act [*Chapter 24:03*] in relation to—
  - (i) the election of members and alternate members to the Board and the revocation of their appointment; and
  - (ii) SMEDCO's shares and debentures.

[Paragraphs (c) – (f) inserted by Act No. 3 of 1997]

- (g) the registration of MSMEs, or any class of MSMEs, for the purpose of any scheme;
- (h) the terms, conditions and benefits of any scheme;
- (i) the compilation of a database of MSMEs, or any class of MSMEs, for the purpose of any scheme;
- (j) requirements and standards for the management of MSMEs;
- (k) fees and charges for registrations effected, services provided and any other thing done under this Act;
- (l) inquiries to enable the Minister or SMEDCO to determine whether any business enterprise qualifies as an MSME for the purpose of any scheme, and to that end the provision for powers of entry upon business premises, the examination of any persons employed in connection with the enterprise and the inspection of the books and other relevant documentation of the enterprise concerned;
- (m) the administration of the Fund and the mobilisation of moneys therefor; or
- (n) the establishment of incubation facilities and centres of excellence for MSMEs.

[Paragraphs (g) – (n) inserted by Act No. 6 of 2011]

(3) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level twelve or imprisonment for a period of twelve months or both such fine and such imprisonment.

[Subsection substituted by Act 6 of 2011]

(4) Regulations shall not be made for a purpose referred to in subparagraph (c) or subparagraph (ii) of paragraph (f) of subsection (2) without the approval of the Minister responsible for finance.

[Subsection inserted by Act No. 3 of 1997]

#### **45 Amendment or replacement of Fourth and Fifth Schedules**

(1) Subject to subsection (1), the Minister, after consultation with the Advisory Council and the Board, may by notice in a statutory instrument amend or replace the Fourth or Fifth Schedule.

(2) When the Minister wishes to amend or replace the Fourth or fifth Schedule the Minister shall lay the draft statutory instrument amending or replacing the Fourth or Fifth Schedule before the House of Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*.

[Section inserted by Act 6 of 2011]

## FIRST SCHEDULE (Section 19)

### POWERS OF SMEDCO

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights over the same and concessions, grants, rights, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.

[Paragraph amended by Act No. 3 of 1997]

5. To make, draw, accept, endorse, discount and otherwise deal in bills of exchange, invoices and other documents and securities, whether transferable, negotiable or not.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts, suretyships and guarantees.
8. To co-operate or enter into partnership or association with any person or association of persons carrying on or engaged in or about to carry on or engage in any business, enterprise or transaction capable of being conducted so as directly or indirectly to benefit SMEDCO.
9. To lend or advance money to, or acquire an interest in, to provide, by underwriting or otherwise or to assist in the subscription of capital for co-operatives and MSMEs.
- 9A. To enter into contracts of lease and hire, which shall, be exempt from the provisions of the Hire-Purchase Act [Chapter 14:09].

[Paragraph inserted by Act No. 3 of 1997]

10. To lend or advance money to any persons or association of persons who, in the opinion of the Board, are about to form a co-operative or engage in any MSME.
11. To provide or enter into agreements to provide management counselling to persons who, in the opinion of the Board, are engaged or are about to engage in any co-operative or MSME.
12. To provide, or enter into agreements to provide, management training designed to meet the needs of co-operatives and MSMEs.
13. To sponsor, support or organize conferences, seminars and meetings for the promotion of good management practices in the administration of co-operatives and MSMEs.
14. To assist persons who in the opinion of the Board are engaged or may become engaged in co-operative or MSMEs by preparing, compiling and distributing information relating to and providing advice on—
  - (a) techniques, methods and practices required for the successful administration of co-operatives and MSMEs;
  - (b) such Government incentives and assistance programmes as are available to co-operatives and MSMEs; and
  - (c) such financial services and other forms of assistance as are available to co-operatives and MSMEs.
15. To promote, establish or acquire companies, co-operatives or other enterprises and, in connection with any such company, co-operative or enterprise—
  - (a) to manage it and act as secretary thereof; and
  - (b) to appoint any person to act on behalf of SMEDCO as a director thereof or in any other capacity in relation thereto.
16. To raise or borrow or secure the payment of money or the performance of any obligation, in such manner and on such terms as may seem expedient.
17. To enter into, renew, cancel or abandon arrangements with any organization or authority, local or otherwise, that may seem conducive to the exercise of any or all of its functions and to obtain from such organization or authority rights, privileges and concessions which it thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.

[Paragraph amended by Act No. 3 of 1997]

18. To establish and administer such funds and reserves, not specifically provided for in this Act, as the Board may consider appropriate or necessary for the proper exercise of the functions of SMEDCO.
19. To employ, upon such terms and conditions as the Board thinks fit, such persons as may be necessary for conducting the affairs of SMEDCO, and suspend or discharge any such persons.
20. With the approval of the Minister, to pay such remuneration and allowances to its employees as it thinks fit.
21. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to ef-

fect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.

22. To make or guarantee loans made to its employees or their spouses for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees or their spouses.

[Paragraph amended by Act No. 3 of 1997]

23. To provide security in respect of loans such as are described in paragraph 22 by the deposit of securities, in which SMEDCO may invest such moneys as the Board may think necessary for the purpose.
24. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees and in that connection to provide or assist other persons in providing facilities for training, education and research.
25. Generally to do all such things as are calculated to achieve or facilitate or which are incidental or conducive to the performance of the functions of SMEDCO in terms of this Act or any other enactment.

## SECOND SCHEDULE (Section 38 (2))

### SALE OF SECURITIES

1. (1) Where any security or part thereof has been seized in terms of subsection (2) of section *thirty-eight* or delivered to SMEDCO in terms of subsection (4) of that section and such security or part thereof is not subsequently released, SMEDCO shall, as soon as possible but in any event within six months of such seizure, cause to be published in the *Gazette* and in a newspaper circulating in the area a notice describing the security and stating the date, hour, place and terms and conditions of the proposed sale of such security.  
(2) On the date stated in the notice published in terms of subparagraph (1) SMEDCO shall put up for sale the security described in that notice.  
(3) A sale in terms of subparagraph (2) shall be by public auction and on the terms and conditions stated in the notice in terms of subparagraph (1):

Provided that, where the security seized is of an incorporeal or documentary nature, the sale thereof shall be in such manner as SMEDCO considers just and reasonable in the circumstances.

- (4) Where SMEDCO sells any security referred to in subparagraph (1), it may bid for and purchase the whole or any part of the security offered for sale.
2. Where the security has been seized by SMEDCO in terms of subsection (2) of section *thirty-eight*, such seizure shall, subject to this Schedule, have the same effect as an attachment made by the Sheriff or his deputy under a writ of execution issued by the High Court.
3. (1) When a security which consists of immovable property has been sold in terms of paragraph 1, the proceeds of the sale shall be applied in the following manner—

- (a) firstly to the holders of any mortgage bonds, notes, statutory hypothecations and charges duly registered against such property in the Deeds Registry in accordance with the preference conferred upon such holders by such registrations upon production by such holders of evidence of the amounts owing thereunder:

Provided that no payment in terms of this subparagraph shall be made until at least seven days' notice thereof has been given to the person to whom the loan or financial assistance was granted and to any other person having a *prima facie* claim to such proceeds by registered letter posted to the last known place of address of the person to whom the loan or financial assistance was granted and such other persons;

- (b) if, after satisfying the claims of all persons referred to in subparagraph (a), there remains a surplus and the property so sold has prior to the sale been declared executable or attached under the process of a competent court, such surplus shall be paid to the Sheriff or messenger of the court, as the case may be, who shall distribute such surplus in accordance with the appropriate rules of the court;

- (c) if, after satisfying the claims of all persons referred to in subparagraphs (a) and (b), if any, there remains a surplus, such surplus shall be paid to the debtor or his legal representative.

- (2) If the person to whom the loan or financial assistance was granted or any other person who has a claim to the proceeds of the sale objects to the proposed distribution of moneys from such sale, SMEDCO shall transmit to the Master of the High Court an account showing how SMEDCO intends to dispose of those proceeds and such account shall lie open for inspection by any person claiming an interest in the proceeds at the office of the Master of the High Court for a period of not less than three weeks.
- (3) SMEDCO shall give due notice that an account referred to in subparagraph (2) is open for inspection by an advertisement in the *Gazette* and in a newspaper circulating in the area where the person to whom the

- loan or financial assistance was granted carries on his principal business and shall state in that notice the period during which and the place at which the account shall lie open for inspection.
- (4) Any person interested in the proceeds of a sale held in terms of this Schedule may, at any time during the period that the account relating thereto is open for inspection, lodge with the Master of the High Court two copies, in writing, of any objections to the proposed distribution, giving his reasons, and the Master shall forward one of these copies to SMEDCO.
- (5) After the expiry of the period during which the account has lain open for inspection—
- (a) the Master of the High Court shall consider the proposed distribution together with any objections duly lodged and any comments thereon by SMEDCO and shall give such directions as he considers equitable in the circumstances; and
  - (b) SMEDCO shall, after the expiration of the period referred to in subparagraph (6), dispose of the moneys in accordance with such directions:
- Provided that if during that period an application to the High Court has been made in terms of subparagraph (6), SMEDCO shall not dispose of the moneys until the application has been determined by the High Court or has been abandoned.
- (6) Any person who is aggrieved by a direction of the Master of the High Court may, within thirty days after the Master has given the direction and after giving notice to SMEDCO and to any person affected by the direction, apply by motion to the High Court for an order to set aside the direction and the High Court may make such order as it thinks fit.
- (7) Where the Master of the High Court directs in terms of subparagraph (5) that any moneys should be distributed in a manner different from that specified in the account and the interests of a person who has not lodged an objection to the account are affected, the account as amended on the direction of the Master of the High Court shall lie open for a period of not less than three weeks and SMEDCO shall give due notice thereof in accordance with the provisions of subparagraph (2) unless the person concerned consents, in writing, to the moneys being distributed without the necessity for the account lying open for inspection.
4. Where a security which consists of movable property is sold in terms of paragraph 1, the proceeds of the sale shall be applied in the following manner—
- (a) firstly in satisfying the debt due to SMEDCO by the person to whom the loan or financial assistance was granted;
  - (b) if after satisfying the debt referred to in subparagraph (a) there remains a surplus and the property has been declared executable or attached under the process of a competent court, the surplus shall be paid to the Sheriff or the messenger of the court, as the case may be, who shall distribute such surplus in accordance with the appropriate rules of the court;
  - (c) if after satisfying the debt referred to in subparagraph (a), there remains a surplus and the property has not been declared executable or attached, the surplus shall be paid to the debtor or his legal representative:
- Provided that, if the property had not been declared executable or attached any costs incurred by *bona fide* creditor in respect of the application for the execution or attachment of the property shall be paid before any moneys are appropriated towards satisfying the debt due to SMEDCO by the person to whom the loan or financial assistance was granted.

### THIRD SCHEDULE (Section 5 (1) (b))

NUMBER OF MEMBERS OF BOARD THAT MAY BE ELECTED BY SHAREHOLDERS

[Schedule inserted by Act No. 3 of 1997]

<i>Number of members</i>	<i>Percentage of SMEDCO's Issued Share Capital Held by Private Shareholders</i>
1	10 <i>per centum</i> or less
2	More than 10 <i>per centum</i> but not more than 20 <i>per centum</i> .
3	More than 20 <i>per centum</i> but not more than 30 <i>per centum</i> .
4	More than 30 <i>per centum</i> but not more than 40 <i>per centum</i> .
5	More than 40 <i>per centum</i> but not more than 49 <i>per centum</i> .

### FOURTH SCHEDULE (section 2)

CLASSIFICATION OF MICRO-, SMALL AND MEDIUM ENTERPRISES

[Schedule inserted by Act 6 of 2011]

<i>Sector or Sub-sector</i>	<i>Size or</i>	<i>Maximum</i>	<i>Maximum</i>	<i>Maximum</i>
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<i>of Economy</i>	<i>Class</i>	<i>number of fulltime paid em- ployees</i>	<i>total annual turnover</i>	<i>gross value of assets (excluding immovable property)</i>
Agriculture:	Medium	75	1 000 000	500 000
	Small:	30	500 000	250 000
	Micro:	5	30 000	10 000
Arts, Entertainment Culture, Education and Sport	Medium	75	1 000 000	500 000
	Small:	30	500 000	250 000
	Micro:	5	30 000	10 000
Mining and Quarrying	Medium	75	300 0000	2 000 000
	Small:	40	1500 000	1 000 000
	Micro:	5	50 000	50 000
Manufacturing	Medium	75	1 000 000	1000 000
	Small:	40	500 000	500 000
	Micro:	5	30 000	30 000
Construction	Medium	75	2000000	2000 000
	Small:	40	1 000 000	1 000 000
	Micro:	5	50 000	50 000
Energy	Medium	75	1 000 000	2000 000
	Small:	30	500 000	1 000 000
	Micro:	5	50 000	10 000
Financial Services:	Medium	75	1 000 000	500 000
	Small:	30	500 000	250 000
	Micro:	5	30 000	10 000
Transport	Medium	75	1 000 000	500 000
	Small:	40	500 000	250 000
	Micro:	5	30 000	10 000
Retail	Medium	75	1 000 000	50 000
	Small:	30	500 000	250 000
	Micro:	5	30 000	10 000
Tourism and Hospitality	Medium	75	1 000 000	500 000
	Small:	30	500 000	250 000
	Micro:	5	30 000	10 000
Services	Medium	75	1 000 000	500 000
	Small:	30	500 000	250 000
	Micro:	5	30 000	10 000

## FIFTH SCHEDEULE (section 2)

FORMULA FOR CLASSIFYING MICRO-ENTERPRISES, SMALL ENTERPRISES AND MEDIUM ENTERPRISES

[Schedule inserted by Act 6 of 2011]

### 1. Interpretation in Fifth Schedule

In this Schedule—

“enterprise of the sector or subsector concerned” means an enterprise operating within a sector or subsector of the economy specified in the first column of the Fourth Schedule.

## **2. Formula for use in classifying enterprises**

For the purposes of this Act, a reference to a “micro-enterprise”, “small enterprise”, or “medium enterprise” operating within a sector or subsector of the economy specified in the first column of the Fourth Schedule shall be construed as meaning any enterprise of such a size as is determined in accordance with the following formula—

$$A+B+C$$

whose meaning and application is further described in the following paragraphs.

### **3. Meaning of factors “A”, “B” and “C”**

The factors “A”, “B” and “C” represent respectively the average maximum total number of full-time employees during any calendar year of an enterprise, the maximum total annual turnover of an enterprise and the maximum gross value of the assets (excluding immovable property) of an enterprise.

### **4. Intended result of formula**

Each of the factors “A”, “B” and “C” is assigned a predetermined number of points, such that if the total sum of the formula as applied to any particular enterprise is nine (9) points or less, the enterprise in question shall, in accordance with paragraph 6, be deemed to be a “micro-enterprise”, “small enterprise”, or “medium enterprise”, as the case may be.

### **5. Weighting to be assigned to factors “A”, “B” and “C”**

Points are assigned to each factor on the following basis—

“A”: if an enterprise of the sector or subsector concerned—

- I. employs on average during any calendar year more than the maximum number of full-time employees specified for a medium enterprise in the sector or subsector concerned, this factor is worth five points;
- II. employs on average during any calendar year not more than the maximum number of full-time employees specified for a medium enterprise in the sector or subsector concerned, but more than the maximum number of employees specified for a small enterprise in the sector or subsector concerned, this factor is worth three points;
- III. employs on average during any calendar year not more than the maximum number of full-time employees specified for a small enterprise in the sector or subsector concerned, but more than the maximum number of employees specified for a micro-enterprise in the sector or subsector concerned, this factor is worth two points;
- IV. employs on average during any calendar year not more than the maximum number of full-time employees specified for a micro-enterprise in the sector or subsector concerned, this factor is worth one point;

“B”: if the maximum total annual turnover of the enterprise concerned—

- I. exceeds the maximum annual amount specified for a medium enterprise in the sector or subsector concerned, this factor is worth five points;
- II. does not exceed the maximum annual amount specified for a medium enterprise in the sector or subsector concerned, but is more than the maximum annual amount specified for a small enterprise in the sector or subsector concerned, this factor is worth three points;
- III. does not exceed the maximum annual amount specified for a small enterprise in the sector or subsector concerned, but is more than the maximum annual amount specified for a micro-enterprise in the sector or subsector concerned, this factor is worth two points;
- IV. is equivalent to or less than the maximum annual amount specified for a micro-enterprise in the sector or subsector concerned, this factor is worth one point;

“C”: if the maximum gross value of the assets (excluding immovable property) of the enterprise concerned—

- I. exceeds on average in any calendar year the maximum annual amount specified for a medium enterprise in the sector or subsector concerned, this factor is worth five points;
- II. does not exceed on average in any calendar year the maximum annual amount specified for a medium enterprise in the sector or subsector concerned, but is more than the maximum annual amount specified for a small enterprise in the sector or subsector concerned, this factor is worth three points;
- III. does not exceed on average in any calendar year the maximum annual amount specified for a small enterprise in the sector or subsector concerned, but is more than the maximum annual amount specified for a micro-enterprise in the sector or subsector concerned, this factor is worth two points;
- IV. is, in any calendar year, equivalent to or less than the maximum annual amount specified for a micro-enterprise in the sector or subsector concerned, this factor is worth one point.

## ***6. Classification of enterprises as obtained by applying formula***

Any score of—

- (a) ten points or more disqualifies the enterprise concerned for the purposes of this Act;
- (b) eight or nine points qualifies the enterprise concerned as a “medium enterprise”;
- (c) five, six or seven points qualifies the enterprise concerned as a “small enterprise”;
- (d) three or four points qualifies the enterprise concerned as a “micro-enterprise”.

## **SIXTH SCHEDULE (Section 2B(2))**

PROVISIONS RELATING TO MEMBERSHIP AND PROCEDURE OF ADVISORY COUNCIL

[Schedule inserted by Act 6 of 2011]

### **ARRANGEMENT OF PARAGRAPHS**

#### **PART I**

MEMBERSHIP OF ADVISORY COUNCIL

*Paragraph*

1. Interpretation in Part I.
2. Appointment of members.
3. Qualifications and disqualifications for appointment as member.
4. Vacant office by appointed member.
5. Suspension of appointed member
6. Filling of vacancies on Advisory Council.
7. Chairperson and vice-chairperson of Advisory Council.
8. Terms of office and conditions of service of members.

#### **PART II**

PROCEDURE OF ADVISORY COUNCIL

9. Meetings and procedure of Advisory Council.
10. Members to disclose certain connections and interests.
11. Committees of Advisory Council.
12. Minutes of proceedings of Advisory Council and of committees.
13. Validity of decisions and acts of Advisory Council and committees.

#### **PART I**

MEMBERSHIP OF ADVISORY COUNCIL

##### ***1. Interpretation in Part I***

Section 34 In this Part—

“appointed member” means a member of the Advisory Council referred to in paragraph 2(1)(b), (c) or (d).

##### ***2. Appointment of members***

(1) The Advisory Council shall consist of—

- (a) the Secretary of the Ministry for which the Minister is responsible; and
- (b) five members, being one representative each from the Ministries responsible for industry, commerce, science and technology, and from any other Ministry considered relevant, appointed by the Minister:

Provided that the Minister shall not appoint such a representative without the approval of the Minister responsible for the Ministry concerned; and

- (c) one representative of the Reserve Bank of Zimbabwe, appointed by the Minister with the approval of the Governor of the Bank; and

- (d) not less than three or more than five representatives of associations which, in the Minister’s opinion, represent micro-, small and medium enterprises or any class of such enterprises.

(2) Before appointing a member referred to in subparagraph (1)(d), the Minister shall call upon the organisation concerned to nominate, within such reasonable period as the Minister may specify, suitable and qualified persons to be appointed to the Advisory Council, and the Minister shall make the appointment from among the persons so nominated for membership:

Provided that—

- (i) the organisation, when called upon, shall provide the Minister with the names of at least twice the number of persons as there are vacancies to be filled by its nominees;
- (ii) if the Minister considers all the persons nominated by the organisation are unsuitable or unqualified for appointment, he or she may call upon the organisation to submit, within such reasonable period as he or she may specify, the requisite number of names of further persons who are suitable and qualified for appointment.

(3) If an organisation referred to in subparagraph (1)(d) fails or refuses to nominate the requisite number of persons within a reasonable time after being called upon to do so, the Minister may appoint any qualified person to be a member of the Advisory Council, and the person so appointed shall be deemed to represent the organisation concerned.

### ***3. Qualifications and disqualifications for appointment as member***

- (1) Persons shall not be qualified to be appointed or to hold office as appointed members if—
  - (a) they are neither citizens of Zimbabwe nor ordinarily resident in Zimbabwe; or
  - (b) they have been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and have not been rehabilitated or discharged; or
  - (c) they have made an assignment to or arrangement or composition with their creditors in terms of a law in force in any country and the assignment, arrangement or composition has not been rescinded or set aside; or
  - (d) within the five years immediately preceding their proposed appointment, they have been sentenced—
    - (i) in Zimbabwe, in respect of an offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and have not received a free pardon; or
  - (e) they have been convicted—
    - (i) in Zimbabwe, of an offence involving dishonesty; or
    - (ii) outside Zimbabwe, in respect of any conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty;and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended.
- (2) A person who is—
  - (a) a member of two or more other statutory bodies; or
  - (b) in the full-time employment of the State or the SMEDCO;shall not be qualified to be appointed or to hold office as an appointed member:

Provided that this subparagraph shall not apply to the appointed members referred to in paragraph 2(1)(b).

(3) For the purposes of subparagraph (2)(a)—

- (a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) “statutory body” means—
  - (i) any commission established by the Constitution; or
  - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President or a Vice President, a Minister or another statutory body or a commission established by the Constitution.

### ***4. Vacation of office by appointed member***

- (1) An appointed member’s office shall become vacant—
  - (a) one month after the member gives notice in writing to the Minister of his or her intention to resign from the Advisory Council or after the expiry of such other period of notice as the member and the Minister may agree; or
  - (b) on the date the member begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—
    - (i) in Zimbabwe, in respect of any offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;or
  - (c) if the member becomes disqualified in terms of paragraph 3(1 )(a), (b), (c) or (e), or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
  - (d) if the member is required in terms of subparagraph (2) or (3) to vacate his or her office as a member.

(2) Subject to subparagraphs (4), (5) and (6), the Minister may require an appointed member to vacate his or her office if—

- (a) the member has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (b) the member has failed to comply with any condition of his or her office fixed in terms of paragraph 8; or
- (c) the member is mentally or physically incapable of efficiently performing his or her duties as a member; or
- (d) the member contravenes paragraph 10; or
- (e) the member or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister’s opinion may occasion a conflict of interest with the member’s duties on the Advisory Council.

(3) Subject to subparagraph (4), the Minister, on the recommendation of the Advisory Council, may require an appointed member to vacate his or her office if the Minister is satisfied that the member has been absent without the consent of the chairperson of the Council from three consecutive meetings of the Council, of which the member has been given at least seven days’ notice, and that there was no just cause for the member’s absence.

(4) Before requiring a member to vacate his or her office in terms of subparagraph (2) or (3), the Minister shall inform the member of the reasons for doing so and shall afford the member a reasonable opportunity to make representations in the matter.

### ***5. Suspension of appointed member***

The Minister—

- (a) may suspend from office an appointed member against whom criminal proceedings are instituted for an offence involving dishonesty; and
- (b) may suspend an appointed member from office if the Minister has reasonable grounds to believe that the member’s office has become vacant in terms of paragraph 4(1) but the member has not relinquished his or her office; and
- (c) shall suspend from office an appointed member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office;

and, whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

### ***6. Filling of vacancies on Advisory Council***

Within three months after an appointed member’s death or vacation of office, the Minister shall take all necessary steps in accordance with this Part to fill the vacancy.

### ***7. Chairperson and vice-chairperson of Advisory Council***

(1) At its first meeting the Advisory Council shall elect one member to be chairperson and another to be vice-chairperson of the Council.

(2) The chairperson and vice-chairperson of the Advisory Council shall hold office as such for so long as they remain members, unless—

- (a) they resign their office as such; or
- (b) the Council resolves that they should cease to hold office as such.

(3) Whenever a vacancy occurs in the office of chairperson or vice-chairperson, the Advisory Council shall at its next meeting elect a member to fill the vacancy.

(4) The vice-chairperson of the Advisory Council shall exercise the chairperson’s functions whenever the chairperson is unable to exercise them or whenever the office of chairperson is vacant.

### ***8. Terms of office and conditions of service of members***

(1) Subject to this Part, an appointed member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of the member’s appointment.

(2) An appointed member whose term of office has expired shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subparagraph for more than six months.

(3) A person who ceases to be an appointed member shall be eligible for reappointment.

(4) Members shall hold office on such terms and conditions relating to remuneration, allowances and other benefits as the Minister, in consultation with the Advisory Council, may fix for members generally.

## PART II

### PROCEDURE OF ADVISORY COUNCIL

#### **9. Meetings and procedure of Advisory Council**

(1) The Advisory Council shall hold its first meeting on a day and place fixed by the chairperson, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit.

(2) The chairperson of the Advisory Council—

- (a) may convene a special meeting of the Council at any time; and
- (b) shall convene a special meeting of the Council on the written request of—
  - (i) the Minister; or
  - (ii) the chief executive officer of SMEDCO; or
  - (iii) not fewer than two members of the Council;

which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been Convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson of the Advisory Council, where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the chairperson of the Advisory Council convened the meeting in terms of subparagraph (2)(b).

(5) The chairperson of the Advisory Council or, in his or her absence, the vice-chairperson shall preside at all meetings of the Advisory Council:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Advisory Council, the members present may elect one of themselves to preside at that meeting as chairperson.

(6) A majority of the members shall form a quorum at any meeting of the Advisory Council.

(7) With the Council's approval, the chairperson of the Advisory Council may invite any person to attend a meeting of the Council, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Council at that meeting.

(8) A person invited to attend a meeting of the Advisory Council may take part in the proceedings of the meeting while the Council is considering the matter for which he or she was invited, but shall not have a vote on any question before the Council.

(9) Subject to subparagraph (11), anything authorised or required to be done by the Advisory Council may be decided by a majority vote at any meeting of the Council at which a quorum is present.

(10) Subject to paragraph 10, at all meetings of the Advisory Council each member present shall have one vote on any question before the Council:

Provided that—

- (i) in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote;
- (ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Council which relates to his or her vacation of office as a member.

(11) Any proposal circulated among all members and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted meeting of the Advisory Council and shall be incorporated into the minutes of the next succeeding meeting of the Council:

Provided that, if a member requires that such a proposal be placed before a meeting of the Council, this subparagraph shall not apply to the proposal.

#### **10. Members to disclose certain connections and interests**

(1) In this paragraph—

“relative”, in relation to a member, means the member's spouse, child, parent, brother or sister.

(2) If—

(a) a member—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Advisory Council; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his or her functions as a member; or

- (iii) knows or has reason to believe that any of his or her relatives—
  - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Advisory Council; or
  - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member's private interests coming or appearing to come into conflict with his or her functions as a member:

or

- (b) for any other reason, the private interests of a member come into conflict with his or her functions as a member;

the member shall forthwith disclose the fact to the Council.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on any question before the Advisory Council which relates to any consultation, advice, interest, property or right referred to in that subparagraph.

(4) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### ***11. Committees of Advisory Council***

(1) The Advisory Council may establish one or more committees for the better exercise of its functions, and may vest in such a committee any of its functions that it thinks fit:

Provided that—

- (i) the vesting of a function in a committee shall not prevent the Council from itself exercising that function, and the Council may amend or rescind any decision of the committee in the exercise of that function;
- (ii) if required to do so by any enactment, the Council shall establish a committee and vest in the committee such functions as may be requisite under that enactment.

(2) On the establishment of a committee the Advisory Council may appoint persons who are not its members to be members of the committee.

(3) The chairperson of the Advisory Council or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Advisory Council.

(5) Subject to this paragraph, subparagraphs (2) to (11) of paragraph 9 and paragraph 10 shall apply, with any necessary changes, to committees and their members as they apply to the Advisory Council and its members.

### ***12. Minutes of proceedings of Advisory Council and of committees***

(1) The Advisory Council shall cause minutes of all proceedings of and decisions taken at any meeting of the Council or of a committee to be entered in books kept for the purpose.

(2) Any minutes which purport to be signed, with the authority of the Advisory Council or the committee concerned, as the case may be, by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

### ***13. Validity of decisions and acts of Advisory Council and committees***

No decision made or act done by or under the authority of the Advisory Council or any of its committees shall be invalid solely because—

- (a) there were one or more vacancies on the Council or the committee, as the case may be; or
- (b) an unqualified person acted as a member of the Council or the committee, as the case may be; when the decision was taken or the act was done or authorised.