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SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON LABOUR

LABOUR BROKERING IN SOUTH AFRICA

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**BUSA SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON
LABOUR – LABOUR BROKERING IN SOUTH AFRICA**

Introduction

Business Unity South Africa (BUSA) welcomes the call for submission on labour brokering to the Labour Portfolio Committee.

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents South African business on macroeconomic and high-level issues that affect it at the national and international levels. BUSA aims to ensure that organised business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As the principal representative of Business in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

Internationally, BUSA is a member of the International Organisation of Employers (IOE), the Pan-African Employers' Confederation (PEC) and the Southern African Development Community (SADC) Employers' Group. BUSA is also the official representative of business at the International Labour Organisation (ILO), African Union (AU) Social Affairs Commission and World Trade Organisation (WTO).

Labour broking must be considered in the context of employment as a whole. Latest statistics reveal that there is large scale unemployment in South Africa in that approximately 4.1 million South Africans cannot find work, and a further 1.5 million have given up hope of finding a job. The Framework Response to the Economic Crisis emphasises that job loss may increase under current economic conditions.

Labour broking is a pivotal facilitator and enabler of employment. Business relies on labour broking in a number of essential ways. Labour brokers provide a method of speedy access to employees, facilitates temporary and permanent employment, skills development and reduces the administrative burden on employers. The positive elements of labour broking need to be maintained as an important enabler of employment.

At the same time, business is cognisant that some forms of labour broking can give rise to abuse, and consequently the erosion of employment rights and decent work. Business does not support such practices and is in favour of measures that will limit such practices.

Business submits that the key consideration should be how to improve the conditions for decent work for employees engaged in labour broking, rather than the elimination or banning of labour broking.

Temporary Employment Services (TES) in the Private Sector

The contribution of labour brokers to employment and skills development is best illustrated with reference to the data and research of the Confederation of Associations in the Private Employment sector (CAPES).

CAPES are the employer confederation representing the interests of more than 1000 Private Employment Agencies/ Temporary Employment Services (TES)/ Labour Brokers in South Africa. Employees of CAPES members are located throughout all the sectors in the economy. It should be noted that CAPES has played a major role in educating and improving labour standards among its members.

The attention of the Committee is drawn to the following statistics regarding temporary employment services as reported by CAPES:

- TES places in excess of 500 000 temporary assignees daily across all industries and sectors in SA.
- More than 20% of these individuals are appointed permanently every year.
- More than 50% of these are youth and 83% are black individuals.
- TES make provision for all statutory benefits, including annual leave, sick leave and family responsibility leave.
- Provisions are also made for Compensation for Occupational Injuries and Diseases and UIF contributions.
- The most BBBEE empowered listed organisation in SA is an organization operating TES as a primary proposition.
- TES facilitate more than 20 000 learnerships, contribute more than R400 million per annum in skills levies and facilitated more than 5% of all learnerships in NSDS 1.
- TES represents a R23 billion per annum industry.
- TES have a national footprint of more than 6000 branches which interview and place a total of more than 2 million assignees per annum.
- Around 40% of the 500 000 temporary assignees fall under the jurisdiction of Bargaining Councils and hence have access to the rights under the respective main agreements.
- The 500 000 temporary assignees represent a mere 4% market penetration of the economically active population (EAP), whereas estimates are that a-typical employees (via sub-contracting and outsourcing arrangements) represent in excess of 30% of the EAP. The market penetration of TES is not excessive and comparable with EU and other countries (in the EU, average market penetration is around 3% and laws are

generally introducing greater flexibility where TES are being used more often and in some instances have even been unbanned) given their channel to formal and permanent employment, the market needs for flexibility, globalization, technology and youth employment creation and facilitation.

- In 2008, the daily average headcount of contract employees was 902,350 (managed by agencies) or 2,739,315 (managed by agencies and by employers directly, without the use of agencies). Since 2000, private employment agencies introduced around 3.5 million temporary, part-time and contract employees into the labour force, approximately 2 million of whom were first-time job-seekers, and 32% of whom secured traditional, permanent jobs within 12 months, or 47% within 3 years.

It is the view of Business that the recognition of the role played by the private sector, in particular TES in job creation has been grossly underestimated. These statistics are no doubt indicative of the fact that private employment agencies remain one of the primary entry points into the labour market.

Temporary Employment Services in the Public Sector

Business wishes to note that there is large scale use of labour broking in the public sector. Expanded public works programmes, temporary and permanent employment are frequently resourced through labour broking. It would be important to understand the impact in the public sector in the absence of labour broking.

Existing legislation

Business is of the view that there is already in existence relevant legislation which addresses the legal and risk provisions associated with labour broking, their assignees and the clients. These include inter alia: Section 198 of the Labour Relations Act, Section 57 of the Employment Equity Act, Section 24 of the Skills Development Act and the Regulations, Section 82 of the Basic Conditions of Employment Act; and section 1 of the Occupational Health and Safety Act. Labour broking are also regulated on a sector by sector basis through Bargaining Council Agreements or Sectoral Determinations. These statutes have not been enforced by **DOL**. In addition, many Bargaining Councils are not adequately addressing the matter of enforcement.

It is our submission that the enforcement of existing statute should be considered as primary remedy, as opposed to new legislation. This is proposed on a co-regulatory basis with a Private Employment Agency Board which registers, investigates and de-registers TES. Provision should be made for Business, Government and Labour to be included herein. A co-regulatory model has been tabled at NEDLAC in this regard in 2007.

Measures to enforce existing labour laws are supported, with the inclusion of the co-regulatory model. It is precisely the objective that Government is trying avoid and precisely the objective they are going to achieve.

Proposed legislative amendments

The Department of Labour has recently submitted a Discussion Document for consideration by the National Economic Development and Labour Council (NEDLAC). The proposal involves widespread amendments to key labour market legislation, viz the Labour Relations Act, the Basic Conditions of Employment Act, and the Employment Equity Act.

Business has noted the concerns and will be engaging through social dialogue in the discussions at NEDLAC. It is hoped that the focus on eliminating those problematic elements of labour broking will not serve to undermine the contribution of labour broking to the economy and job creation.

Business has grave concerns with the Discussion Document. The following is recorded:

There are numerous proposals made by the DOL for statutory amendments that would materially curtail the TES industry (e.g. that TES assignees remain employees while in between assignments; that unjustified discrimination in wages and working conditions should only apply to the TES environment; and the like). This is unjustifiable restriction of economic rights and unacceptable. There can be no justification for treating temporary workers placed by TES differently from those employed directly by organisations, as this would create two dispensations for the same workers.

- The TES industry contributes significantly to the **socio-economic objectives** of South Africa by placing 500 000 people per day (mostly youth), facilitating in excess of 20 000. The proposals contained in the Discussion Document threaten both growth and employment targets at a national level.
- Learnerships and apprenticeships, having around 32% of the temporary assignees appointed permanently per annum, contributing R23 bn per annum to GDP and the like. Any **attempts to dismantle the labour broking industry will result in the dismantling of the said contributions.**
- The very premise on which the Discussion Document has been crafted is fundamentally flawed. Firstly, there has been **no reasonable enforcement** of the substantial existing statute by the Department of Labour in order to bring TES of poor repute to book. Secondly, the research conducted and relied on has material shortcomings in respect of the nature, extent, current relevance and empirical validity.
- It is submitted that there have been no Regulatory Impact Assessment conducted in respect of the Discussion Document recommendations and as such it would be irresponsible to proceed with amendments given the unintended consequences this would have on, inter alia, economic growth, unemployment levels, skills development and labour market skills intermediation.

Conclusion

BUSA believes that labour broking is a sustainable way of addressing many of the labour market challenges and is essential to South Africa's economic performance. It strengthens the programmes like EPWP, currently on the table as key job creation platforms.

Further regulation of labour brokers should be the subject of social dialogue at NEDLAC and should be approached with restraint and with a clear understanding of the regulatory impact.

Consideration should be given to improving the conditions for decent work for employees engaged in labour broking, rather than the elimination or banning of labour broking.

The enforcement of existing statute should be considered as primary remedy, as opposed to new legislation. Enforcement is proposed on a co-regulatory basis with a Private Employment Agency Board which registers, investigates and de-registers TES.