

PARLIAMENTARY NEWS WATCH

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► FEATURES



Parliament - 4th term

Parliament is in recess until 11 October. We provide a look at what to expect in the final term of 2010.

Consumer Protection Act Companies Act

The Minister of Trade and Industry has postponed the implementation date of both the Consumer Protection Act and Companies Act to 1 April 2011.

3



$$C_i = M_i$$
$$\sum_{i=1}^{i=n} M_i$$

Trading Up

SA proposes reformulating SACU

As the Southern African Customs Union celebrates its 100th anniversary, South Africa proposes some forward-looking amendments to the SACU Agreement.

4



BUSA
BUSINESS UNITY SOUTH AFRICA

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Published by the BUSA Parliamentary Office
First Floor, Graaffs Trust Building
9 Church Square, Cape Town, 8001

Enquiries: Lee Padayachee

Information Services Manager

021 465 1633 / lpadayachee@bpo.co.za

Website: www.busa.org.za

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P A R L I A M E N T



Parliament is currently in recess and will resume for its fourth and final term of the year on 12 October 2010. The fourth term, usually the shortest of the year, will run until 26 November.

Two of the largest items on Parliament's agenda for the fourth term will be the Medium Term Budget Policy Statement and the passing of the Protection of Personal Information Bill.

Medium Term Budget Policy Statement

Finance Minister Pravin Gordhan is scheduled to make his Medium Term Budget Policy Statement on 27 October.

The MTBPS is a ministerial review of the state budget, halfway through the current financial year. It tends to include revisions of budget allocations made earlier in the year. Like the Budget Speech, the MTBPS provides an overview of South Africa's economy in terms of growth, revenue and spending expectations.

Importantly, the Minister will advise Parliament on spending priorities for the following year, in effect providing a preview of what to expect in the 2011 budget.

Protection of Personal Information Bill

As 2010 draws to a close, the Protection of Personal Information Bill remains tabled at Parliament. Once passed, the law will require all businesses to take steps to protect personal information held in their possession, and will regulate the manner in which businesses are allowed to communicate with customers. The Bill also seeks to create an Information Regulator to monitor compliance and investigate complaints.

The Justice and Constitutional Development Portfolio Committee has previously expressed an intention to finalise the PPI Bill by the end of the fourth parliamentary term of 2010. However it is becoming increasingly unlikely that the self-imposed deadline will be met.

A sub-committee set up to focus exclusively on the Bill met just once during the third parliamentary term. Deliberations on key issues relating to the scope of the Bill remain ongoing. The most recent news from the Justice Committee Secretary is that the Committee does intend to meet in the fourth term to consider the Bill, though specific dates have not yet been decided.

If the PPI Bill were to be finalised by the Portfolio Committee and the National Assembly by the end of the term, it would still have to be referred to the National Council of Provinces (NCOP) for that House's approval - a procedure that will likely require several weeks.

Overall, given the short duration of the fourth term, it is unlikely that the President will be able to sign the PPI Bill into effect before the end of the year, and far more likely that parliamentary deliberations will continue into the first term of 2011.

Consumer Protection Act & Companies Act

POSTPONED



Minister of Trade and Industry Dr Rob Davies has ended speculation on the implementation dates for the Consumer Protection Act (CPA) and Companies Act by announcing that both would take general effect on 1 April 2011.

The six-month postponement is welcomed by Business Unity South Africa. In recent months BUSA has led private sector discussions with the Minister and the Department of Trade and Industry, calling in particular for a review of the Acts' implementation dates in light of a number of outstanding issues.

Consumer Protection Act

Concerns raised by BUSA included:

The National Consumer Commission established in terms of the Act is not yet functional. Without a formal Commission, legislative obligations cannot be met. These include the process of drafting industrial codes, which the Commission is tasked with guiding.

A process has not yet been determined for regulatory authorities to apply for industry-wide exemptions, making it unlikely that exemptions would have been processed before 24 October 2010 (the Act's original implementation date).

A process allowing for the exemption of juristic persons based on their annual turnover has not yet been determined. Consequently, all companies regardless of size would enjoy the same protection afforded to individuals in terms of the Act.

Regulations accompanying the Act have yet to be finalised. From the drafting of the Act it is clear that the legislature intended the finalisation of the Regulations to coincide with the general effective date.

Companies Act

Like the CPA, regulations for the Companies Act have not yet been finalised. The regulations must be published for public comment (usually a 30-day period) before they can be promulgated by the Minister.

It is hoped that the six-month extension will contribute to the successful implementation of both Acts by allowing the DTI time to consult with stakeholders and to address outstanding issues. However, equally important, companies will now have more time to prepare for the legislation which is expected to bring sweeping changes to the South African business landscape.

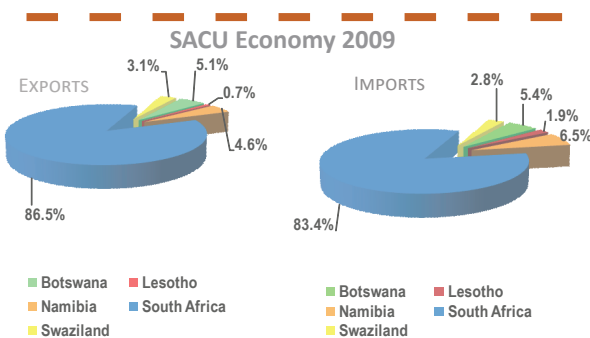
[Click here](#) to read BUSA's statement on the postponement of the CPA and Companies Act

Trading Up

SA proposes reformulating SACU

In 2010, the South African Customs Union celebrates its one hundredth anniversary. The Southern African Customs Union comprises Botswana, Lesotho, Namibia, South Africa and Swaziland. It is the oldest existing customs union in the world. National Treasury recently briefed Parliament on South Africa's proposal to amend the SACU Agreement.

Since 1910, all customs and tariffs collected in the SACU region have been paid into South Africa's national revenue fund. Successive SACU Agreements have set out revenue sharing formulas according to which the shares allocated to Botswana, Lesotho, Namibia and Swaziland (the BLNS group of countries) are calculated. South Africa receives the residual revenue.



Though the BLNS's share of the SACU revenue is roughly based on members' gross domestic product and share of trade, the revenue sharing formula used to calculate shares is heavily skewed in favour of the BLNS. In 2008/9, for example contributed R45 billion (98%) to the SACU revenue pool, but received back only R21 billion - less than half of its contribution, the rest having been distributed to the BLNS.

South Africa has now formally proposed a review of the 2002 SACU Agreement, citing amongst its reasons the unsustainability of the current revenue sharing formula (RSF) and the fiscal burden placed on SA as a result of the RSF.

South Africa believes that proposed changes could achieve a number of objectives: long-term sustainability; regional infrastructure development; greater transparency and parliamentary oversight; and the expansion of SACU to include SADC countries. A revised SACU Agreement could also contribute to the reduction of non-tariff barriers, the harmonisation of customs systems, and fiscal and tax administration reforms.

Amendments proposed are likely to include a more equitable distribution of customs revenue, which would reduce SA's financial burden towards the BLNS. The elimination of common excise tariffs is also being contemplated in favour of allowing each member to set their own excise tax rates.

A proposal to create a SACU Development Fund is also being considered. The current RSF allocates 15% of the common excise pool to the BLNS for development purposes. The revision would see members make contributions to a central development fund commensurate to the size of their economies. Though the BLNS would still receive development funding, the fund would allow for contributions to be made subject to parliamentary approval, ensuring greater accountability.

National Treasury believes that negotiations on the proposed amendments could be concluded in under six months - an ambitious time frame as it took SACU members almost a decade to conclude the 2002 SACU Agreement.

South Africa is hoping to obtain the SACU Council's approval for the new revenue sharing arrangement in December 2010. If all goes as planned, amendments could take effect from as early as 2011/12.