



REPORT OF THE PORTFOLIO COMMITTEE ON SMALL BUSINESS DEVELOPMENT ON THE MOTION OF DESIRABILITY OF THE NATIONAL SMALL ENTERPRISES AMENDMENT BILL [B16 - 2023], DATED 05 DECEMBER 2023

1. Introduction and Referral of the Bill

The National Small Enterprise Amendment Bill [B16-2023] (“the Bill”) was tabled and introduced by the Minister of Small Business Development to Parliament on 29 June 2023 in accordance with Joint Rules of Parliament Rule 159 (1) (a) and (b). The Bill was given the green light by the Cabinet for introduction to Parliament on 7 June 2023. The notice and an explanatory summary of the Bill were published in the Gazette as required by Rules of the National Assembly 276 (b) and (c) on 12 June 2023. Accordingly, the Parliament was satisfied that the Department had adhered to the fundamental principles of tabling the bill before it.

The Bill was introduced in the National Assembly as an ordinary Bill that has no bearing on the provinces (NA - Section 75). The Bill was subsequently referred to the Committee and the Joint Tagging Mechanism (“the JTM”) for further processing. It however, in terms of Joint Rule 160 (4), found that the Bill substantially impacts the interests, concerns and capacities of provinces as it proposes a new system where certain trade practices are (and may still be) declared prohibited trade practices within the small enterprises sector. The JTM decided that the Bill has an impact on Schedule 4 of the Constitution in the concurrent functional area of “trade”. The Bill was subsequently tagged as S76 by the Joint Tagging Mechanism.

2. Objects of the Bill

The Bill proposes amendments to the National Small Enterprise Act 102 of 1996 in order –

- 2.1 To provide for the establishment and registration of the Small Enterprise Development Finance Agency (SE DFA) in line with the Companies Act 71 of 2008, and the resultant incorporation of the Small Enterprise Financing Agency (Sefa), the Co-operative Banks

Development Agency (CBDA) and the Small Enterprise Development Agency (Seda) with a vision of creating a one stop shop for aspiring entrepreneurs as well as the promotion and development of Co-operative Banking Institutions (CBIs). The two agencies, Seda and Sefa currently resides within the Department of Small Business Development. They are both incorporated in terms of the Companies Act (2008) and Public Finance Management Act (1999). While The CBDA is a statutory agency registered as a public entity in terms of section 3 (a) of the Public Finance Management Act.

- 2.2 The creation of the Office of the Small Enterprise Ombud Service (“the Office”). Small enterprise firms do not compete on an equal footing with large companies and the government. Big firms utilise their financial clout to harass and bully small enterprises without recourse. Bureaucratic inefficiencies from the state, on the other hand, undermine the goals of preferential procurement. Poor understanding of the best practices in procurement/invoicing/contracting, particularly among small and medium-sized businesses leads to needless, costly, and protracted disagreements. Available dispute resolution mechanisms i.e., internal company/government processes, the courts and arbitration services are failing to serve the interest of small businesses. The two proposals are long-standing recommendations of the Committee having observed over time that small enterprises get the short end of the stick both from the private sector and state organs.
- 2.3 The Bill also enables the Office to make recommendations to the Minister responsible for small business development to by, notice in the *Gazette*, declare certain practices in relation to small enterprises to be prohibited unfair trading practices and to provide for guidelines as to the practices that may be declared to be prohibited unfair practices and the rights of small enterprises. It furthermore empowers the Minister to make regulations relating to the application of unfair trading practices.
- 2.4 Lastly, the Bill’s objective is to amend section 20(2) of the Act to align it with a recent Constitutional Court decision. This amendment is meant to bring the provisions of the Act in line with the decision in *Smit v Minister of Justice and Correctional Services and Others*, where the Constitutional Court declared section 63 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) to be inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid to the extent that it purports to delegate plenary legislative power to amend Schedules 1 and 2 to the Drugs and Drug Trafficking Act to the Minister of Justice and Correctional Services.

3. Consideration of the Bill by the Committee

- 3.1 The Committee was briefed on the proposed amendments by the Department of Small Business Development on 30 August 2023, and resolved to publish the Bill for comments. The Department responded to the oral and written submissions on 30 November 2023.
- 3.2 In facilitating effective public participation on the NSEA Bill, in accordance to Sections 59(1)(a) and 72(1)(a) of the Constitution state that the National Assembly and the National Council of Provinces must enable public participation in the Assembly's and its committees' legislative and other activities, the Committee resolved in conducting public hearings in all nine (9) provinces to solicit inputs on the Bill. It was then published for public comment from 10 October 2023 to 10 November 2023 in national and regional newspapers, on the Parliament website, Twitter and Facebook.
- 3.3 The Committee conducted provincial hearings from 26 October 2023 to 23 November 2023, in 20 district/local municipalities and five metropolitan municipalities, with a total number of 4933 attendees and 508 speakers. The national public hearings were held on the Zoom platform on 28 November 2023 from ten (10) stakeholders who had indicated that they would like to submit oral submissions, in addition to 310 written submissions collected throughout provincial hearings.
- 3.4 In addition to the public hearings, the Committee received 392 written submissions submitted via electronic mail from the public.
- 3.5 The Department responded to issues raised during the provincial public hearings, oral and written submissions on 29 November 2023. The Committee deliberated on the Bill on 30 November 2023.

4. Voting on the National Small Enterprise Amendment Bill

National Assembly Rule 286(4)(i) (j) requires that the committee “after due deliberation, must consider a motion of desirability on the subject matter of the Bill and, if rejected, must immediately table the Bill and its report on the Bill.” Alternatively, “if the motion of the desirability is adopted, must proceed to deliberate on the details of the legislation”. Based on all the inputs received and extensive engagements on the National Small Enterprise Amendment, a motion of desirability on the subject matter is placed before the Committee as required by the National Assembly Rule 286(4)(i) (j) to vote on. A motion of 'desirability' is the standard procedure used at the Committee level for every tabled Bill.

Votes in favour of the motion on the desirability of the National Small Enterprise Amendment Bill [B16-2023]:

- ❖ Ms VS Siwela, ANC
- ❖ Mr F Jacobs, ANC
- ❖ Mr ET Myeni, ANC
- ❖ Mr H April, ANC
- ❖ Ms L Lubengo, ANC
- ❖ Ms KB Tlhomelang, ANC
- ❖ Mr HCC Kruger, DA
- ❖ Mr J de Villiers, DA
- ❖ Ms B Mathulelwa, EFF
- ❖ Inkosi B Luthuli, IFP
- ❖ Mr V Zungula, ATM
- ❖ Mr GCE Hendricks, Al-Jah-Mah

Votes rejecting the motion on desirability of the Bill:

The following Members of the Committee participated but did not vote as they are alternate Members of the Committee:

- ❖ Mr M Mabika*, DA
- ❖ Mr N Kwankwa*, UDM

Accordingly, the Committee agrees that the subject matter of the Bill is desirable and should be further considered and processed by the Committee.

Ms VS Siwela, MP

Date

Chairperson of the Portfolio Committee on Small Business Development

Report to be considered.