



# **Submission to the Portfolio Committee of Small Business Development on the National Small Enterprises Amendment Bill**

10 November 2023

**Submitted by the DigiBiz Network**

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## **What is the DigiBiz Network?**

The DigiBiz Network consists of entrepreneurs and small business support practitioners from across South Africa. They have an interest in promoting small business growth, job creation and social inclusion by increasing the adoption of digital technology by small businesses. 2 596 network members currently take part in events and the network has a total reach to 9 197 participants.

Included in the network activities are hosting of regular online workshops and webinars; working on the promotion of good practice through several Communities of Practice (CoPs); publishing of Quick Guides and Success Stories on an online platform; offering one-on-one coaching support to entrepreneurs; and conducting research and surveys to contribute to evidence based decision-making.

## 1. Background to the submission

The introduction of the Office of the Small Enterprise Ombud Service (the “Ombud”), provided for in the National Small Enterprises Amendment Bill (the “Bill”), could be a **game changer** for small businesses in South Africa, if it is able to address the crisis of late payments and other contractual disputes that many small businesses continue to face in their interactions with government departments and big business.

The introduction of the Ombud and other aspects of the Bill were discussed by the DigiBiz Network at internal workshops and at a public webinar. Members see the introduction of the Ombud as a **significant improvement** in the small business support ecosystem and believe it **deserves wide support**. Furthermore, the network members believe they can provide practical insights to help shape the creation of the Ombud to address the real needs of entrepreneurs, and ensure that significant impact is created by **utilising digital technology**.

## 2. Support for addressing a pervasive problem

As entrepreneurs and small business support practitioners, the members of the DigiBiz Network have first-hand experience of the impact of contract disputes and late payments on the feasibility of small businesses. Delayed account settlement and “contract bullying” remain massive problems.

For instance, the National Treasury reported that in the 2022/23 financial year, 344 653 invoices, valued at R32.7bn were paid by national and provincial government departments later than 30 days, while 75 147 invoices valued at R6.9bn had still not been paid after 30 days.<sup>1</sup> The problem is likely far worse at municipalities and similar complaints have been made with regards to the private sector.

The effect of late payments and contract disputes on small businesses is disastrous, as it can often impact negatively on their cash flow, squander of time which can potentially lead to loss of business and jobs being cut.

### **DigiBiz members say**

*The Ombud should be able to address complaints and disputed about a range of issues, including misconduct and corruption; discrimination and harassment; and bullying and victimisation.*

**- Anastacia Ramaru**

*The Ombud should focus on the adjudication panels to practice fairness in awarding tenders.*

**- Monde Mpumela**

*The Ombud should have educational workshops for small businesses on how to deal with complaints if agencies do not follow the required processes or take too long. It should have walk-in centres to make it accessible; allow for digital processes to work efficiently; and be able to deal with informal businesses that are not registered.*

**- Neo Hassen**

*Issues related to government contracts, procurement processes, bidding disputes, supplier-related concerns, patents, trademarks, copyrights, or other intellectual property issues affecting small businesses must be addressed by the Ombud.*

**- Boy Simon Tlhahane**

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<sup>1</sup> National Treasury, Annual Report on Late Payment of Supplier's Invoices, 2023 Ibid, 2022.

Small businesses have little resort for addressing contract breach and when they do take legal action, it comes at a disproportionate cost. This is confirmed by a 2020 survey<sup>2</sup> by the Department of Planning, Monitoring and Evaluation (DPME). Of those surveyed 7% had taken legal action against provincial departments. In 17% of these cases, the cost of the legal action surpassed the value of the unpaid invoice while 83% of businesses had to pay legal costs which ranged up to a quarter of the total invoice amount.

While section 17 G(b) of the Bill allows for investigation of matters brought to it by small businesses or matters directed by the Minister, it is vital to ensure that the list of unfair business practices set out in section 17Y are easily updatable to reflect the quick changing business environment. Any additional unfair business practices must be identified through inputs from small business and entrepreneurship bodies, including networks such as DigiBiz, as well as the Advisory Council, first set up in the 1996 Act in section 2, but not being an active ecosystem contributor yet – which is an issue that should also be addressed!

While the Treasury says in its late payments report for 2022/23 that it assists suppliers by following up with transgressing institutions, it's clear that a different approach is needed if the problem is to be tackled effectively. It's here where the Ombud could go some way to helping address the issue – but **only if it is capacitated, resourced sufficiently and enabled through the use of digital technology.**

The members of the DigiBiz Network are **in full support** of the Small Business Portfolio Committee's efforts to introduce the Ombud and may offer the comments below to highlight specific considerations when Parliament considers the Bill and the operational model for capacitating an effective office.

### **3. Use of digital technology**

In executing its mandate, it is clear that the use of digital tools – such as the chat bots to assist applicants with lodging disputes, integrating popular platforms such as WhatsApp into an online service and utilising Artificial Intelligence (AI) to streamline processes – will ensure significant efficiency gains for the Ombud.

An easy-to-navigate mobile and web platform, will be vital if the Ombud is to have a wide enough reach. It may offer advantages such as use of templates for drawing up contracts or filing of letters of demand; and submitting contracts for Artificial Intelligence (AI) review and recommendations before small businesses conclude supplier agreements.

At our DigiBiz workshops we were privileged to receive input from IT experts, whose insights may be shared in detail if needed, covering digital solutions, cyber security and privacy.

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<sup>2</sup> Department of Planning, Monitoring and Evaluation, Research on the Delays and Non-payment by Government on Small, Micro and Medium Enterprises, 2020.

The Bill, in section 9, sets out to create an amalgamated agency, termed Small Enterprise Development Finance Agency (SEDFA), to replace the Small Enterprise Development Agency (SEDA) and the Small Enterprises Finance Agency (SEFA).

SEDFA has as its objective the development and design of programmes and products for small businesses growth. This objective is linked to the work of the Ombud, as cases brought to the Ombud may be avoided through SEDFA initiatives. It must be emphasised that the use of digital technology is essential to resolve many of the issues faced by small businesses, such as lack of negotiation skills, understanding of legal rules governing trade matters, and governance requirements to have access to finances. The Ombud and SEDFA should seek a close working relationship, **streamlined by the use of digital solutions and information platforms**, that will empower small businesses in their contracting with government and corporate buyers.

Additionally, in the work set out for the Ombud in the Bill, the use of AI may contribute to the identification of misguided complaints, offering small businesses to first test the validity of potential complaints before it is lodged, and help the government to better use its resources, particularly given the country's constrained fiscal environment.

#### **4. Accessibility**

Those business owners based in rural areas or with limited data, should be able to access the portal through various government offices such as Thusong centres, libraries as well as SEDA and SEFA branches, which will be taken over by SEDFA.

In addition, with minimal training at these and other government offices, with whom small businesses regularly interact, officials can assist business owners

### **DigiBiz members say**

*Reimbursement by insurance companies are often held up or not paid, which the Ombud should be able to help small business with.*

**- Lerato Cingo**

*As a farmer who paid for livestock that was never delivered, I would need the help of the Ombud to get what I paid for or get my money back.*

**- Hale Tsehlana**

*The Ombud must address complaints against bodies such as government funding agencies.*

**- Nkululeko Mlotshwa**

*Looking into unpaid UIF claims must be included as a responsibility of the Ombud.*

**- Stephanie Jacobs**

*The Ombud should function like a small claims court for complaints by small business owners.*

**- Winston Lawrence**

*We need help from the Ombud with our Tax Clearance Certificate, which is held up because SARS must do a manual correction on their system but it is not done.*

**- Puseletso Mafisa**

*I think late payments by corporates and government is the single biggest problem for SMEs that the Ombud should address.*

**- Nikita Mfenyana**

*The Ombud must be able to confront offenders.*

**- Thabo Emmanuel Petros Magagula**

*Where processes take too long and agencies are under-staffed, the Ombud must be able to intervene.*

**- Fidel Issel**

*The Ombud must address the unfair allocation of discretionary grants by SETAs.*

**- Juanita Burjins**

*Digital processes may not be able to uncover fraud and corruption, so the Ombud should be able to investigate digital processes too.*

**- Jennifer Classen**

with lodging disputes and navigating on the Ombud's portal. What this shows is that, while the use of a digital platform could make the Ombud's services accessible to more, it will also have to have some kind of on-the-ground presence to ensure that dispute resolution is carried out effectively, and awareness of the office is more widespread.

It's possible that a call centre might help too. SEDA, in recent years, ran a call centre to help small businesses to settle late payments. However, after helping settle about R480m in invoice payments between September 2009 and March 2016<sup>3</sup> the call centre ceased to exist when SEDA was relocated from the then Department of Trade and Industry, to the Department of Small Business Development (DSBD). The Ombud may learn from this service and incorporate a call centre to ensure accessibility to quick interventions, before a formal dispute is lodged.

## **5. Handling disputes**

In handling payment, contractual and other disputes effectively, the Ombud will need to be well resourced with legal advisors, while being connected with a network of mediation services located across the country.

As entrepreneurs and business support practitioners, we believe that the dispute resolution process should start with low intensity engagement of the parties to first seek informal resolution, which may be escalated to a mediation process, and failing all other efforts to a formal hearing and findings by the Ombud.

Section 17G(g) of the Bill specifically tasks the Ombud to make recommendations on regulations and policy guidelines. To do so, in an effective manner, we strongly encourage that we learn from other developing countries, especially those where the GDP and GINI index is comparable to our own.

For example, India's MSME Samadhaan<sup>4</sup> which monitors late payments to small businesses from both the public and private sector, incorporates special courts located across the country, called facilitation councils, which were set up under the 2006 MSME Development Act to handle late payments to small businesses. In the last six years the Indian government has helped small businesses involved in 28 800 applications to settle late payments of over R11.6bn.<sup>5</sup> Facilitation councils have a number of features such as; a big company or department found to have paid late must pay interest of three times the current bank interest rate, and that big companies or departments can appeal a late payment, but must deposit 75% of the amount before moving to court, to avoid them simply taking the case on appeal as a delay tactic.

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<sup>3</sup> Department of Small Business Development, Annual Report, 2015/16.

<sup>4</sup> <https://samadhaan.msme.gov.in>

<sup>5</sup> Financial Express, "MSME delayed payments: Amount disposed so far crosses Rs 5,000 crore", 7 June 2023: [www.financialexpress.com/business/sme-msme-fin-msme-delayed-payments-amount-disposed-so-far-crosses-rs-5000-crore-3117322](http://www.financialexpress.com/business/sme-msme-fin-msme-delayed-payments-amount-disposed-so-far-crosses-rs-5000-crore-3117322)

## 6. Investigative interventions

The Ombud can also initiate investigations, according to section 17G of the Bill, into common prevalent issues or repeated transgressors that small businesses face and that the office uncovers through its work.

The Ombud could work with existing public agencies, most notably the Competition Commission and the National Treasury as well as with various industry bodies, to avoid unnecessary duplication of services and staffing.

We believe that this mandate – to pro-actively investigate common complaints – will be a key element of the Ombud’s impact, as it will elevate its work from individual cases to industry-wide influence. Therefore, an investigative unit of the Ombud should be capacitated to address pervasive practice in an industry or by a specific government department or company.

## 7. Advocacy and review

The Ombud’s mandate includes that of an advocacy role as this will offer small business a more prominent position in ensuring fair treatment as set out in section 17E(3) of the Bill. It is imperative that the Ombud, together with SEFDA and the Advisory Council, raise awareness to public servants and corporate buyers of the impact of late payment and other contract breaches, this may go a long way in reducing the extent to which small businesses are suffering.

We recommend that the Ombud should therefore be resourced sufficiently to be able to also advocate for the rights of small businesses on broader issues that affect small businesses. Successful ombuds that are leaders in this specific area must be studied for guidance, for example the Australian Small Business and Family Enterprise Ombudsman<sup>6</sup>.

### **DigiBiz members say**

*The Ombud must ensure that small businesses are paid within 30 days by keeping the accounting officers and chief financial officers accountable. It should also be able to monitor implementing policies such as the NISED Masterplan.*

**- Luther Diedericks**

*We should be able to get help from the Ombud to meet SARS compliance as the process with returns is too time-consuming.*

**- Sam Mashaba**

*Funding that was approved but never paid must be part of what the Ombud help small business like me with.*

**- Richard Ngobeni**

*Consultants charging an arm and a leg without giving much value should be investigated.*

**- Teboho Seretlo**

*Fairness in the allocation of grants is something affecting small businesses and must be looked into.*

**- Theresa Mac Quena**

*It is hard for small business without a track record to get funding, so the Ombud must be able to assess the criteria being used for loans.*

**- Kholofelo Sekatane**

*The Ombud must investigate complaints and not get involved in the roll out of strategy and tactics at level, such as ESD funding-related activities to uncover and expose corruption, wastage and unethical practices between corporates and practitioners.*

**- KK Diaz**

*Small business owners must be educated about business matters and how to resolve disputes.*

**- Catharine Klaaste**

*Small businesses and initiatives like DigiBiz must participate in the Parliamentary processes and make our voices heard,*

**- Nwabisa Mbelekane**

<sup>6</sup> [www.asbfeo.gov.au](http://www.asbfeo.gov.au) and [www.youtube.com/@australiansmallbusinessand2432](http://www.youtube.com/@australiansmallbusinessand2432)

These issues included in the mandate could involve everything, from measures, regulations and laws that may harm small businesses, to common practices by buyers of small business products or services, as well as the level of service of government programmes that are not delivering on their mandate or unfair discrimination against small businesses.

Furthermore, there is a great need for the Ombud to have a say in reviewing new and existing laws so as to avoid any negative effect these might have on small business. When drafting new laws, departments are obliged to carry out regulatory impact assessments which among other things must consider the impact these might have on small businesses. The Ombud could collate such impact assessments on a web platform for small businesses to view. Doing so could strengthen the voice of small business.

DigiBiz has looked at and researched such other ombuds and is happy to be called upon to interact with the Department of Small Business Development on recommendations, policy guidance.

## **8. Collaboration with key stakeholders**

To ensure small businesses are kept informed of their rights and obligations in terms of things such as their involvement in labour contracts and abiding by regulations, the Ombud should, in partnership with respective industry associations and business chambers, also develop various resources such as information pamphlets and media interviews that are easily accessible in digital format on its portal and shared via social media platforms, and be directly involved in the delivery of educational events such as workshops covering key topics covering contracting and dispute resolution appropriate for small businesses.

Impactful communication, awareness raising and education will be effective when done in collaboration with other entrepreneurship support ecosystem parties, including government programmes/agencies and private sector initiatives, networks and representative bodies. We count the DigiBiz Network as an example of a party to collaborate with in this regard.

The Advisory Council offers a mechanism for ensuring that the trends identified by the Ombud be contextualised for the benefit of the DSBD and the Minister. It is imperative that the Advisory Council is comprised of a diverse members, including from initiatives that are at the forefront of new trends such as digital progression, which is the focus of the DigiBiz Network. Maintaining a productive relationship between the Ombud and the Advisory Council will allow the Advisory Council to have access to up-to-date information on the challenges faced by small businesses and thus serve a more effective role in support of the DSBD and the Minister.

Most importantly, collaboration between the Ombud and the newly merged SEDFA will allow SEDFA to be responsive to ongoing challenges faced by small business and to create pro-active programmes that will reduce the workload of the Ombud by preventing disputes through changes in practice by the involved parties, including small businesses.

## **9. Cost-effective operations**

It will be essential, given the current constrained fiscal environment, that the Ombud conducts its work in the most cost-effective way as much as possible, while being able to achieve the widest reach possible. This is particularly so, given that the World Bank in a 2019 review recommended that South Africa merge its current seven ombudsmen in the financial sector into two Ombudsmen. Further, SEFDA and the Ombud have dovetailed responsibilities which may benefit from the use of digital technologies, so that efficiencies are created in the delivery of their mandates.

To address this the use of digital solutions such as a portal, complete with various web resources and AI, together with close integration with other offices across various government agencies, municipalities and provincial governments, will be key if the office is to be run sustainably enough to be able to make a difference to small businesses.

## **10. Conclusion**

The Office of the Small Enterprise Ombud Service can represent **a real chance** to address not just late payments and contractual disputes, but as an **opportunity to provide small businesses with a powerful voice.**

Through the use of **digital solutions** and **close engagement** with the small business community, the Office could make a real impact in helping entrepreneurs, supporting local economic growth, and creating the much needed jobs our country needs.

**END**