

Short notes on:

THE SMALL ENTERPRISES OMBUD SERVICE BILL AND HOW IT COULD HELP SMMEs

Introduction

In May 2018 comments were officially received in response to the notification that Shadow Minister of Small Business Development, Mr. Roger William Chance, intends to introduce the Small Enterprises Ombud Service Bill (herein after 'the Bill'). The Bill, which has since been tabled before the National Assembly, seeks to address the need for Small, Medium and Micro-Enterprises (SMMEs) to have a structured and timely alternate dispute resolution process dealing specifically with matters where SMMEs are involved.

The National Development Plan revealed that by 2030 SMMEs would be responsible for creating of 90% of all new jobs. Considering that the unemployment rate of the Country was at 26.7% for the first quarter of the year, it would be easy to see why special care must be given to protecting the usage and appeal of SMMEs.¹ Entrepreneurship is a well-discussed part of Government's push to decrease the unemployment rate, seeing as jobs will be created whilst business owners will simultaneously be contributing towards the country's GDP. Unfortunately, cash-flow problems are one of the main reasons 70% of new businesses fail in the first two years of operating.²

What the Bill proposes to introduce

This Bill seeks to show the Legislature's intent to do well by creating the scope for a mandate of a Small Enterprises Ombudsman. The Ombudsman will hear issues regarding payment or repayment of monies owed in terms of a service agreement between parties; specific performance in respect of the execution of the terms of a service agreement between parties; cancellation of a service agreement between parties or a declaratory order clarifying a dispute of rights in terms of a service agreement between parties.³

In terms of authority, the Bill further makes provision for a Board of the Small Enterprises Ombud Service comprising of two executive and seven non-executive members responsible for

¹ <http://www.statssa.gov.za/?p=11129>: accessed 08/12/2018.

² <https://businesstech.co.za/news/business/260797/the-alarmed-truth-about-the-number-of-small-businesses-in-south-africa/>: accessed on 08/12/2018.

³ As per S39 of the Bill

implementing strategic plans and aiding the Chief Ombud in fulfilling their functions in terms of the Bill.

Section 34 outlines offences in respect of the Bill, stating that anyone who fails to provide access to any accounts, documents or who refuses to provide or provides false information, will be guilty of an offence and could face a fine or a period of imprisonment not exceeding 5 years. Where a person is convicted for a second or subsequent time the period of possible imprisonment increases to 10 years.

Considering the financial implications of pursuing a matter until its conclusion, parties to an application under the Bill would not be entitled to legal representation during proceedings unless all parties, including the Adjudicator, have consented thereto. This would allow costs to remain minimal whilst ensuring that the parties themselves are able to argue the merits of their cases.

Another positive for SMME traders questioning the overall impact or authority of powers given to the proposed Ombudsman would be that any adjudication must be enforced as if it was an Order of the Magistrate's Court or may be enforced by the High Court with the relevant jurisdiction. Not only would this ensure that the alternate dispute resolution process be seriously considered by SMME owners for relief, but it again ties back to being a more cost-effective way of doing so.

Conclusion

Ascension of this Bill would be a powerful move towards recognising the needs of the smaller business players in the sector. All too often we see the trade and industry landscape develop to suit bigger operations at the expense of smaller ones whereas the creation of a mechanism to deal with disputes would prove Government's intention to hit their National Development Plan goals.

It would clarify the position that SMME traders face difficulties that can be resolved using an expedited form of dispute resolution, allowing more focus to be placed on growing a business rather than chasing debtors. Importantly, it would also prevent SMME traders from becoming entangled in a complex choice between letting a dispute go, possibly leading to adverse business conditions, or approaching a Court for relief which could prove not being worth the financial burden of doing so.

Contact an expert at SchoemanLaw for all your entrepreneurial needs.