

**SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON
LABOUR IN RESPECT OF LABOUR BROKERING IN THE RSA**

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1. Introduction

This document is submitted to the Parliamentary Portfolio Committee on Labour in response to the invitation to the public to submit comment on the practice of labour brokering in the RSA, published in the Sunday Times of 9 August 2009.

2. Business Connexion (Pty) Ltd

- 2.1. Business Connexion (Pty) Ltd (“Business Connexion”) is one of Africa’s largest black empowered information and communications technology (“ICT”) companies with a 29-year history of service delivery. It has offices in all major SA centres and employs more than 4000 employees. Its clients include key JSE listed and public sector organisations, parastatal enterprises and medium-sized emergent companies.
- 2.2. Business Connexion’s solutions are designed to meet its clients’ strategic and operational needs, which Business Connexion develops, implements and maintains in partnership with its clients. Business Connexion provides effective solutions tailor-made for each customer by leveraging off the diverse skills of a strong body of consultants.
- 2.3. Business Connexion makes extensive use of consultants whom it obtains from labour brokering firms. It does so primarily for two reasons, namely:
 - 2.3.1. to obtain from the market place scarce or specialised skills, which it does not have in-house;
 - 2.3.2. to obtain from the market place skills that it requires to deal with peaks in its business offerings to clients, which requires a larger staff complement than it has in full-time employment, but only for a limited period.

- 2.4. Business Connexion itself also provides a labour brokering service to its clients for much the same reasons.

3. Considerations

- 3.1. Business Connexion realizes that in some instances labour brokers follow questionable practices. It is aware, for example that they sometimes deduct PAYE or UIF contributions from the individuals working for them and then do not pay such deductions over to the appropriate authorities. It is also aware that some labour brokers do not ensure that their clients adhere to the Basic Conditions of Employment Act with regard to individuals that are deployed to the clients. For example, the client would require such individuals to work overtime, and the labour broker would charge the client at an overtime rate, but still pay the individual at the normal rate.
- 3.2. Business Connexion condemns such practises and is proud to say that it does not engage in such practices. It would welcome any move to tighten the controls that would ensure that labour brokers who do so are brought to book.
- 3.3. However, Business Connexion submits that there is a very real and much needed position in the South African work place for the labour broker who works in accordance with ethical and legal principles. For example:

Cyclical Work

- 3.3.1. Any cyclical industry, for example the construction industry or the ICT industry, will often have work loads that fluctuate quite dramatically from time to time. A construction company may be awarded a contract to build a large building and will not have sufficient permanently employed staff to complete the project. It would be possible for it to recruit the required complement of full-time employees, but it may not be assured that it will be

awarded any other contract or an equally large contract when the current one has been completed. If it were to employ the required staff on a permanent basis it would, at the end of that contract, if it has not been awarded other contracts of sufficient size to enable it to employ all the extra staff, either have to keep the extra manpower “on the bench” until sufficient new work is generated to use them, or to retrench them.

3.3.2. Keeping them on the bench, at their full remuneration packages while they are not being used in the generation of income, would soon prove to be unsustainable. No company can afford to pay employees for whom it does not have work – this is a well-established principle of South African labour law.

3.3.3. Retrenching them would require the payment of severance packages that could absorb a large part of the profit the company made on the contract for which they were employed. The construction company might endeavour to build the severance packages into its price for the contract, but that would mean that the company’s client would be paying for the retrenchment of its building contractor’s work-force, which most companies would not accept. It could also have the effect of either increasing building costs, which would be detrimental to the overall efficiency of the South African economy as the extra money paid would not be expended on productive services rendered. Alternatively, it could result in the workers being paid less than they would otherwise have been paid, to allow the company to pay them retrenchment packages.

3.3.4. It must be borne in mind that certain industries, such as the ICT industry, is very labour intensive – ICT companies essentially sell expert skills – and operate at very low margins. It would simply not be possible for an ICT company to sustain the costs of an unproductive bench or to pay severance packages for project staff every time a project ends. Most ICT projects are

shorter than one year, but severance payments are calculated at a minimum of 1 week per year of service *or part thereof*. Therefore, the cost of severance packages for short projects could constitute a considerable percentage of the cost of the project – in some instances equal to or more than the actual profit on the project.

- 3.3.5. Retrenching staff is a cumbersome, time-consuming exercise and ties up manpower that could be much better employed in generating income. That would have a detrimental influence on the country's productivity, something that a growing economy like South Africa cannot afford.

Flexibility / agility in the workplace

- 3.3.6. Especially in the ICT industry it is often important to have access to skilled personnel at short notice to undertake urgent projects. For example, if a computer virus infests a large company's systems, it may be necessary to obtain a large complement of skilled personnel to urgently clean up the company's systems and to restore data – often the work has to commence within a matter of hours. Similarly, if a disaster, such as a fire or flooding were to occur, a company might again need a large complement of skilled persons who can commence with salvage / disaster recovery operations as soon as possible. Under such circumstances it would simply be far too time-consuming to have to go through a recruitment process to obtain such skilled people and then labour brokers who have access to a pool of people will be invaluable.
- 3.3.7. Many skilled individuals do not want to be tied to one company. It is, of course, possible for them to free-lance instead of working through a labour broker, but that presents the problem that companies who might wish to make use of their services will not know about them. A labour broker then fulfils much the same role as an estate agent – it acts as a central point of

contact who is able to bring many potential employers in touch with many potential consultants.

Easier Access to the Labour Market

- 3.3.8. Some individuals prefer the flexibility and relative freedom of temporary employment. Some have little option, in particular the less educated. South Africa knows the sad phenomenon of persons without work who have great difficulty finding work as they do not have the resources to expend on the search for work. Such people would be in a considerably better position if they are on a labour broker's books, so that the broker is able to contact them when work becomes available. It would be socially unconscionable to deprive them of this avenue of securing work, even if only on a temporary basis.

Temporary Assignments

- 3.3.9. Labour brokers fulfil an extremely useful service in giving employers access to a pool of temporary workers to fill in for positions that are temporarily vacant due to, for example, illness or maternity leave. It would be impossible for a company to appoint a person full-time to stand in for a female employee who is on maternity leave as, when that employee returns from leave, the employer would not require two full-time workers for one position. Conversely, experience has shown that many individuals working for such labour brokers are themselves in the market, seeking employment and this practise affords them the opportunity to remain employed, even if on a temporary assignments, until they find full-time employment - it would again be socially unconscionable to deprive them of this avenue of securing work. And, again, the labour broker fulfils the very useful role of being a central point of contact who is able to bring many potential employers in touch with many potential consultants.

Social Considerations

- 3.3.10. South Africa has not escaped the ravages of the economy and the effect that this has had on the labour market. Banning labour brokering would remove an industry that makes employment much more flexible and affords those people who are hardest hit with an opportunity to find some kind of employment, albeit temporarily, until circumstances improve. South Africa cannot, especially at this time, afford to add complications to its labour dispensation, but should rather seeks ways in which individuals are given more and easier access to the labour market.

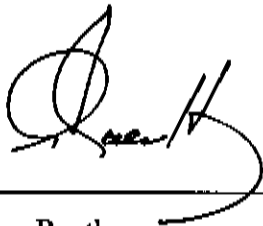
Constitutional Considerations

- 3.3.11. Section 22 of the Constitution of South Africa provides that “Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.” Banning labour brokering may well conflict with this provision. Regulating the industry would not.

4. Conclusion and Proposal

- 4.1. Business Connexion submits that for the reasons stated above (and there may, indeed be many other reasons too) labour brokers fulfil a very important role in the South African economy. It is, nevertheless, aware that some labour brokers employ unacceptable practises. Business Connexion submits, however, that the answer is not to ban labour brokering as has been done in Namibia, but to regulate the industry properly, as is being done in many European countries and as is provided for in the Constitution of South Africa.

- 4.2. It might not even be necessary to promulgate new laws to do so. Business Connexion submits that sufficient law exists and that if the Basic Conditions of Employment Act is properly implemented and policed, most of the unacceptable practices would be done away with.
- 4.3. However, self-regulation might well be the best route to follow and consideration should be given to make membership of a governing body compulsory for all labour brokers, with an ombudsman who is able to adjudicate complaints.
- 4.4. The nature and scope of this document does not lend itself to an in-depth consideration of the manner in which the industry may be regulated. Business Connexion proposes that the Department of Labour convenes a workshop at which a representative selection of the players in the industry may explore possible ways of regulation. Business Connexion would be willing to take part in such a workshop and to bring its many years of experience of ethical labour brokering to the table.



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