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BUSA
BUSINESS UNITY SOUTH AFRICA

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Legislative Updates

Companies Amendment Bill



Minister Rob Davies led a DTI delegation that briefed Parliament on Tuesday, 16 November, on the Companies Amendment Bill.

The Bill will amend the Companies Act of 2008; it was tabled at Parliament on 9 November. Public hearings are scheduled for 30 November 2010 and 1 December 2010. Parliament is [calling for comment](#) from stakeholders. Deadline for submissions is 26 November 2010.

Scope of the Bill

The Amendment Bill stems from discrepancies noted while drafting the Regulations to the Companies Act. The Bill therefore does not contain fundamental changes to the 2008 Act, but rather is intended to rectify omissions, grammatical errors and other technical inconsistencies contained in the Act.

Minister Davies urged Parliament's Portfolio Committee on Trade and Industry to focus its attention on the immediate scope of the Amendment Bill, despite expectations that stakeholders would use public hearings on the Bill to revive other controversial provisions in the Companies Act.

The DTI highlighted a few of the more substantial amendments contained in the Bill, including:

- » **Domestication of foreign companies** – a clause providing for the transference of company's registration to South Africa from its country of origin had been unintentionally omitted from the 2008 Act. The amendment will allow foreign companies to transfer their registration to South Africa without losing their status or financial obligations.
- » **Powers of business rescue practitioners** – stakeholders had raised concerns over the perceived broad powers of business rescue practitioners to cancel or suspend agreements. The amendment proposes a process of judicial review whereby a business rescue practitioner must seek the approval of the court prior to altering an agreement.
- » **Registration of external companies** – Provisions in the 2008 Act have been considered by stakeholders as being too wide. A foreign company holding a meeting in South Africa might, for example, might be considered to be doing business in South Africa under the existing requirements of the Act. The amendment will provide for a foreign company to be regarded as doing business in South Africa only if it is engaged in specified activities, including employing staff.

For a more detailed report of clauses highlighted in the meeting, [click here](#)

Process Going Forward

Portfolio Committee Chairperson Joan Fubbs indicated that submissions heard during public hearings on 30 November and 1 December would guide the Committee's future deliberations on the Bill. Should the Committee discover, while analysing stakeholder comments in December, that more input is required on a specific issue for from a specific stakeholder, it would hold a follow-up hearings in January - 18 and 19 January were mentioned as possible dates.

If all goes according to plan, the Committee intends finalising its deliberations by March 2011.





BUSA talks to PARLIAMENT

job creation • poverty alleviation • decent work

“I salute BUSA...Without Business there would be no country”

- Lumka Yengeni, Parliamentary Chairperson

Labour Portfolio Committee Chairperson Lumka Yengeni paid tribute to BUSA in Parliament on Tuesday, 9 November, saying that she ‘saluted BUSA’ and that ‘without Business there would be no country. Ms Yengeni’s comments were in recognition of the crucial role played by Business in creating jobs and stimulating the economy.

BUSA had been invited by the Committee to present its views on economic issues arising out of the President’s 2010 State of the Nation Address.

BUSA’s presentation focussed on:

- BUSA’s response to fighting poverty - a strong focus on achieving higher economic growth is required in order to create economic opportunities for poor households
- Towards job-rich growth in South Africa - increased service delivery and reducing the skills gaps were amongst measures required to promote job-rich growth
- BUSA and decent work - priority areas for business include: strengthening labour inspection systems, employment equity, and analysis and data on decent work

BUSA noted that lowering indirect employee costs, such as the cost of public transport and basic services, were important to stimulating employment. Education and skills development also required much greater attention and re-engineering to produce more employable graduates.

For BUSA’s presentation to the Labour Portfolio Committee [click here](#)

Committee Issues

Questioned on BUSA’s relationship with government, BUSA CEO Jerry Vilakazi responded that the relationship was one that centred on engagement. While BUSA does cooperate with government on many programmes it also, when necessary, voices its disagreement with policy issues. BUSA’s policy of engagement with government has resulted in a number of successes - the most recent being the deferral of the Consumer Protection Act for 6 months, to allow both government and business time to prepare for the Act.

While the Committee raised some concerns about South Africa’s jobs growth forecast, BUSA emphasised that while creating millions jobs in the next few years would not be easy, it was achievable given the right environment. Prior to the recession, South Africa had been making steady progress in job creation. It was possible to return to and improve on previous growth levels.



BUSA Delegation, right to left: Mr Coenraad Bezuidenhout, BUSA Parliamentary Liaison; Prof Raymond Parsons, BUSA Deputy-CEO; Mr Jerry Vilakazi, BUSA CEO; Ms Bev Jack, BUSA SocPol Member; Ms Lee Padayachee, BUSA Information Manager.

Tax Free BOOKS

For the first time in its history, Parliament is poised to amend the national budget, and it is doing so for a good cause: to eliminate VAT on books.

On 29 October 2010, the Standing Committee on Finance requested National Treasury to produce a detailed report on the potential impact of zero-rating books in South Africa. The request is the first step in the process towards amending the budget to provide for books to be added to the list of products for which no VAT can be charged.

SARS' list of zero-rated items is fairly limited. It comprises predominantly basic food and household items, such as brown bread, eggs and kerosene, to assist lower-income households.

While the proposal to zero-rate books was initiated by an opposition party Member, the Finance Standing Committee was united in its endorsement - an indication of the depth of support for the proposition within Parliament.

All books, magazines and newspapers are not subject to import tariffs. By eliminating local taxes on books, the Committee hopes to further reduce the cost of education, thus improving access to education - a key factor in the fight against poverty.

Parliament has yet to decide whether the tax exemption will apply to educational books only or to all books, newspapers and magazines. Public opinion and the outcome of SARS' financial impact assessment are likely to influence the Committee's determination.

While the Constitution gives Parliament the authority to amend the national budget, until now the legislature has lacked the procedures with which to do so. In 2009, Parliament passed the Money Bills Amendment Procedure and Related Matters Act, which sets out procedures for Parliament to amend the budget. 2010 is the first year in which Parliament has been procedurally able to do so.



CHARTERING A NEW GROWTH PATH

BUSA Responds to the Mini-Budget

On Wednesday, 10 November BUSA appeared at Parliament to present Business' view on the Medium Term Budget Policy Statement. The public hearing was convened by the Standing Committee on Finance following Minister Gordhan's delivery in Parliament of the MTBPS, or mini-budget as it is commonly known, on 27 October.

Overall, BUSA welcomed the guidance on macroeconomic policy direction contained in the MTBPS, but noted amongst other issues that:

- **Corruption negates economic growth**

Accelerated growth therefore requires a collaborative response from social partners. Delegates at BUSA's recent 2nd Annual Anti-Corruption Forum had agreed that tougher sanctions were the only way to deter corrupt behaviour.

- **Implementing development policies was critical**

The business sector is ready to partner with government to deliver infrastructure and believes that more can be done to fast-track project implementation. Investment in human capital, addressing competitiveness issues and reducing the cost of business also required continued attention.

- **Government's economic outlook was optimistic**

BUSA noted its uncertainty over government's anticipated 3% GDP growth forecast for 2010 given that domestic consumer spending was still weak and demand in export markets remained subdued. However, BUSA agreed that inflation forecasts of under 6% CPI inflation over the next three years were realistic.

Concern was expressed over weak growth in the manufacturing and agricultural sectors, as well as the sluggish performance of the mining sector. Regulatory uncertainty was cited as a key cause.

- **The cost of basic services requires further discussion**

Having taken note of the Minister's comment that "reliable electricity supply, clean water and better transport services have to be paid for over time... we will see further rises in tariffs and user charges", BUSA believes that price increases will require greater discussion as they can negatively impact on growth and competitiveness.

BUSA concluded that while macro-economic policy can succeed in creating a favourable macro-economic environment, it was important that programmes at micro-level also be successfully implemented to achieve tangible results.

For BUSA's full submission on the MTBPS [click here](#)