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► FEATURES



Parliament Now

Update on: Superior Courts Bill;
Draft Taxation Laws Amendment Bill;
Protection of Personal Information
Bill; and Immigration Amendment Bill

page 2



BUSA on Tax

BUSA submission to Parliament on the Draft
Taxation Laws Amendment Bill

page 3



SMME Access to Finance

The Banking Association of South Africa
recently briefed Parliament on SMME Access
to Finance, focusing on the tourism sector

page 4



Companies Act: Regulations, 2011

The DTI appeared before Parliament this
month to provide details of regulations to the
Companies Act

page 5



BUSA
BUSINESS UNITY SOUTH AFRICA

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PARLIAMENT NOW



Superior Courts Bill

The Portfolio Committee on Justice and Constitutional Development is inviting comments on the Superior Courts Bill and Constitution Seventeenth Amendment.

The Superior Courts Bill aims to rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa. The Constitution Seventeenth Amendment seeks to amend the Constitution accordingly by providing *inter alia* for the Constitutional Court to be the highest court in all matters, with the Chief Justice as the head of the judiciary.

The deadline for written comments is 22 July. Public hearings are expected to take place in August.

[More details...](#)

Draft Taxation Laws Amendment Bill

BUSA participated in public hearings at Parliament on the Draft Taxation Laws Amendment Bill on 22 June (see page 3 for submission details). Following the hearings, National Treasury and SARS issued a statement notifying stakeholders of an accelerated consultation process to provide certainty in respect of section 45 and hybrid shares.

In terms of the statement, National Treasury and SARS are hoping to conclude the accelerated consultation process by September 2011, at which time a revised set of Taxation Laws Amendment Bills will be introduced in Parliament. Parliament is expected to pass the Bills by 30 November 2011.

[Read the full statement...](#)

Protection of Personal Information Bill

Despite earlier indications that deliberations on the Protection of Personal Information (PPI) Bill would resume in June 2011, the technical working committee (TWC) established to deal with the PPI Bill did not convene in June. Members of the TWC are currently involved in deliberations on the Protection of Information (PI) Bill. The Ad Hoc Committee dealing with the PI Bill had earlier aimed to finalise the PI Bill by the end of June 2011, but has since requested and received an extension to continue its deliberations until September 2011. Work on the PPI Bill is likely to stall until the PI Bill is finalised.

Immigration Amendment Bill

The Immigration Amendment Bill [B32-2010] was submitted to the President for his assent on 23 June. The Bill has been passed by both Houses of Parliament.

Email bpo@busa for a copy of the Bill.



BUSA on TAX

BUSA presented its preliminary submission on the Draft Taxation Laws Amendment Bills, 2011 to Parliament's Standing Committee on Finance on 22 June. The submission commented on issues affecting the broader business community, including the proposed national health insurance and carbon tax.

BUSA supported the broader intention behind the Draft Taxation Laws Amendment Bills and welcomed provisions with the potential to bolster growth and development, including:

- Personal income tax relief
- Transfer duty relief
- Measures to enhance the learnership and industrial incentive programmes;
- Increases in the turnover tax exemption threshold for micro-businesses; and
- Measures to build on South Africa's role as a regional gateway regime

In BUSA's view, tax policy should be used to stimulate investment in the South African economy. This approach would ensure that there is higher growth in the long run, and could be useful in assisting government to generate higher revenues by broadening the tax base.

Cost of Doing Business

BUSA cautioned that the excessive use of additional taxes and special levies as revenue-generating instruments could be counter-productive as it invariably reduced South Africa's competitiveness by raising the cost of doing business. BUSA called for a comprehensive review of taxes levied on the economy, as the streamlining of revenue streams would favour a more competitive economy. Taxes identified as particularly in need of review included: the skills development levy, estate duty, air departure tax, CO2 tax on motor vehicles, customs duty, and stamp duties and fees.

National Health Insurance

While BUSA acknowledged Finance Minister Pravin Gordhan's frankness concerning the likely high costs of the implementation of a National Health Insurance, it noted that it was essential for the NHI to rest on sound financial foundations.

Carbon Tax

BUSA reiterated its commitment to working with Government on addressing climate change, but said that more debate was still required on the merits of alternative policy instruments to reduce greenhouse gasses, specifically with respect to the proposed carbon tax, as South Africa could not afford a one-dimensional focus on revenue generation.



SMME ACCESS TO FINANCE

Managing Director of the Banking Association of South Africa, Mr Cas Coovadia*, appeared before the Portfolio Committee on Tourism on 14 June to provide a financial sector perspective on support for the tourism industry.

With a large number of SMMEs located in the tourism sector most local banks had instituted a range of programmes to provide targeted support to the sector. These included collaborations with government and tourism associations as well the establishment of dedicated tourism units to provide financing options as well as non-financial support. ABSA and Standard Bank were highlighted for their initiatives in support of the sector.

Points of interest noted during the presentation included:

- South Africa's 37 licensed banks provide 95% of all funding to SMME's
- As at the end of 2008, banks had provided R11.4 billion in support to black-owned SMMEs in the tourism sector
- Bad credit from SMMEs had totalled R35 billion over the past 3 to 4 years due to the economic crisis
- Successful financing was greater among SMMEs with a higher turnover
- Smaller SMMEs require greater ancillary (non-financial) support - potentially an area for co-operation with partners outside of the financial sector
- In terms of business development support, there is a need to find creative solutions such as, for example, the accreditation of SETAs coupled with a voucher system that would allow SMMEs to "shop" for the support they required amongst the SETAs
- Given the limited degree to which public programmes supported SMMEs, there is a need to look at the mandate of development finance institutions, which potentially could play the role of 'risk leaders', lending money where banks were unwilling to take the risk
- Generally, banks were wary of financing emerging businesses as many SMMEs failed during their early stages; however the situation could be addressed by development finance institutions working with banks to diversify funding

95%

- the extent to which SMMEs in South Africa are funded by private banks.

* Mr Coovadia is also a BUSA Vice-President and Chairperson of the BUSA Finance Committee.

COMPANIES ACT REGULATIONS 2011

On 22 June, the Department of Trade and Industry appeared before the Portfolio Committee on Trade and Industry to provide an outline of recently promulgated regulations to the Companies Act.

The regulations have been drafted for Chapters dealing with:

Company Accounting Records

- The regulations set out registration formalities for external companies, including forms
- Companies must inform the Commission on their registered offices and records kept at those offices as well as information pertaining to directors

Financial Reporting Standards

- Financial statements can be compiled independently or internally
- The regulations identify the standards applicable to different types of companies

Companies to be audited

- Companies that in the ordinary course of business hold assets in fiduciary capacity
- Organs of state, state owned companies, international entities, foreign state entities
- Non-profit companies performing regulatory or public functions initiated by the state
- Companies exceeding the public interest score

Independent Reviews

- Reviews must be in accordance with ISRE 2400
- Must be conducted by an auditor or appropriate accredited person
- Must not be conducted by a person who prepared the statement

Annual Returns

- Companies must file annual returns within 30 business days after the anniversary of their registration or date of incorporation
- Audited companies must file their audited statements
- External companies must file and pay a prescribed fee

Business Rescue

- Notices relating to the business rescue must be in the prescribed form and (if applicable) displayed at the registered office, company website and delivered to affected persons
- The practitioner must report progress of business rescue proceedings in the prescribed form and inform the court, company and affected persons
- Practitioners may apply for accreditation in terms of section 138

Social and Ethics Committee

- Applies to state owned and listed companies
- A Board must appoint the committee within 12 months of the effective date, date of incorporation or date of becoming a listed company
- The committee must monitor the company's activities in terms of relevant legislation or other legal requirements of good practice; matters within its mandate must be brought to the Board's attention

Par Value Shares

- A pre-existing company may not authorise new par value shares after the effective date
- Conversions may be affected by amendments to the company's MOI, but must be approved by special resolution