STATE OF IMPLEMENTATION OF THE MICRO AND SMALL ENTERPRISES ACT 2012

Policy Brief
1.0 Introduction

The purpose of this policy brief is to situate the Micro and Small Enterprises Sector (MSE) and its contributions to Kenya’s economy. Secondly, the brief will provide a status update on the implementation of law and policy related to the MSE sector generally but specifically to the MSE Act 2012. Thirdly, the brief will review the status of implementation and provide policy and legal prescriptions for full implementation of the MSE Act in addition to other policies that would facilitate growth for the sector.

2.0 Defining MSE and Quantifying their Economic Contribution in Kenya

In Kenya, the Micro and Small Enterprises (MSE) industry is defined by the number of workers the turnover and assets of the enterprises. According to Kenya’s Micro and Small Enterprises Act 2012, micro enterprises are defined as a firm, trade, service, industry or a business activity whose annual turnover does not exceed Kshs. 500,000 and whose total employees are less than 10 people. The same statute defined a small enterprise as that which has an annual turnover of between Kshs0.5 - 5 million, with the number of employees in the range from 10-50 people. In essence, the law classifies these enterprises based on employment and the annual turnover.

<table>
<thead>
<tr>
<th>Entity (Trade, service, industry or business activity)</th>
<th>No of Employees/ People</th>
<th>Annual Turnover Limit</th>
<th>Investment in Plant and Machinery + Registered Capital</th>
<th>Equipment Investment + Registered Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro Enterprise</td>
<td>Less than 10 people</td>
<td>Not exceeding Ksh. 500,000</td>
<td>Not exceeding Ksh. 10M</td>
<td>Not exceeding Ksh. 5M</td>
</tr>
<tr>
<td>Small Enterprise</td>
<td>More than 10 but less than 50</td>
<td>Between Ksh. 0.5M - 5M</td>
<td>More than Ksh. 10M but less than 50M</td>
<td>More than Ksh. 5M but less than 20M</td>
</tr>
</tbody>
</table>

Table 1: Presentation of the classification of Micro and Small Enterprises in Kenya

Source: D. Ong’olo, 2013.

Kenya’s Micro and Small Enterprises (MSEs) are further divided into four areas including agriculture, trade, manufacturing and provision of services. This division confirms that Kenya’s MSEs are engaged in all sectors of the economy despite the fact that the disproportionate numbers are found in agriculture and the provision of services. Based on the definition provided above and the diversity of business activities that MSEs in Kenya are involved in, it can be surmised that they have substantial economic contribution and support a large number of livelihoods. That notwithstanding, there have not been studies undertaken to quantify the exact contribution of Micro and Small Enterprises in Kenya.
The nature of MSEs is such that there are few systematic surveys that have captured their numbers and size with accuracy. Instead, the estimates of the number of MSEs are derived from the data that is available on Small and Micro Enterprises (SMEs). Thus MSE are a subset of Small and Micro Enterprises in Kenya and their activities also straddle both the formal and informal sector.

We can surmise their numbers from the data that various studies have provided regarding SMEs in Kenya. For instance, the Kenya Private Sector Alliance (KEPSA) states that MSEs in Kenya generate 18.4% of the Gross Domestic Product (GDP). From this citation, it shows that MSEs are an undeniably important player in Kenya’s economy.

The Economic Survey 2015 issued by the government of Kenya confirms that the largest creator of employment in Kenya is the informal sector. In turn, most of the MSEs in Kenya are based in the informal sector and are therefore the primary sources of employment for Kenyan people. Since the mid-1980s, MSEs in both the formal and informal sector have been the major drivers of employment growth. This is because the formal sector in Kenya has not grown commensurately with the growth in the population of Kenyans reaching working age.

### 3.0 Contribution of Informal Sector and MSEs to Employment

<table>
<thead>
<tr>
<th>Modern Sector</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wage Employees</td>
<td>2,016.2</td>
<td>2,084.1</td>
<td>2,155.8</td>
<td>2,283.1</td>
<td>2,370.2</td>
</tr>
<tr>
<td>Self employed</td>
<td>69.8</td>
<td>73.8</td>
<td>76.9</td>
<td>83.8</td>
<td>103.0</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td><strong>2,086.0</strong></td>
<td><strong>2,157.9</strong></td>
<td><strong>2,232.7</strong></td>
<td><strong>2,366.9</strong></td>
<td><strong>2,473.2</strong></td>
</tr>
<tr>
<td>Informal sector</td>
<td>9,371.1</td>
<td>9,958.3</td>
<td>10,548.4</td>
<td>11,150.1</td>
<td>11,843.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11,457.1</strong></td>
<td><strong>12,116.2</strong></td>
<td><strong>12,781.1</strong></td>
<td><strong>13,517.0</strong></td>
<td><strong>14,316.7</strong></td>
</tr>
<tr>
<td>Percent of Wage Employees</td>
<td>17.6%</td>
<td>17.2%</td>
<td>16.9%</td>
<td>16.9%</td>
<td>16.6%</td>
</tr>
<tr>
<td>Percent of Informal Sector Employees</td>
<td>81.8%</td>
<td>82.2%</td>
<td>82.5%</td>
<td>82.5%</td>
<td>82.7%</td>
</tr>
</tbody>
</table>


In 2014, the informal sector, which already accounts for the greater share of employment, is largely comprised of workers in Micro and Small Enterprises (MSEs). The national employment data in Kenya does not decompose employment data by size of the enterprise hence it is not possible to determine what share of the 0.64 million new jobs created in the informal sector would be attributable to Micro and Small Enterprises (MSEs). Looking at Table 2 above, we surmise that Micro and Small enterprises
(MSEs) comprise the larger share of the new jobs principally because new enterprises tend to be smaller and also involve investments of comparatively lower capital compared to the more established ones.

Owing to the establishment of the Youth Enterprise Development Fund and the Women’s Enterprises Fund, the number of Micro and Small Enterprises (MSEs) in Kenya has risen. This is principally because the funds provided under these facilities has expanded opportunities for groups of youth to establish enterprises trading in services, goods or agriculture in both rural and urban areas of Kenya. The significance of Micro and Small Enterprises (MSEs) in employment is discerned from the expanding opportunities for entrepreneurship among Kenya’s youth and women, added to the fact that the majority of new enterprises in Kenya are MSEs.

Micro and Small Enterprises (MSEs) contribute about 18% of the Gross Domestic Product (GDP), employ millions of adult Kenyans and also consume and pay for public funded services through licenses and taxes. These enterprises are therefore central to economic growth and employment and are also important to the county governments are sources of revenue and provision of services to residents of urban areas and the counties in general. Micro and Small Enterprises (MSEs) are a subset of the informal sector which is not only the major source of jobs but whose growth rate is much higher that it is for the wage sector. If this rate of growth is maintained through the provision of a better environment for MSEs, it is clear that their contribution to the Gross Domestic product in Kenya will be higher.

4.0 Status of the Implementation of the Micro and Small Enterprises (MSE) Law

Kenya’s Micro and Small Enterprises (MSEs) bill was passed into law in 2012. The law professes two primary purposes:

1. To provide for the promotion, development and regulation of Micro and Small Enterprises (MSEs)

2. To establish the Micro and Small Enterprises Authority

Thus any assessment of its implementation would be based on the degree to which these primary objectives of the law have found implementation. Section 3 of the law elaborates upon the objectives to include the provision of an enabling business environment, inspiring an entrepreneurial culture and facilitate formalization, promotion of representative organizations and upgrading of the informal Micro and Small Enterprises (MSEs).
As required by Section 29 of the law, the Micro and Small Enterprises Authority (MSEA) has been established and it has commenced its work based on the law. In turn, the Micro and Small Enterprises Authority (MSEA) has sought to have offices in counties to ensure that its officers are accessible to individual organizations that represent collectives of Micro and Small enterprises throughout Kenya. This has become more formalized since parliament provided appropriations to enable the secretariat to be formed and for the principal officers to be appointed.

- **Establishment of the Micro and Small Enterprises (MSE) Fund**

Section 51 of the statute on Micro and Small Enterprises requires the formation of a specific fund to be known as the Micro and Small Enterprises (MSE) Development Fund. While the full office and staff of the secretariat has been made operational, KENASVIT observes that the fund has not been established. The stated reason for this is that parliament did not authorize appropriation of funds to facilitate the formation of the MSE Development Fund. For that reason, it is possible to state that both arms of government responsible for planning and authorizing for funds may be violating the provisions of the act.

A priority of the registered groups of Small and Micro Enterprises (MSEs) is therefore to bring this issue to the attention of both parliament and the executive to ensure that the funding is approved for the next financial year. This issue is a priority because many MSEs are unable to receive funding for business activity from other funds that have been established because there is broad knowledge that a dedicated fund is available under Section 51 of the Micro and Small Enterprises Act (MSE) 2012. In the view of the membership and leadership of KENASVIT, the delay in establishment of the MSE Fund is a major violation of the law and an impediment to growth of the sector.

An examination of the budget estimates for the financial year that commenced on July 1, 2015 confirms that for the third consecutive year, parliament has not allocated funding for the MSE development fund as required by law.

- **Appointment of the Registrar of Micro and Small Enterprises**

Section 4 of the MSE Act creates the office of the registrar of Micro and Small Enterprises in Kenya. This section creates the offices and provides that it shall be occupied by an officer in the public sector whose responsibility is to register Micro and Small Enterprises in Kenya in accordance to the provisions of the law. Together with the appointment of the Chief Executive Officer for the Micro and Small Enterprises Authority (MSEA), the office of the registrar is an important office for bringing the MSE law into operation. Reviewing
documents and information posted on the website of the MSEA, it is not possible to verify whether a substantive registrar has been appointed. However, there is a notice on the website asking for applications for many positions including that of the registrar of MSE. This is marked as job reference number (Job Ref. No: MSEA Grade 4 - 6/07/2015). The expiry date for this application is August 12, 2015 showing that the recruitment process is ongoing.

- **Establishment of the Micro and Small Enterprises (MSE) Tribunal**

Section 54 of the MSE Act 2012 establishes a tribunal to hear and determine disputes related to the MSE sector in Kenya. This tribunal is formed by appointment of seven professionals of diverse backgrounds and is required to hear and take decisions on disputes that affect the operations of MSEs in Kenya. Information contained on the official website of the Micro and Small Enterprises Authority (MSEA) is insufficient to confirm whether the tribunal has been established. According to the MSE Act 2012, the appointments to the tribunal is to be done through a gazette notice by the Cabinet Secretary responsible for matters related to Micro and Small Enterprises (MSEs) in Kenya.

A review of the budget allocations to the MSEA shows that there is no allocation specified for the Tribunal, implying that it has not been set up or provided with facilities and budgets to facilitate its work. The total budget approved for the MSEA is Kshs. 325 million of which the recurrent expenditure will be Kshs 80.5 million and Kshs 225 million dedicated for development spending. 78% of the total, Kshs 225 million has been allocated for purchase of specialized equipment with the rest for dedication of civil works suggesting that the MSEA is constructing business and other premises. This shows that some of the plant and equipment may be dedicated for the use of micro and small enterprises.

- **Confirmation of the Chief Executive Officer of the Micro and Small Enterprises (MSE) Authority**

Whereas the MSE Authority has been properly constituted as required by the statute, there is still some uncertainty regarding the tenure of the Chief Executive Officer. This is a curious state of affairs since the required complement of 8 members of the board of directors are properly in place. However, the Chief Executive Officer has been working in an acting capacity for several months without confirmation of tenure. This situation continues to affect performance of a young institution but most importantly, represents non-compliance with good principles of corporate governance.
According to section 35 of the act, the Chief Executive Officer is responsible for the day to day operations of the Micro and Small Enterprises Authority (MSEA). While the formal confirmation of the Chief Executive Officer has been pending for a long time, the Micro and Small Enterprises Authority (MSEA) advertised for several positions including that of the CEO on its website. The job reference number for this position is (Job Ref: No: MSEA Grade 1 - 1/07/2015) and the call expires in August 12, 2015.

• **Registration of Individual Traders**

A critical purpose of the work of the Micro and Small Enterprises Authority (MSEA) is to ensure the registration of both individual businesses and associations that represent micro and small enterprises (MSEs) in Kenya. This is critical to its functions because this registration would enable the MSE Authority to have a database of these institutions and therefore design its programmes to ensure adequate coverage and informed intervention. At the same time, Section 48 of the act places a direct responsibility on the MSE Authority to undertake capacity building programmes for MSEs while Section 49 creates additional responsibility for market development and marketing services.

The development and promotional responsibilities that are required under Sections 48 and 49 above can only be accomplished subject to information on the needs of individual and collectives of MSEs respectively. The MSEs that should be registered under this law are seeking registration through alternative laws and administrative mechanism shows that the authority is failing to consolidate its constituency of enterprises and associations.

• **Performance of the Micro and Small Enterprises Authority (MSEA)**

As stated earlier in this brief, the MSE Act places enormous responsibilities on the registrar and the Micro and Small Enterprises Authority (MSEA). The MSEA’s main functions are:

• Formulate and review policies and programmes for MSEs in Kenya. In pursuit of this goal, the MSEA has developed and published a strategic plan covering the years 2013 - 2017 to guide its operations in policy formulation and assistance to institutions under its regulation.

• Promote access to markets by Micro and Small Enterprises. Contained in the Strategic Plan and in other policy is the intention to promote a bias for MSEs in public procurement in Kenya.
• Promote mainstreaming of youth, women and persons with disability into Kenya’s MSE. This function is superfluous because the vast majority of Kenya’s MSEs are run by women and younger Kenyans. The regulatory institution would help their cause by alerting law makers to the contribution of this industry in Kenya.

• Facilitate technology acquisition by MSEs in Kenya.

Section 71 of the MSE Act 2012 compels the MSEA to submit an annual report of its activities to the Cabinet Secretary responsible for MSE affairs for onward transmission to the national Assembly. Despite the existence of the MSEA for three years since its inception, there is no published record of the reports having been submitted to the cabinet secretary. That the MSEA has not published the reports of its activities on its website or other forms presents a difficulty in taking a systematic review of its performance in implementing the requirements of the law and policy.

5.0 Recommendations

Having identified the outstanding issues in the full implementation of the Micro and Small Enterprises Act of 2012, it becomes evident that there is urgency in ensuring their implementation and full compliance with the law. This brief identifies solutions and assigns responsibility for reforms or accomplishment of outstanding issues to public sector on the one side and non-state actors on the other.

• Public Sector

The priority matter for both the Micro and Small Enterprises Authority (MSEA) and individual entrepreneurs is to ensure that the MSE Fund is brought into operation in the next budget cycle. Due to the fact that the secretariat is established and the full complement of the board of directors is in place, it is incumbent upon the Micro and Small Enterprises Authority through the cabinet secretary for Industrialization to bring this matter before parliament. Thus the primary responsibility for the executive branch of government is to place the proper estimates before the legislature for consideration. Parliament must in turn review the budget proposals by the executive and ensure that allocations are made to ensure that the MSEA has not only operational funds but sufficient funding to get the MSE Fund to be fully operational.

Secondly, since the Micro and Small Enterprises Authority (MSEA) is in its formative stages, its leadership and management structures ought to be fully defined. Specifically, the board of directors should hasten the recruitment process that is ongoing for the Chief Executive Officer. Significant progress has been made in
publication of the advertisement but the screening of the candidates and confirmation of the Chief executive
together with principal officers should be concluded before the start of the last quarter of the year. As soon
as this is accomplished, the CEO and the staff should quickly start the implementation of its plans and
consolidate its membership and relationships with other micro and small enterprises throughout Kenya

Thirdly, as stated above, it is unclear whether the tribunal that is required under the law has been established
and if so, whether it has heard and determined disputes. A review of the budget approval for the last two
years shows that no funds were dedicated for the work of the tribunal. Therefore, parliament should require
the cabinet secretary to make a statement to clarify whether a substantive tribunal has been established.
This comprehensive statement should identify the methods used in filling the positions and whether the
procedures prescribed by section 54 of the law have been adhered to in full. This would serve to create public
confidence and understand what the achievements of the tribunal have been. These disclosures are fully in
the public interest and are based on the constitutional right to information.

Fourthly, the Micro and Small Enterprises Authority (MSEA) is required by law to publish an annual report of
its activities to the Cabinet secretary for transmission to parliament. There is no record that a report has been
tabled before parliament. At the same time, we could not confirm whether a draft report was presented by
the MSEA’s chief executive since there is no record of this on the website or at the Government printer. This
inability to trace the annual reports implies that the MSEA has not been in compliance with the requirements
of the law. This position must be corrected by the legislature by the joint action of the committees on Finance
Trade and Planning on the one side and the Committee on Labour and Social Welfare on the other.

Fifthly, Kenya’s parliament should recognize that it undermines its own authority when a law that is passed
is not brought to effect by the failure to fund institutions that it has created. While cognizant of the pressure
to fund many other activities, it must take initiative and provide specific funding to establish the MSE Fund.
This is imperative for the next funding cycle and the Micro and Small Enterprise Authority (MSEA) ought to
provide a rationale and estimates for this fund to enable parliament to make appropriations for it.

This proposal is therefore relevant for the Treasury and the parliament to ensure that an appropriate amount
is provided both for administration of the MSE Authority but also to ensure that the MSE Fund commences
its operations at the beginning of the next financial year.
• **Non-State Actors**

Stakeholders in the sector, who include MSEs, private sector associations and the Kenyan public, should hold the authority responsible for ensuring that the MSE Authority presents estimates to the Treasury and that the parliamentary Committees on Finance and Budget are informed to ensure that an adequate allocation for the fund is made for the coming financial year. On the other hand, individual associations that represent small traders and businesses should seek audience with the same committees mentioned above to alert them to the critical need to set up the fund.

Also, individual Micro and Small Enterprises have recognized that the Micro and Small Enterprises Authority (MSEA) may not have sufficient recognition because it has not commenced the capacity building work. It is imperative for the authority to develop the database of diverse firms and individual MSEs and commence the capacity building, infrastructure and market development contemplated in Part V of the law, Development and Promotion of Micro And Small Enterprises. This requires that the regulator should publish its work plan for the year and consult with registered associations to schedule capacity building activities that are relevant to registered associations and members in various regions within Kenya.

### 6.0 Conclusion

The enactment of the law in December 2012 to guide the development and formalization of Micro and Small Enterprises (MSEs) in Kenya was a big policy achievement. However, it is clear that the requirements of that law have not been fully implemented. Full compliance with its provisions require action by parliament and the executive in ensuring that the institution receives resources necessary to set up the MSE Fund. On the other hand, the board of directors of Micro and Small Enterprises Authority (MSEA) bears responsibility to promptly appoint the leadership in order to allow the Chief Executive Officer to drive the institution’s work. Appointment of technical officers has commenced and will be completed before the end of the first quarter of the financial year. This means that the year will be a decisive one for the institutions created under the Micro and Small Enterprises Act 2012 to hire competent staff and commence work programmes that advance the objectives contained in the MSE Act 2012. These set of outstanding issues are essential to raising the profile of the Micro and Small Enterprises Authority and are also important because they would mark significant progress towards full compliance with the requirements of the law.
References

2. Kenya Private Sector Alliance National Business Agenda II
The Institute of Economic Affairs (IEA - Kenya) is a Public Policy Think Tank and Kenya’s premier dialogue forum that seeks to promote pluralism of ideas through open, active and informed public debates on key policy issues, and to propose feasible policy back-up to policy makers including members of parliament as well as through research and advocacy. Through its work, The IEA-Kenya provides alternative public policy choices and addresses the legal and institutional constraints to economic reforms and growth.

The IEA-Kenya is independent of political parties, pressure groups, lobbies and any other partisan interests, and its only interest is the generation of cutting edge knowledge to inform the public while contributing to the formulation of rational public policies.