

KEPSA WEEKLY LEGISLATIVE BULLETIN

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Implementing MSE Act to support business growth in the Counties

Following the enactment of the Micro and Small Enterprises (MSE) Act 2012, attention has now shifted on how the implementation of the Act can help spur the growth and development of micro and small enterprises. The MSE Act was enacted by the National Assembly in 2012 to provide a legal framework that would advance the promotion, development and regulation of micro and small enterprises. Besides establishing rules and institutional mechanisms to guide the development of MSEs, one of its most salient features is the establishment of the Medium and Small Enterprises Authority.



The Kenya Private Sector Alliance (KEPSA) was actively

involved in the process of enacting the Act. There is broad consensus that the Act would best serve the MSE sector by guiding the establishment of MSEs in the Counties. To this end, some of the functions and roles assigned to the MSE Authority are important and could help towards this end. It is especially necessary that the MSE Authority places emphasis on enhancing dialogue at County level to influence a better understanding of the MSE Act and opportunities to grow the sector. It would be equally helpful to establish linkages between existing business associations at the County level with the MSE Authority to ensure adequate support and facilitation for MSEs in line with section 32 (1) (e) which requires the Authority to undertake measures to support the development of MSEs.



Further, the MSE Authority, in line with its functions under the Act, should strengthen linkages with County level organizations to support effective lobbying and advocacy through the various platforms addressing business development at the County level. Lastly, in its regular annual report to the Cabinet Secretary, the MSE Authority would do well to highlight specific measures and initiatives undertaken in promoting the establishment and growth of MSEs in the Counties.

One of the important offices established through the MSE Act is that of the registrar with a responsibility over registration and regulation of MSEs. It would help if this role was decentralized to promote more efficient interaction with the Counties and facilitate the ease of registration of MSEs at this level. The MSE Authority should, in accordance with its functions, provide capacity building and other training interventions to enhance awareness on registration and regulation MSEs and in line with section 48 to “provide capacity building and other training interventions to better support the establishment of SMEs”.

Another salient feature of the MSE Act is the creation of a MSE Fund which could be used towards advancing the development of MSEs in the Counties. The Fund could be utilized towards meeting the objectives of financing and promoting MSEs; providing affordable and accessible credit to MSEs; and, financing capacity building of MSEs. It is significant that beyond regulating the sector, the Act provides significant leeway to the Authority to help steer the development of markets and provision of marketing services which could be focused on growing MSEs in the Counties. In view of the significant number of MSEs in Kenya, the challenge for the MSE Authority is that of implementing the Act with a bold sense of vision to better meet the needs of MSEs.

Legislative Watch Tower

This section reviews Bills in the pipeline and due for presentation to the National Assembly and/or the Senate highlighting the key elements and provisions of the proposed legislation. In this week's Issue, we focus on the Kenya Institute of Public Policy Research and Analysis Bill, 2013

Bill seeks to strengthening research

The Kenya Institute of Public Policy Research and Analysis Bill, 2013 seeks to amend the Kenya Institute of Public Policy Research and Analysis Act, 2006. The latter is the law under which this premier research organization was established and which regulates its functions in undertaking its mandate. The Bill seeks to strengthen the Institute by improving its institutional and operational capacity to undertake its research work more effectively in key areas of economic policy. The Bill has been necessitated by the need to align to the provisions of the new constitution such as Articles 10



and 232 which set out the values and principles of public service and which create specific obligations on agencies funded through State resources.

The Kenya Institute of Public Policy Research and Analysis Bill 2013 also seeks to ensure that KIPPRA transforms into a research Institute that is well-placed to inform public policy formulation and meet the needs, demands and expectations of both the Public and Private Sectors under the new structure of government that now incorporates both the national and county governments. Ordinarily, the KIPPRA Bill 2013 should have been introduced by way of an amendment Bill but it has instead been presented as an entirely separate Bill. This would mean that once enacted and passed into law, it will effectively repeal and replace the KIPPRA Act, 2006 in accordance with Section 42 under the current Bill.

It is significant that the Bill anticipates a role for KIPPRA to provide its services to both the public and private sectors under section 6(d). To have clarity on its priority mandate in informing public policy, the new law would require establishing appropriate administrative structures to enable KIPPRA inform and advice te national and county governments on public policy through targeted research; and, undertake policy research on behalf of various entities outside the public sector as a means of supporting its sustainability. In accordance with section 6(g) of the Bill, it is hoped that KIPPRA's work is publicly available and disseminated to all stakeholders in both the private and public sectors. It would be expected that in view of its public-body legal status, KIPPRA would not exercise undue restriction over its research outputs in favour of an open source policy in respect of such research.



On provisions relating to access to information under the Bill, KEPSA has recommended a review of section 40(3) which seeks to limit the right of access to information. The Bill provides that “the right of access to information under Article 35 of the Constitution is limited to the nature and extent specified under this section”. KEPSA has observed that in view of the supremacy of the constitution, a provision within an Act of Parliament cannot override a right guaranteed under the Constitution. KEPSA has accordingly recommended a rewording of this sub-section to read Section 40 (3) “the right of access to information as guaranteed under Article 35 of the Constitution shall not be limited as to the nature and extent specified under this section”.