

THE NATIONAL ECONOMIC EMPOWERMENT ACT, 2004

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SCHEDULES

THE UNITED REPUBLIC OF TANZANIA



No. 16 OF 2004

I ASSENT,
Benjamin W. Mkapa
.....
President

19th January, 2005.
.....

An Act to establish the National Economic Empowerment Council for the promotion and facilitation of ownership of income generating activities and assets by Tanzanians to provide legal and institutional framework for the Council; to establish the National Economic Empowerment Fund and to provide for the control of the financial affairs of the Council and the Fund, and to provide for other incidental matter

[.....]

PREAMBLE

WHEREAS, Article 8(1) (b) of the Constitution of the United Republic of Tanzania, 1997 provides that, the United Republic of Tanzania is a state which espouse principles of democracy and social justice and accordingly the primary objective of the Government shall be the welfare of the people;

AND WHEREAS, the Government has resolved to take measures designed to promote and facilitate economic initiatives aimed at empowering Tanzanians;

AND WHEREAS, the Government has agreed in terms of the National Economic Empowerment Policy that, natural resources, trade, agriculture industry and other economic opportunities must generate wealth, boost the small and medium enterprise sector, in order to bring about a sustainable affirmative action and facilitate genuine and positive economic empowerment to the population of Tanzanians;

AND WHEREAS, economic empowerment is a central means for bringing about economic growth and social justice among our people that is necessary for the promotion of peace, tranquility and social stability that has characterised our society;

NOW THEREFORE , with a view to promoting rapid economic growth that will facilitate broader economic ownership by Tanzanians deliberate measures are taken to establish structures and mechanism to redress the existing economic inequalities among various sections of the population;

IT IS THEREFORE ENACTED by Parliament of the United Republic of Tanzania as follows-

PART I
PRELIMINARY PROVISIONS

Short title
and
commen-
cement

1.-(1) This Act may be cited as the National Economic Empowerment Act, 2004.

(2) This Act shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Appli-
cation

2. This Act shall apply to Mainland Tanzania.

Interpreta-
tion

3. In this Act unless the context otherwise requires-

“Act” means the National Economic Empowerment Act, 2004;

“Chairman” means the Chairman of the Council appointed under section 7(1)(a);

“Council” means the National Economic Empowerment Council established under section 4;

“economic activities” means such activities undertaken by an institution or organization for purposes of economic empowerment of an individual person, group of individual persons formed on communal basis, association, partnership or company, the primary purpose of which is to generate income and includes farming, trading, mining, transportation, manufacturing, tourism, construction, fishing, livestock keeping and rendering or providing service;

“economic empowerment” means deliberate and affirmative actions and measures undertaken by the Government for the purpose of promoting and enhancing knowledge, skill, economic prowess and financial prudence of Tanzanians to enable them to meaningfully participate in

- economic activities, and includes all plans, strategies, policies and measures taken to achieve that goal, be it by public or private sector;
- “Executive Secretary” means the Secretary of the Council appointed under section 14(1) and the term “Secretariat” shall be construed accordingly;
- “Fund” means the National Economic Empowerment Fund established under section 16;
- “institutions or organizations” in relation to economic empowerment, means Government departments, or agencies, institutions such as the Tanzania Credit Guarantee Agency, Small Enterprise Development Agency, Entrepreneur Development Institute, Market Development Centre, Vocational Education Training Authority, Small Industries Development Organization, institutions of learning, institutions and organizations such as banks and financial institutions, Savings and Credit Cooperative Societies; Non Governmental Organizations, Folk Development Colleges, Co-operative Societies Mwananchi Fund; Credit Guarantee Fund; Privatization Fund; Rural Electrification Fund; Community Based Organizations; Agricultural Finance Bank; and individual persons who perform economic activities and any other institution or organization which may be established as such;
- “member” means the member of the Council or Committee;
- “Minister” means the Minister charged with the coordination of economic activities for purposes of economic empowerment;
- “Register” means a register established under section 25(1).

PART II

ESTABLISHMENT OF THE COUNCIL

4.-(1) There is established a Council to be known as the National Economic Empowerment Council.

Establishment of the Council

(2) The Council shall be the agent of the Government constituted under the Prime Minister’s office.

(3) The Council shall have a common seal.

(4) The Council shall be a body corporate with perpetual succession, and subject to the provisions of this Act, be capable of-

- (a) on its own name, of suing and being sued;
- (b) of acquiring, holding and alienating movable and immovable property or enter into any contract or transaction;

- (c) borrowing or lending; and
- (d) of performing such acts as a body corporate may by law perform.

Functions
of the
Council

5.-(1) The Primary function of the Council shall be to implement the National Economic Empowerment Policy as promulgated by the Government and in so doing, it shall develop strategic institutional framework and national guidelines to support planning, and co-ordination of the sector and multi-sector response to such policy at all levels, and shall in particular, co-ordinate training on entrepreneurship and research geared towards facilitation of economic empowerment and shall, in that respect-

- (a) provide Tanzanians with the opportunity to participate in economic activities;
- (b) encourage and promote savings, investment and meaningful economic participation by Tanzanians;
- (c) promote and support business ventures pioneered and run by Tanzanians;
- (d) to manage, administer and identify sources of grants and donations for the Fund.

(2) Without prejudice to the generality of subsection (1), the Council shall have the duty to-

- (a) subject to other written laws which provide for the manner in which certain business or transactions are to be carried out, designate types of business which may be done by Tanzanians jointly or in partnership;
- (b) develop and facilitate implementation of sector and multi-sector strategies for mobilization and utilization of resources for economic empowerment activities;
- (c) develop and facilitate implementation of national multi-sector strategies for advocacy of all matters and activities relating to economic empowerment;
- (d) advise on the establishment and strengthening of individual or communal groups, cooperative or partnerships or joint ventures in economic activities;
- (e) provide advice to the Government, public and private sector institutions on specific issues and measures aimed at the promotion of economic empowerment of Tanzanians;

- (f) promote research on economic activities and foster linkage with research institutions;
- (g) make recommendations relating to any existing or proposed business or investment opportunities;
- (h) recommend on the modalities and measures to be taken that will ensure that micro-credit facilities are available for exploitation by or the gaining of access to such credit facilities;
- (i) establish and maintain sector and multi-sector economic empowerment information management system and facilitate information dissemination;
- (j) develop and supervise effective mechanism for monitoring trends of economic empowerment activities and for evaluating the impact or results;
- (k) identify training opportunities on economic and investment issues and to co-ordinate the relevant training programmes;
- (l) collaborate with institutions and organizations for the purposes of promoting access to services relating to economic opportunities;
- (m) in collaboration with relevant sectors, perform such other activities and functions ancillary or incidental to the promotion and enhancement of economic empowerment of Tanzanians;
- (n) study and review existing laws with a view to making recommendations for amendments as may be necessary for the purpose of facilitating or realization of the objectives of this Act; and
- (o) advance and lend money to any person, company, corporation, association or institutions, either with or without security and upon such terms and conditions regarding repayment or otherwise as the Council may decide.

(3) Where, pursuant to the provisions of subsection (2), the Council decides to designate certain types of economic activities which may be carried on only by Tanzanians individually or in joint venture with other institution or organization, it shall publish in the *Gazette*.

6. The Council shall, in performing its functions, have powers to delegate any of its functions to any public or private office or institution as it may deem necessary.

Delegation
of functions

Composi-
tion of the
Council

- 7.-(1) The Council shall consist of nine members being-
- (a) the Chairman who shall be appointed by the President; and
 - (b) a maximum of eight other members who shall be appointed by the Minister from among citizens of Tanzania.

(2) In making the appointment, the Minister shall ensure that the public and private sectors are adequately represented through senior officials who possesses proven experience in trade, agriculture industry or finance.

(3) Members of the Council shall be paid such allowances drawn from the funds of the Council as may be determined by the Minister upon recommendation by the Council.

(4) Members of the Council shall perform their functions on part-time basis.

Disqualifi-
cation of
members

8. A person shall not be appointed or continue as a member if such person-
- (a) is an undischarged bankrupt;
 - (b) is of unsound mind, or is subject to an order of a court declaring him to be mentally ill or mentally disordered;
 - (c) has at any time been convicted by court of theft, fraud, forgery and uttering, perjury, bribery, corruption or any offence involving dishonesty.

Tenure of
office and
removal of
members

9.-(1) A member shall hold office for a period of three years and shall be eligible for re-appointment for another term.

(2) Notwithstanding the provisions of subsection (1), a member shall cease to be as such-

- (a) if he resigns from the Council;
- (b) if the appointing authority revokes his appointment;
- (c) if a member is appointed to such other position the terms of which are inconsistent with his membership to the Council; and
- (d) if a member fails without assigning any valid reasons whatsoever to attend three consecutive meetings of the Council.

(3) The appointing authority shall not later than three months from the date on which office fall vacant fill any vacancy in the Council in respect of a member appointed pursuant to section 7(1)(b).

Meetings,
quorum
and
disclosure
of interest

10.-(1) The Council shall hold its meetings quarterly except that the Chairman may, at any time when circumstances demand, convene an extraordinary meeting of the Council.

(2) In the absence of the Chairman, members of the Council shall nominate from among their number a member who shall be the acting Chairman and a member so appointed shall assume all powers of the Chairman for the purpose of that meeting.

(3) The quorum of the Council shall be not less than half of its members.

(4) A member of the Council who has a direct or indirect personal interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature and extent of his interest to the Council.

(5) A disclosure of interest under sub-section (4) shall be recorded in the minutes of the meeting of the Council and the member making such disclosure shall not-

- (a) be present during the deliberations of the Council for the making of the determination; or
- (b) influence any other member or participate in the making by the Council of the determination.

(6) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberations on a matter in which he has disclosed a personal interest, the other members present may-

- (a) postpone the consideration of the matter until a quorum is realized; or
- (b) proceed to consider and decide the matter as if there was a quorum.

11. A decision taken by the Council or an act performed under the authority of the Council shall not be invalid only by reason of-

- (a) an irregularity in the appointment of a member;
- (b) a vacancy in the Council;
- (c) a fact that a member has lost qualification for being appointed or remaining as such;
- (d) a fact that any person who is disqualified from being a member or who was removed from that office sat as such on the Council at the time when such decision was taken,

Procedur-
es of
Council
not invalid
on certain
circumsta-
nces

if such decision was taken by a majority of members lawfully entitled to vote and the said members, at the time, constituted a quorum.

Procedure
of the
Council

12.-(1) Subject to this Act, the Council may regulate its own practice and procedures on matters relating to its meetings.

(2) The Council may appoint Committees on specific terms of reference.

Staff of the
Council

13.-(1) The Council shall have power to employ such members of staff as it may deem fit for the purpose of smooth execution of the functions and objectives of the Council.

(2) Without prejudice to the generality of subsection (1), the Council shall have powers to employ or appoint on terms and conditions as it may determine agents or professional persons for any specific purpose.

(3) the Council shall pay such salaries and allowances to its staff as it may determine from time to time.

PART III

THE SECRETARIAT

Executive
Secretary

14.-(1) There shall be the office of the Executive Secretary of the Council who shall be the head of the Secretariat of the Council.

(2) The Executive Secretary of the Council shall be appointed by the President from among persons holding or who have held senior position in the public service.

(3) A person may not be appointed the Executive Secretary unless he holds a degree from a University whose awards are recognized by the Government and has had experience in business or public administration or economic or agricultural planning or management.

Duties of
the
Executives
Secretary

15. It shall be the duty of the Executive Secretary to conduct daily affairs of the Council under general directions of the Council and shall in particular be-

(a) responsible for the carrying out of the policy decisions of the Council and the day to day administration and management of the affairs of the Council;

- (b) responsible for arranging the business for and the recording and keeping of the minutes of all decisions and proceedings of the Council at its meetings; and
- (c) perform any other function assigned to him by the Council or under any written law.

PART IV

ESTABLISHMENT OF THE NATIONAL ECONOMIC EMPOWEREMENT FUND

16.-(1) There is hereby established a Fund to be known as the National Economic Empowerment Fund into which shall be paid all monies, appropriated by Parliament and such other monies collected as grants, contributions or loans in accordance with the provisions of this Act.

National
Economic
Empowerment
Fund

(2) All monies appropriated or collected for the Fund shall be deposited in the bank as the Council shall determine or designate and shall be expended for the purposes of defraying expenses or achieving the objective of the Fund as specified under section 17 regard being had to the functions of the Council stipulated under section 5 of this Act.

(3) The Fund shall be managed and administered by the Council.

17. The objects of the Fund shall be to facilitate the redressing of economic inequality which exists among persons by-

Objects of
the Fund

- (a) promoting universal understanding of equity ownership of property among Tanzanians;
- (b) contributing to the creation of employment opportunities;
- (c) providing a link between institutions and organizations that are registered under this Act and to monitor economic activities undertaken by such institutions and organizations and, where necessary, to provide technical and, or facilities that may be necessary for the purposes of advancement or furtherance of their economic activities; and
- (d) employing such schemes of businesses and enterprises as may be necessary to achieve the objectives of this Act.

18.-(1) The operating and capital expenses of the Fund shall be financed by money appropriated by Parliament, grants, loans or income accruing to the Fund.

Financing
of the
Fund

(2) The Fund shall utilize any money referred to in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).

(3) The Fund-

(a) shall, in each financial year, at a time determined by the Minister, submit to him for his approval granted with the concurrence of the Council, a statement of estimated income and expenditure, for the next financial year; and

(b) may, in any financial year, submit adjusted statements of estimated income and expenditure to the Minister for his approval.

Establishment of instrument entity

19. The Fund may, having regard to-

(a) the implementation directives issued by the Council;

(b) the policies adopted by the Government, from time to time, regarding the economic empowerment of Tanzanias; and

(c) the objects of the Fund,

establish, promote or facilitate the establishment of companies, trusts, unit trust, management companies, or other suitable business entities for purposes of engaging in activities or schemes designed to economically empower Tanzanians.

The Fund to act with care and diligence

20. The Fund shall in the performance of its functions and the exercise of its powers, act with such care, diligence and skill as may reasonably be expected of a person who manages affairs of another person.

Fund may establish business entities

21. The Fund may, having regard to-

(a) the implementation programs;

(b) the policies adopted by the Government regarding the economic empowerment of Tanzania,

establish, promote or facilitate the establishment of companies, trusts, unit trust, management companies or other suitable business entities for purposes of engaging Tanzanians in such activities or schemes.

Confidentiality

22.—(1) The Fund shall not use for its own benefit or divulge other than in the proper course of performing its duties and powers, or, as required by any law or order of a court of competent jurisdiction, any confidential information which they may obtain in relation to the affairs of the Fund.

(2) The Fund shall not be entitled to use for its own benefit or divulge other than in the proper course of discharging its duties or performance of its functions any confidential information which he may obtain in relation to the affairs of the Council.

23. The Fund shall not render any services to any institution or organization rendering its services except with the consent of the Council, and such consent shall not be unreasonably withheld.

Exclusivity

24.—(1) Without prejudice to section 23, the Fund shall be entitled to render services-

Conflict of interest and disclosures

- (a) to a prospective institution or organization;
- (b) to any person proposing to buy or sell an interest in any institution or organization:

Provided that, the Fund shall be required to use its best endeavors to ensure that the Council's or disadvantaged persons' interest are not prejudiced.

(2) No member of the Council, employee, or staff, or agent of the Council shall be entitled to acquire any direct or indirect proprietary interest in an institution or organization in respect of which the Fund or employee of the Council is considering an interest on behalf of the Council.

(3) Notwithstanding the preceding provisions of this section, a member of the Council or, an employee or staff of the Council shall not sit in any meeting of the Council called for the purposes of the performance of the functions of the Fund and shall abstain from taking part in the deliberation on any matter to which such member or employee believe or has any reason to believe to have direct or indirect proprietary interest.

PART V

REGISTRATION OF INSTITUTIONS AND ORGANIZATIONS

25.—(1) There shall be a Register of institutions or organizations engaged in economic activities.

The Register

(2) The Register shall be kept and maintained by the Secretary.

26.—(1) It shall be an obligation for each institution or organization engaged in economic activities to register with the Council pursuant to the provisions of this Act and obtain a certificate of registration.

Requirement to register

(2) For purposes of this Act, recognition of institution or organization engaged in economic activities shall be given upon registration under this Act.

Procedure
for regis-
tration

27.—(1) Every institution or organization wishing to carry on economic activities in accordance with this Act shall submit application for registration to the Executive Secretary.

(2) The application shall be made in the form prescribed in the First Schedule to this Act and shall contain-

- (a) the name and address of the organization or institution;
- (b) the economic activities undertaken;
- (c) persons or category of persons involved;
- (d) area and location of operation; and
- (e) any other information as the Council may determine.

(3) The Minister may vary the First Schedule.

Issuance of
certificate

28.—(1) The Executive Secretary shall, after receiving application and upon being satisfied with the contents of the application-

- (a) register the institution or organization;
- (b) issue a certificate of registration.

(2) The certificate of registration shall be in the form prescribed in the Second Schedule to this Act and shall contain-

- (a) name and address of organization or institution;
- (b) area and location of operation;
- (c) economic empowerment activities undertaken;
- (d) category of persons who are subject to economic activities undertaken;
- (e) registration number and place of issuance;
- (f) signature of the issuing authority.

(3) The certificate of registration issued under this Act shall be sufficient evidence proving that the institution or organization is engaged in the economic activities under the supervision of the Council.

(4) The Minister may vary the Second Schedule.

- 29.**-(1) The Council may, where the institution or organization fails to
- (a) observe the guidelines or directives of the Council in the performance of its activities;
 - (b) comply with any of the terms or conditions imposed by the Council upon registration,
- issue a notice requiring the institution or organization to observe the guidelines and directives and any other conditions imposed by the Council within such time as may be prescribed in the notice.
- (2) The Council may, where the institution or organization fails to comply with the requirement specified in the notice under subsection (1), cancel a certificate of registration in respect of any of such institution or organization.
- (3) Where the Council has revoked a certificate of registration, it shall direct the Secretary to notify the institution or organization of the decision of the Council and to inform such institution or organization that it will no longer be under the supervision of the Fund whereupon the latter shall withhold any assistance to such institution or organization.
- 30.** Any person who is aggrieved by the decision of the Council made under section 29 may, within thirty days from the date on which notice of cancellation was notified to him, appeal to the Minister.
- 31.**-(1) Any registered institution or organization shall have the duty to-
- (a) prepare and submit performance reports of its economic activities and programs;
 - (b) provide to the Council relevant information on the improvement or establishment of economic empowerment activities;
 - (c) create employment opportunities for disadvantaged persons; and
 - (d) observe laws, guidelines and other directives which may be issued by the Council.
- (2) A report made by institution or organization shall be submitted to the Council for the purposes of monitoring and appraisal.

Cancellation of certificate

Appeals

Duties of the institutions or organizations in relation to economic activities

PART VI
FINANCE, AUDIT AND REPORT

Accounta-
bility

32. The Council shall-

- (a) Keep full and proper records of all its revenue and expenditure and of all the assets, liabilities including those related to the Fund;
- (b) satisfy itself that, all reasonable management measures have been taken to ensure that, resources which are necessary for achieving its objectives or objectives of the Fund are as far as possible, obtained safeguarded and utilized in the most, efficient and effective manner;
- (c) prepare appropriation accounts in accordance with the Public Finance Act, 2001; and
- (d) prepare annual accounts in accordance with generally accepted accounting practice, covering all its transactions.

Act No. 6
of 2001

Estimat-
es, reve-
nues and
expendi-
tures Act
No.6 of
2001

33.-(1) The Council shall, in respect of each financial year, prepare and submit to the Minister estimates of its revenue and expenditure.

(2) In preparing its estimates pursuant to subsection (1), the Council shall have regard to the provisions of the Public Finance Act, 2001.

Audit

34.-(1) The accounts of the Council and those of the Fund shall be audited by the Controller and Auditor-General.

(2) Upon the completion of examination of the accounts, the Controller and Auditor-General shall make and submit a report to the Council.

Annual
report

35.-(1) The Council shall, within six months after the end of each financial year, prepare and submit to the National Assembly through the Minister an annual report in respect of that year containing-

- (a) the audited accounts of the Council together with the auditor's report on those accounts;
- (b) a report on the operations of the Council and the Fund during that financial year; and
- (c) such other information as the Minister may require.

(2) The Minister shall cause the report to be laid, before the National Assembly within three months, or at the next Meeting of the National Assembly.

36.-(1) The Council may, at any time if it appears to it to be desirable, submit to the Minister a special report, on any matter incidental to the performance of its functions and those of the Fund.

Special reports

(2) Notwithstanding the provisions of subsection (1), the Council shall-

- (a) furnish the Minister with information and particulars as he may in writing require in connection with the activities of the Council; and
- (b) annually, within six months from the end of each financial year, furnish the Minister with a consolidated report with regard to the functions, affairs, activities and provide a statement of the progress achieved towards realization of economic empowerment.

PART VII

MISCELLANEOUS PROVISIONS

37. No matter or thing done by any member of the Council, employee or officer shall, if done *bona fide* in the execution of the functions conferred upon such member, employee or officer by this Act or by regulations made under the Act render such member, employee or officer personally liable for such matter or thing.

Protection of members

38. A person commits an offence who, in connection with the exercise of any power or performance of any function by the Council-

Offences and penalties

- (a) interferes with or exerts undue influence on, a member of the Council, an employee, staff, agent or any other person performing the functions of the Council;
- (b) knowingly gives false or misleading information concerning principal affairs of the Council or the Fund.

39.-(1) It shall be an offence for an official of any institution or organization for commission of an act which amount to an abuse of funds.

Offences by institution or organization;

(2) For purposes of subsection (1), 'abuse of funds' shall be construed to have been committed in the event of the occurrence of any of the following-

- (a) use of funds issued by or through a credit facility under the guarantee of the Fund contrary to the purpose for which it was issued;
- (b) theft of funds of an institution or organization;
- (c) false pretence, utterance of forged document, supplying misleading information or unlawfully procures funds or asset or any other property of the Fund.

Regulations

40.-(1) The Minister may, after consultation with the Council, make regulations for better carrying on the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations-

- (a) providing for procedures to be followed under the Act;
- (b) prescribing any forms which may be necessary for the purposes of this Act;

(c) providing for anything which, in his opinion, is necessary for better carrying into effect the purpose and objective of the Fund.

FIRST SCHEDULE

FORM

NO. NEE OI

THE NATIONAL ECONOMIC EMPOWERMENT ACT,2004 APPLICATION FOR REGISTRATION OF ECONOMIC ACTIVITIES

PART A

(To be filled by the Applicant)

1. Name and Address of applicant

.....
.....
.....
.....

2. Name of Institution or Organization

.....
.....
.....
.....

3. Economic activities

undertaken.....
.....
.....

4. Persons or Categories of persons involved in economic activity.....

.....
.....
.....

5. Date.....

Signature of the

Applicant.....

PART B
(For Official Use only)

6. Recommendation.....
.....
.....

.....
Date Signature of the Secretary
and Seal of the Council

SECOND SCHEDULE

FORM NO.

NEE OI

THE NATIONAL ECONOMIC EMPOWERMENT ACT, 2004
CERTIFICATE OF REGISTRATION
FORM NO. NEE O2

THIS IS TO CERTIFY THAT, (Name of Institution or Organization
).....
.....

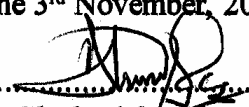
P.O.Box.....
HAS BEEN REGISTERED AS INSTITUTION/ ORGANIZATION/ CARRYING
ON ECONOMIC ACTIVITIES IN ACCORDANCE WITH THE ACT.

ISSUED AT..... THIS..... DAY
OF.....
YEAR 20

.....
Signature of the Secretary
and Seal of the Council

.....
Signature of Chairman

Passed in the National Assembly on the 3rd November, 2004


.....
Clerk of the National Assembly.