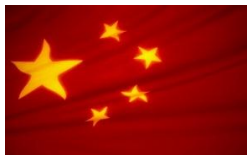


POLICY FRAMEWORK AND LEGISLATION; A HELP OR HINDRANCE TO THE RETAIL SECTOR, THE SA CONTEXT AND LESSONS FROM ABROAD...



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The principal objective of this project is to confirm or dispute the perception held by various stakeholders in the retail industry on whether the existing legislation is more of a hindrance than a help. In this paper we lay out a systematic conceptual framework with which to classify the relationship between retail business operations and legislation. We focus on the direct and indirect impact of Retail laws in South Africa. We eventually benchmark and compare some of these laws with what we learnt from our trip to India and China.

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1. EXECUTIVE SUMMARY

South Africans often criticise their Government for formulating great policies but failing to adequately implement them. While there have been pockets of brilliance in policy formulation that have served the country well, allowing us to navigate the stormy seas of the global economy, there are also a fair number of policies that have had the unintended consequence of restricting progress. Twenty years into democracy, it is time we wake up from denial and shrug off our protectionist outlook and change what doesn't work while improve what works. The way in which a business can operate is controlled by legislation. Legislation may act as a constraint on business in some cases. The main areas of legislation that affect SMME businesses are: Labour law, Consumer Law and Business Law.

1.1 Business Laws

a. Competition law

Competition law aims to ensure that fair competition takes place in each industry. Governments believe that greater competition leads to lower prices, better quality goods and a wider variety of products.

b. Company law

Company law is that body of rules which regulates corporations formed under the Companies Act. A company is a business organization which earns income by the production or sale of goods or services.

c. Tax law

South Africa's tax system is determined by the laws that the Commissioner must administer. The Income Tax Act 58 of 1962, the VAT Act 89 of 1991 and the Customs Act 91 of 1964 are the most important of these.

1.2 Labour Laws

a. Basic Conditions of Employment Act (BCEA)

Applies to all employers and workers and regulates leave, working hours, employment contracts, deductions, pay slips, and termination

b. Labour Relations Act (LRA)

The purpose of this Act¹ is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act

c. Skills Development Act

The Skills Development Act aims to develop the skills of the South African workforce and to improve the quality of life of workers and their prospects of work. To improve productivity in the workplace and the competitiveness of employers and to promote self-employment.

1.3 Consumer Laws

a. Consumer Protection Act

The purpose of the Consumer Protection act is to promote a fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection.

b. National Credit Act

To promote a fair and non-discriminatory marketplace for access to consumer credit.

c. POPI

The Protection of Personal Information Act (POPI) sets conditions for how you can process information.

2. INTRODUCTION

The retail trade industry can be defined by using the classifications from the Standard Industrial Classification (SIC) from Statistics South Africa (Stats SA). It falls under division 62 of the SIC. This industry is said to include the reselling (sale without transformation) of new and used goods to the general public for personal or household consumption or use by shops, department stores, stalls, mail-order houses, hawkers and peddlers, consumer co-operatives, etc. Establishments that are classified under this division include amongst others, those that sell to the general public, from retail products, such as type writers, stationery, paint or lumber

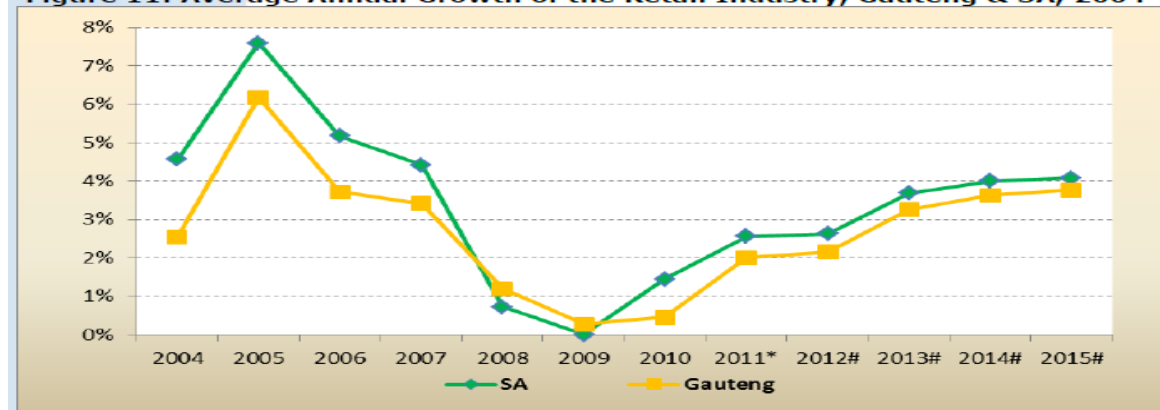
The World Economic Forum, recently held in Cape Town, highlighted the substantial economic growth that is expected to occur on the African continent over the next five years. It is predicted that Africa will have six or seven of the fastest-growing economies in the world, as well as the largest overall growth of any continent within the next five years.

Leading this African economy turnaround is South Africa, the continent's most sophisticated economy. It is already the biggest retail market in sub-Saharan Africa, and the 20th largest in the world, with a wide array of shopping malls and retail developments, as well as a sizable food and non-food manufacturing sector.

2.1 Overview of South Africa's Retail Industry

The retail industry has grown over the past years, supported by an increase in both the supply of retail space and the number of shopping centres in the country. The industry grew by an annual average of 3 percent in the past eight years. The country has seen a boom in shopping centre development and townships have also benefited from this. Retail trade sales have been increasing over the years.

Figure 11: Average Annual Growth of the Retail Industry, Gauteng & SA, 2004-2015#



Source: IHS Global Insight, 2012

Note: # indicates forecast and * indicates estimate

1.1.1 Major retailers

South African retail companies compare well with other retailers globally. Major industry players in the country include Edcon Pty (Ltd), Pick n Pay Holdings Ltd, Shoprite Holdings Ltd, Spar Group Ltd, Woolworths Holdings Ltd and Massmart Holdings Ltd. In the 2012 Global Powers of Retailing report⁵, the country's top five retailers were ranked in the global top 250 retailers. Shoprite was ranked 92nd in the retail sales rank, Massmart (126th), Pick n Pay ranked (133rd), Spar (179th) and Woolworths (222nd).

Most of these retailers make appealing targets for foreign acquisitions. Nevertheless, given the challenges of Walmart's acquisition, which attracted close scrutiny from the Competition Commission, along with strong local competition, few experts are forecasting a boom in foreign investment in the sector from foreign entrants.

2.2 Performance of the Retail Industry in South Africa

The level of interest rates, household indebtedness, inflation, persistent skills shortage and consumer confidence have all had an impact on the performance of the retail industry. The government has been frantically trying to introduce policies to keep the factors above under check. As this project seeks to explore, some of these interventions have been beneficial to the sector and some have resulted in unintended consequences.

2.2.1 SMMEs in South Africa

SMME definitions can be broadly categorised into two, "economic" and "statistical" definitions. Under the economic definition, a firm is regarded as small if it meets the following three criteria: (1) it has a relatively small share in the market place; (2) it is managed by owners, and (3) it is independent in that it is not part of a larger enterprise. The "statistical" definition, on the other hand, is used in three main areas: (1) quantifying the size of the small firm sector and its contribution to the Gross Domestic Product (GDP), employment and exports; (2) comparing the small sector contribution change over time; and (3) in a cross country comparison of the small firms' economic contribution. (Refer to Appendix for Table)

2.2.1.1 The importance of SMMEs in South Africa

As large enterprises have restructured and downsized small, medium and micro enterprises (SMMEs) have come to play an increasingly important role in South Africa's economy and development. The sector has grown significantly. In 1996, around 19% of those employed were in the informal sector of the economy. By 1999 this had risen to 26%. The government has therefore targeted the SMME sector as an economic empowerment vehicle for previously disadvantaged people. As a result, SMMEs have received significant attention and investment, ranging from the establishment of state-initiated projects to supportive legislation, a variety of funding institutions and government incentives through the Department of Trade and Industry (DTI). The National Small Business Act, passed in 1996, helped to establish many of the supportive structures now in place. According to *Towards a Ten Year Review*, a discussion document reviewing the impact of the government's policies since 1994, there were 2.3 million people who owned at least one Value Added Tax (VAT) unregistered company. Of these, only 338 000 owners had employees, a total of 734 000. These number may raise the question of the job creation potential of these enterprises, but it also demonstrates the level of self-employment, a large portion of which may be survivalist. The growth and continued existence of these SMMEs is mostly influenced by various pieces of legislation enacted by the government.

2.3 Factors Influencing the Growth of the Retail Industry

The development of the retail industry in the country is highly influenced by global economic conditions and domestic macroeconomic factors. Key to retail growth is also the availability of consumers with disposable income to boost the industry. The increase of retail developments can be largely explained by urban sprawl. Residential growth in a particular area results in new retail developments which in turn increase retail sales. The demand for retail space is driven by a number of factors. These factors include customer related aspects which

are population size, population growth and existing quality of retail space, household income, household expenditure patterns, consumer preferences and seasonal aspects.

2.4 Challenges & opportunities

About 7-million South Africans are either unemployed or discouraged from seeking work. Millions more suffer from poverty. The National Development Plan envisaged that about 90% of jobs will be created in small and expanding companies including retailers by 2030, but the progress of this has been disappointing. For more than 20 years, a thriving SMME community has been hailed as one of South Africa's pathway to prosperity. According to our SMME Growth Index, the average small enterprise is spending about 4% of its turnover on compliance with regulatory demands. The impact of this firstly is that it is damaging the prospects of small business.

Challenges faced by small retailers include:

- + Customers changing buying habits (South African consumers are becoming more health conscious and brand conscious);
- + Imminent entry of far larger foreign retailers (e.g. Wal-Mart) may find local retailers that are not modernised, struggling to compete in the market;
- + Rising food prices could see retailers reporting lower sales figures;
- + Logistical challenges due to a very wide spread of consumer demographics;
- + Skills shortage is a major problem in the Retail industry especially for small businesses.
- + Small retailers face increased operational costs.
- + With rising costs of electricity and transport, SMMEs are encountering new pressures on their profit margins contracting.

The industry is also full of possibilities which include:

- + Internationalisation of the retail business, whereby retailers can expand their businesses beyond national borders;
- + The value of the retail industry is forecast to increase in the next 2 years;
- + Due to the high unemployment rate in the country (25.2 percent), wage rates are comparatively low;
- + Lots of room for growth in the food retail SMME industry;
- + There is a demand for longer store hours or even 24-hour shopping

2.5 International Perspective

2.5.1 India Retail Sector

India's growing economy has continuously provided a boost to the annual disposable income of consumers, encouraging them to increase spending every year. After much discussion, the Indian government approved 51% of foreign direct investment (FDI) in multi brand retailing in the last quarter of 2012. This was followed by

the decision to allow 100% FDI in single brand retailing. The decision of FDI approval was warmly met by urban consumers as the availability of brands such as Wal-Mart, Prada, and H&M in India was quite exciting for them. However, small grocery retailers, commonly known as Kirana stores along with farmers, vehemently protested against the same as this will force out the small domestic players in the future. However, this decision's complete effect will be fully realised in 2013 due to its recent approval.

2.5.2 China Retail Sector

Based on our immersion trip, we observed that the Chinese central government's has placed emphasis on domestic demand to boost the economy through stimulus packages. This has been translated into dynamic retailing market movement, particularly explosive growth in internet retailing, as well as buoyant home-shopping, direct selling and mixed retailing, in addition to the steady development of grocery retailers. Owing to the boom in internet retailing, leading internet retailers, such as taobao.com and JD.com (whom we visited), have experienced explosive growth in sales revenue and quickly risen to the top 10 position in the retailing market over the review period

2.5.3 Kenya Retail Sector – Executive Summary

The retail industry in Kenya is performing very well currently. This has been attributed to the fact that the Government is developing infrastructure across the country which will enhance the transportation of commodities. With devolved regulatory activity being implemented, economic activity is expected to increase across the country, attracting both local and international retailers to the market.

3. OBJECTIVES AND SCOPE OF THE PROJECT

The project seeks to confirm the perception held by those in the retail sector, especially the SMME's, that legislation hinders the growth in the industry, and to further make recommendations that are practical to reduce the negative perceptions in some areas of legislation. The scope will entail an investigation:

-  To review existing retail Legislation & Regulations
-  To confirm the real or perceived impact of legislation on SMME's in the retail sector.
-  To study the South African Context.
-  To compare and contrast the South African retail legislation with legislation in selected countries; i.e. China, India and Kenya.
-  To explore South African retail's competitive edge.
-  To investigate best practices from China, India and Kenya that South African Retailers can adopt.

Legislation and its Objectives

It is generally acknowledged that the role of legislation in any industry cannot be overstated as it gives all stakeholders a certain degree of confidence that whatever the industry in question. Retail legislation plays a significant role in the successful operation of business. These laws facilitate planning and the realization of reasonable expectations; promoting economic growth through free competition; promoting social justice; and protecting the environment. It is important to note that without laws to govern the actions of people and businesses, society would not be able to function effectively, and commerce would likely collapse.

4. RESEARCH METHODOLOGY

4.1 Interviews

Interviews allowed us to have face to face discussion with several individuals who work in the retail or legal areas that have some in depth knowledge of the South African retail laws. We also interviewed various individuals that we met overseas in China and India to get a view of their respective countries' legislation and how it affects especially SMME retail businesses. Both the structured and unstructured interview methods were used and using these we were able to engage face to face with the chosen individuals as well as probe further during these interviews; thus drawing out more information.

The choice of interviewees was based on their knowledge of the retail industry and their interest in the retail industry. The approach was useful in allowing the subject to clarify and provide evidence and share own views on the topic as we presented it and it also ensured that the group members were able to pose different questions to the subjects and after the session, consolidate the responses to compare. (Please see glossary for the list of people interviewed)

The sample subjects interviewed were (number of people in brackets):

- Retail industry experts(12)
- Retail store owners (4)
- Labour Attorney (retail)(4)
- Labour Union Representatives(2)
- Academic experts (10)

4.2 Literature review

Literature review was chosen for its ability to provide reliable and validated data. Literature on South African law was retrieved from the various government gazettes. The other part of our literature review focused on obtaining international information on China and India.

4.3 Ethnography (participant observation)

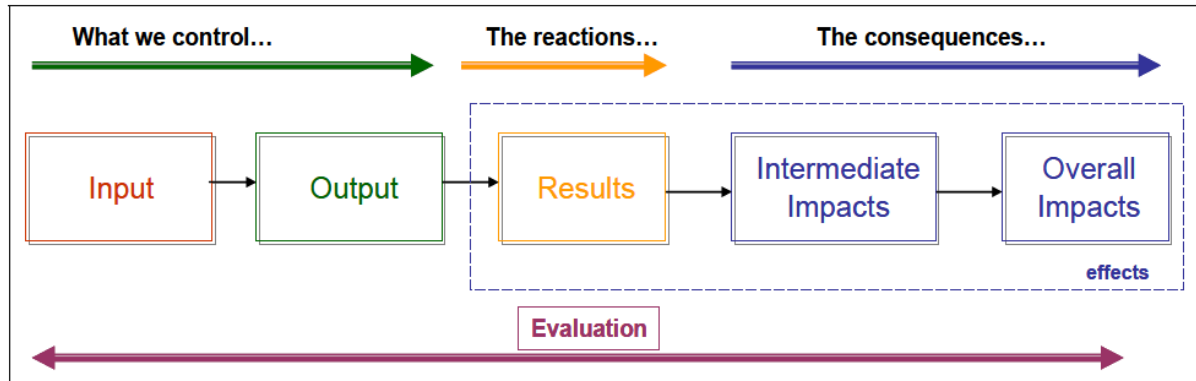
Ethnography is more usually described as participant observation, and this is where the researcher becomes a working member of the group or situation to be observed. Two members in our group (Ismail and Riad) own and run small businesses. They interact with several facets of legislation on a daily basis. The aim was to understand the effect of legislation especially on SMMEs from the inside: from the viewpoints of the people currently in the situation. These team members shared the some experiences as the subjects, and this form of research was particularly effective in the study of small retailers.

4.4 Risk Assessment

A risk assessment in this case involved a careful examination of existing legislation that affect SMME businesses, so that we could weigh up which legislation had the biggest impact currently on small retail business operations. All the legislation where evaluated using the format outlined in the diagram below. In

short, evaluation of a legislation involved gathering and analysing facts associated with the legislation in order to determine the effects of legislation within the wider policy context.

Figure 2 : "Standard" cause-effect logic for evaluation



We used the analysis above to verify and analyse the links between:

- ✚ **Inputs (resources)** – what was used, e.g. the legislation itself;
- ✚ **Outputs (action)** – what the SMMEs are doing, e.g. compliance;
- ✚ **Results** – What happened, e.g. increase in revenue due to tax cuts;
- ✚ **Direct impacts** – What the Legislation wanted to achieve, e.g. more cross-border integration;
- ✚ **Indirect Impacts**- Unintended consequences e.g. Growth of the returned goods market after CPA
- ✚ **Overall impacts (general objectives)** – the major change strived for, e.g. increased productivity and competitiveness.

We identified the following legislative risk factors particularly for SMMEs operating within the retail industry:

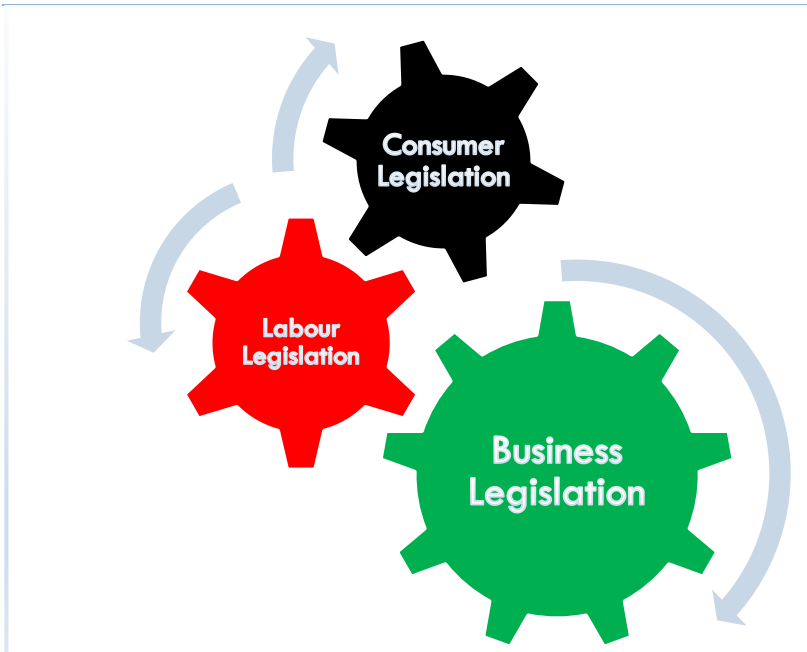
- According to Dr. Adelle van Schalkwyk, Business Governance/Legal services executive at Masscash Pty Ltd, one of the people interviewed for this research: “Previously the balance of power lay chiefly with businesses and now it will rest squarely in the hands of the consumer given the implementation of the **Consumer Protection Act**.” Companies are legally compelled to disclose relevant product information and undertake responsible marketing practices, and consumers will be able to claim compensation if they are sold inferior-quality products or are treated unfairly. The penalties for non-compliance with the Act are severe. Companies not abiding by the CPA face penalties of a fine of up to 10% of turnover, or fines and a prison sentence of up to 10 years where orders of the authorities are not complied with.
- The **Competition Act** impacts on almost all areas of business. It aims to ensure an effective market-based economy that functions for the benefit of all consumers. It therefore restricts businesses from behaving in ways that could adversely affect the level of competition and accordingly the benefit to consumers. The Act prohibits competitors from colluding to keep the selling price of their products artificially high. Heavy fines are exacted on firms that contravene the Act and as a result non-compliance has become one of the most critical risks for businesses to manage.

- A lack of skills and restrictive labour regulations (**Labour Act**) are the first and second most problematic factors for doing business in South Africa, respectively. According to the Global Competitiveness Report (2013), South Africa scores the lowest among 144 countries in the world in terms of labour/employer conflict (absolute worst), hiring and firing practices (2nd worst), wage inflexibility (5th worst), and productivity (11th worst). Compliance with some key aspects of the LRA and BCEA has resulted in administrative burden for small business and increased compliance costs for all businesses. Non-compliance costs results in business disruption (loss of income) and possible closure of businesses which adds to the serious unemployment problem in South Africa.
- The **Business Licensing Bill** requires all businesses from transnational mining companies to street hawkers to be licensed by their local municipalities. The Bill does three deeply problematic things. First it further increases the burden of red tape on businesses and makes entrepreneurship less attractive. Secondly it gives sweeping powers to the often dysfunctional municipalities including broad search and seizure powers and the power to impose conditions on business at will. Third it seems clear that it intends to make life harder for South African immigrants giving the Bill an ugly, populist aspect. The Regulatory Impact Assessment (RIA) warned against the unintended consequences which will result in significant burden on business, raising business costs and ultimately costing jobs in the economy. However, this was ignored and the Bill was still tables by the Department of Trade & Industry. The small business sector in South Africa is in dire straits because there are not enough entrepreneurs to create sustainable, innovative businesses. The Global Entrepreneurship Monitor 2012 annual survey found that only 14% of South Africans intended to open a business in the next three years, well below the average of 27% for peer countries.
- The new **Tax Administration Act** last year gave the South African Revenue Service (SARS) powers to search and seize, in some cases without warrants. A tax review was set in motion in February 2013 by the government to try plug the gap by investigating the effect of tax on employment, growth and development.

Tax review committee Head, Mr Dennis Davis is concerned about the potential effect of the new act on SMMEs in transaction costs and levels of complexity. Hence it is hardly surprising that this will form one of the committee's first areas of investigation.

4. RESULTS & DISCUSSION OF RESULTS

Based on the methods of research stated in the previous chapter we therefore concluded that the retail legislative landscape can be firmly subdivided into 3 categories, namely consumer, Labour and business. This project however seeks to assess whether the benefits of these legislation outweigh the hindrances. There is a plethora of laws in South Africa that all have either a direct or indirect impact on legislation.



5. THE 3 CATEGORIES OF RETAIL LEGISLATION AFFECTING SMMEs

5.1 BUSINESS LEGISLATION

5.1.1 Business Licensing Bill

A new draft law from the department of trade and industry proposes that all businesses in the country – whether formal or informal – register with, and obtain a license from, their local municipality. The Licensing of Business Bill, gazetted for comment by government, intends to create a new framework for businesses to function within. This bill replaces the Business Act of 1991 which required businesses that served food, operated health facilities such as massage parlors, or entertainment venues to license with local authorities.

Objectives & Evaluation of the Business Licensing Bill

- * Simplify procedures for application of business licenses;
- * To provide for better cooperative governance & harmonisation of standards



- * To provide for monitoring & standard setting by National Government and provision of Inspectors;



- * To provide for administrative fines and penalties for non-compliance.

Results

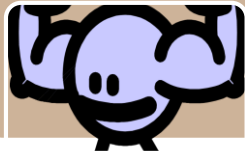
- To obtain the full complement of all operating businesses,
- Application of consistent practice across all tiers of business
- Identification all non-compliant businesses
- Penalisation of non-compliant businesses
- Establishment of Consumer courts, commission investigations and compliance notices

Direct Impact

- Registration of all businesses operating in SA
- All businesses follow standard registration processes
- Random inspection of businesses for compliance checking
- Collection of fines and possible closure of many businesses
- Curbing of unwanted marketing

Indirect Impact

- Inefficient processes to manage registrations
- High administrative cost to government resulting in additional costs to taxpayers
- Potential for bribery and corruption

Overall Impact

- Higher unemployment, lower GDP and political upheaval

Problem Statement

While licensing hawkers and small retailers is a good idea in principle, it's far from clear that South Africa has the capacity to administer that kind of registry and processes involved, considering the challenges already faced at CIPRO (now rebranded as the Companies and Intellectual Property Commission).

However, it's the provisions beyond the basic that are really worrying. The Bill gives municipalities and inspectors a lot of leeway to shut down businesses that contravene rules ranging from dealing in counterfeit goods to messing up on their tax returns, creating more space for corruption, abuse of power, and harassment (all of these things are *already* illegal and punishable under existing laws) and contraventions of the provisions of the Bill are punishable by up to *ten years* imprisonment and undisclosed fines.

Overall Impact



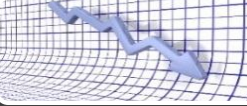

The Bill seeks to formalize the country's considerable informal economy. But it is largely the absence of regulatory restraint which makes the informal sector possible. There are naturally some negative consequences, but informal sector economies provide a livelihood – however, meagre or imperfect – that would otherwise not exist. Consider why India and China do not fully enforce legislation on small business? It's because they understand the constraints facing these businesses and enforcing legislation will stunt economic growth and entrepreneurship and will negatively impact the political and economic landscape. South Africa cannot afford higher unemployment, lower GDP or political upheaval. It requires careful planning, balanced legislation and mature intervention so that both the informal and formal economy can co-exist in an ecosystem that enhances economic growth.

5.1.2 Tax Legislation

The minister of Finance announced in the 2013 Budget that –“A tax review will be initiated this year to assess our tax policy framework and its role in supporting the objectives of inclusive growth, employment, development and fiscal sustainability....” The Minister appointed a committee which is advisory in nature to also evaluate the South African Tax system against internationally accepted tax trends, principles and practices, as well as recent international initiatives to improve tax compliance.

Objectives & Evaluation of the Tax Legislation

- * Raise revenue to fund national expenditure;
- * Building a cohesive and inclusive society through tax collection and redistribution;
- * To consolidate the law related to taxation
- * Taxation and tax incentives used to encourage higher levels of economic growth

	Results <ul style="list-style-type: none"> • Increase in revenue, and redistribution to socio-economic projects • Improve the Tax Administration Act and Introduce new incentives • Penalisation of non-compliant businesses and Establishment of Consumer courts.
	Direct Impact <ul style="list-style-type: none"> • Funding Government Initiatives • Increase in Social Grants and distribution to the poor • Increase in Legislative Compliance • Some benefits to Taxpayers
	Indirect Impact <ul style="list-style-type: none"> • SMME growth stifled as there is no impactful investment in business development • Tax Burden on existing taxpayers resulting in lower discretionary spend • Complex legislation, low compliance and possible closure of business • Tax incentives making minimal impact on economic growth
	Overall Impact <ul style="list-style-type: none"> • Low levels of entrepreneurship , • Weak and negative SMME business growth leading to negative impact on employment

Problem Statement

When one considers the Committee's mandate and its objectives it appears that the main aim of the committee is to assess whether future tax revenue will be sufficient to finance Governments expenditure plans with view to protect and expand the tax base. The obsession with ensuring that the tax base is not eroded clouds the prospect of taking impactful calculated risks. The Minister himself recognises that to sustain and grow the economy a growth rate of 6% is required. To achieve an ambitious target some sacrifice is required through containing Government expenditure by substantial reduction in corruption and wastage (not just cutting budgets) including efficiencies in service delivery and by focussing on incentives and concessions specifically for the SMME Sector. It makes sense to take short-term pain (with some erosion only if corruption and wastage is addressed simultaneously with SMME concessions) to achieve long-term gain. Disappointingly the National Development Plan in its action plans only makes a single reference to tax incentives for all businesses and that has to do with youth subsidy. When employing youth there is still a base wage cost and the inherent costs of training and mentoring. The youth subsidy will benefit larger companies and to a lesser extent SMME's.

Overall Impact

Without incentivizing SMME's with corrective stimulatory measures, the unemployment problem will further escalate and create political and economic turmoil for all South Africans. If unemployment is to be reined in, it will be via the growth and expansion of existing businesses, and the emergence of new ones. In particular it is to small business – acknowledged domestically and worldwide as the chief generators of jobs – that the country must look to do this.

5.1.3 The Competition Act

The overriding objective of the Competitions Act 89 of 1998 is the maintenance and promotion of high levels of competition to facilitate the realization of a number of economic and social objectives.

The Competition Commission is primarily an investigative body with jurisdiction throughout South Africa. It may investigate any suspected contravention of the Act of its own accord, or upon a complaint from an interested person. **The Competition Tribunal** adjudicates on any contravention of the Act and imposes appropriate remedies. A decision of the Tribunal is subject to appeal or Review by the Competitions Appeal Court. **The Competition Appeal court** has a status similar to that of a High court.

Objectives & Evaluation of the Competition Act



- * the promotion of economic efficiency, adaptability and development, competitive prices and product choices for consumers, and market access of small and medium sized firms;
- * the diversification of ownership in favour of members of historically disadvantaged communities;



- *the creation of new employment opportunities
- * the advancement of social and economic welfare of all South Africans
- * The independent competition authority comprises a Competition Commission, a Competition Tribunal and a Competition Appeal Court.

Results

- Growth in new SMME businesses,
- Competition between business enabled
- BEE Equity requirements legislated
- Penalisation of non-compliant businesses
- Establishment of Consumer courts, commission investigations and compliance notices

Direct Impact

- Improved economic growth
- Increased competition, more FDI investment, greater consumer confidence
- Increase in previously disadvantaged groups business ownership

Indirect Impact

- Marginal increase in new business & low economic growth
- non-compliance & collusion (cartel forming)
- Low equity ownership (elite) & profit dilution
- Labour laws restrictive, reduction in compliance, low productivity

Overall Impact

- SMME business may be disadvantaged through lack of education

Problem Statement

Although there is no general exemption in favor of SMME businesses, the Competition Act includes a clear policy of recognizing and supporting their interests. Support for small business is closely related to the policy of empowering historically disadvantaged populations, as their business operations are often small ones. Small business support and empowerment are among the criteria for exemption under Sec. 10. Moreover, concerns about the position of smaller businesses may also be an element in enforcement priorities. Decisions of the Tribunal and the Commission about the claims of small farmers against national co-operatives and about the claims of franchisees against dominant franchisers are consistent with the Competition Act's explicit purposes to give SMEs an equitable opportunity to participate in the economy.

Small businesses are still not as aware as they should be of the importance of competition law to their business. Given the high levels of market concentration, the role of small businesses and their ability to compete with larger business is a serious concern of competition law. The case of *Nationwide Poles v. Sasol* received a decision of non-referral from the Commission. The managing director of Nationwide Poles then took the case to the Tribunal without legal assistance. The experience of this small business had raised a number of very important issues, including the cost of legal expertise to support a competition case, the specialized knowledge required to meet the high standards of the competition authorities with respect to submissions and participation in proceedings and the length of time it may take to get a case resolved.

Overall Impact

The overall impact to SMME's is unknown and it's likely that some may be disadvantaged or discriminated against as a result of their ignorance relating to the competition Act and/or lack of financial resources to support likely litigation.

5.2 LABOUR LEGISLATION

Labour legislation is aimed at regulating the employment relationship between employers and employees and it aims to align SA labour practices to the International Labour Organisation practices as a member of that body.

5.2.1 Basic Conditions of Employment Act

To give effect to the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith.

Problem Statement

In 2011 SBP (*SBP is an independent private sector development and research company specializing in improving the environment for doing business*) created an index to understand the small business environment. It surveyed 500 established, small and medium-sized firms, employing between 10 and 49 people, across various sectors of the economy for a longitudinal study over an initial period of three years. The latest SME growth index released found that instead of growing, the SMME sector was more concerned with just trying to survive. Employers found basic conditions of employment more complex and harder to understand and difficult to enforce. This created significant burdens for the CCMA and Labour Courts. This also created excessive administration and punitive outcomes for retail businesses resulting in risk and uncertainty.

Impact on of the BCEA on the Retail SMME sector

The overall impact of the BCEA act on the SMMEs has been negative, particularly as it requires the employer to:

- a) Keep all records of their employees
- b) Provide basic conditions to employees
- c) Prescribes minimum salaries for categories of employees
- d) Prescribes hours of work and overtime pay

SMMEs do not have the capacity to comply with these onerous prescriptions. SMMEs lack the ability to fulfil the compliance requirements of providing minimum salaries for employees meeting the high cost of leave, keeping of employee records and provision of overtime pay at double time for Sundays and Public holidays. All these come at huge cost which SMMEs can't afford.

The SMME 's are now required to invest in the service of specialists to assist them deal with disciplinary cases; draw up employment contracts for employee and to negotiate terms like retrenchment and retirement benefits. These compliance obligations come as an added cost burden to the SMME's; leading to some of SMMEs to employ cheap foreign labour, while some businesses fold due to the high costs of salaries prescribed by the act.

Objectives & Evaluation of the Basic conditions of Employment Act



*Establishing and enforcing basic conditions of employment;



* Regulating the variation of basic conditions of employment



Results

* High cost of labour for business; especially SMMEs.



Direct Impact

* Centrally determined sectorial salaries grades which some SMMEs can't afford.

* Prescribed minimum working hours.

* Prescribed minimum standard employment terms



Indirect Impact

* Casualization of employment.

* Use of short term employment contracts.

* Increased employment of foreign labour

* Contributor to Xenophobic attacks, which at times started with looting of small businesses



Overall Impact

• Direct impact on high unemployment rate.

• Increased use of employment brokers for casual labour

India Context

The government of India has embraced the country's level of poverty and has promulgated labour laws that are developmental in nature; allowing retailers to employ as many workers as possible to reduce unemployment in the country. In some cases the retailers have taken the basic wage prescribed and shared it among two workers to ensure that they employ two people for the salary of one job.

The government believes in giving citizen self -worth through short term job assignments. The government has turned a blind eye to compliance monitoring.

Republic of China Context

Labor laws and regulations in the People's Republic of China have undergone marked changes in recent years. These changes are part of China's redesign of its legal framework to support the development of its socialist market economy, a process that began close to three decades ago. To help transform and modernize China's past labor system into a labor contract system based on greater freedom of employment, China promulgated the Labor Law of the People's Republic of China (Labor Law), effective January 1, 1995. The Labor Law applies to private companies and State-owned enterprises (SOEs), and their employees in China. Thus, the Labor Law covers employment by foreign-invested enterprises (FIEs) such as Sino-foreign joint ventures and wholly foreign owned enterprises (commonly called WFOEs). At the national level, numerous specialized regulations

and notices have followed the promulgation of the Labor Law. The Labor Law and national regulations are further supplemented by local regulations in many cases. For example, provinces, major cities (such as Beijing and Shanghai), and special economic zones (such as Shenzhen) have their own employment contract regulations.

5.2.2 LABOUR RELATIONS ACT (ACT 66 OF 1995)

Every enterprise has a responsibility to its employees. This responsibility is described in various pieces of legislation, including some aspects of the Labour Relations Act of 1995. The employee acquires bargaining power through the trade unions.

The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are-

- (a) To give effect to and regulate the fundamental rights conferred by section 27 of the Constitution;
- (b) To give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;
- (c) To provide a framework within which employees and their trade unions, employers and employers' organisations can collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and formulate industrial policy; and to promote orderly collective bargaining;

Problem statement

South African labour relations are not only influenced by factors such as the labour retail environments and shop-floor agreement, but also by socio-political and economic factors that impact on the activities and attitudes of various factors in the labour relations field, i.e. the government, employees and employers. The impact of these factors has complicated South African labour relations in the retail sectors to an extent that retail employers have only a limited ability to control the results of such relations. This has led to a great deal of frustration for retailers, who often feel that the government unfairly protects the employees. Retail employees on the other hand are becoming aware of their own power through their labour unions, and are willing to pit their power against those of their employers at every opportunity. South Africa is still undergoing a process of change regarding political labour issues. Until political stability is reached in the country, labour unions' tactics will continue to have political bias on the retail industry. Therefore, the nature of labour unions' demands within the retail sector will depend on the progress made with the restructuring of the political dispensations.

Objectives & Evaluation of the Labour Relations Act



- * To advance economic development, social justice, labour peace and democratisation of the workplace.



Results

- * Establishment of the CCMA.
- * Grouping of workers into unions



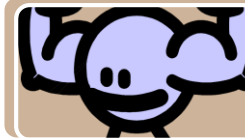
Direct Impact

- * Centrally determined sectorial salaries grades.
- * Prescribed mEstablishment of Labour Unions in the Retail Sector
- * Rights of employees to embark on industrial action.



Indirect Impact

- * Erosion of profits due to protracted strikes.
- * Unreasonable & costly demands.
- * Increase in strikes
- * Harassment of SMMEs by Unions



Overall Impact

- Direct impact on high unemployment rate.
- Increased use of employment brokers for casual labour.
- Loss of potential investment into SA.

Impact on of the Labour Relations Act on the Retail SMME sector

This law deals with hiring and firing procedures, disciplinary processes, unions, negotiations, strikes and disputes between you and your employees through the Commission for Conciliation, Mediation and Arbitration (CCMA).

The most frequent problems that small business owners run into concern the dismissal of employees, who then approach the CCMA.

The Labour Relations Act also deals with bargaining councils, which govern certain industries. These councils have their own rules and regulations that businesses falling within particular industries should abide by. The SMMEs have had to make sure they are familiar with the rules of their bargaining councils.

According to some of the business owners interviewed “SMME’s are constantly being harassed and intimidated by labour unions trying to coerce their workers to join them. In some cases the unions have ended up taking some SMME’s who refuse to have their workers join them to the CCMA, which has resulted at huge cost to some of these SMMEs.

This piece of legislation has impacted on potential foreign investment into the country as it is seen as being biased towards workers. Some investors are considering disinvesting due to the extensive powers granted to labour unions by this legislation.

Lack of direct foreign investment, translates into unemployment and reduced revenue for the country.

India Context

Workers are only legally protected for the small minority group working in the organized sector. Strikes are prohibited in the public sector. Child labour is widespread, and the number of child labourers is estimated at 55 to 60 million. The trade union landscape in India is complex and diversified. The union movement opposes liberalization taking place. Union membership remains small percentage of the labour force. Female share in union membership and decision-making remains low.

Republic of China Context

China has a number of laws and regulations to govern labour relations and protect workers' rights but these are poorly managed and hardly implemented. In recent year's labour disputes, workplace safety violations, and labour unrest have increased dramatically. The Ministry of Law and Social Security are unable to fully supervise and enforce China's workplace standards. Trade unions do not want to supervise the workplace effectively. However the government has instructed the trade unions to get involved to control labour unrest and become self-sufficient, and generate stronger sources of revenue.

Despite these statutory protections, abuses of employee rights under the new system continued to persist, mainly attributable to blatant violations of the law by unscrupulous employers, inconsistent and loose administrative enforcement at the local level, employee's lack of knowledge of their rights or simple fear of employer retribution if those rights were asserted. Common problems included failure to sign employment contracts, extending working hours beyond statutory limits without paying the required overtime, delaying the payment of wages, providing unsafe working conditions and failing to pay social insurance contributions and tax.

There are no independent union organizations in China, and all unions must belong to the All-China Federation of Trade Unions (ACFTU). The ACFTU is an organization reporting to the Communist Party, with branches at the provincial level, city level, and district level.

5.2.3 Skills Development Act

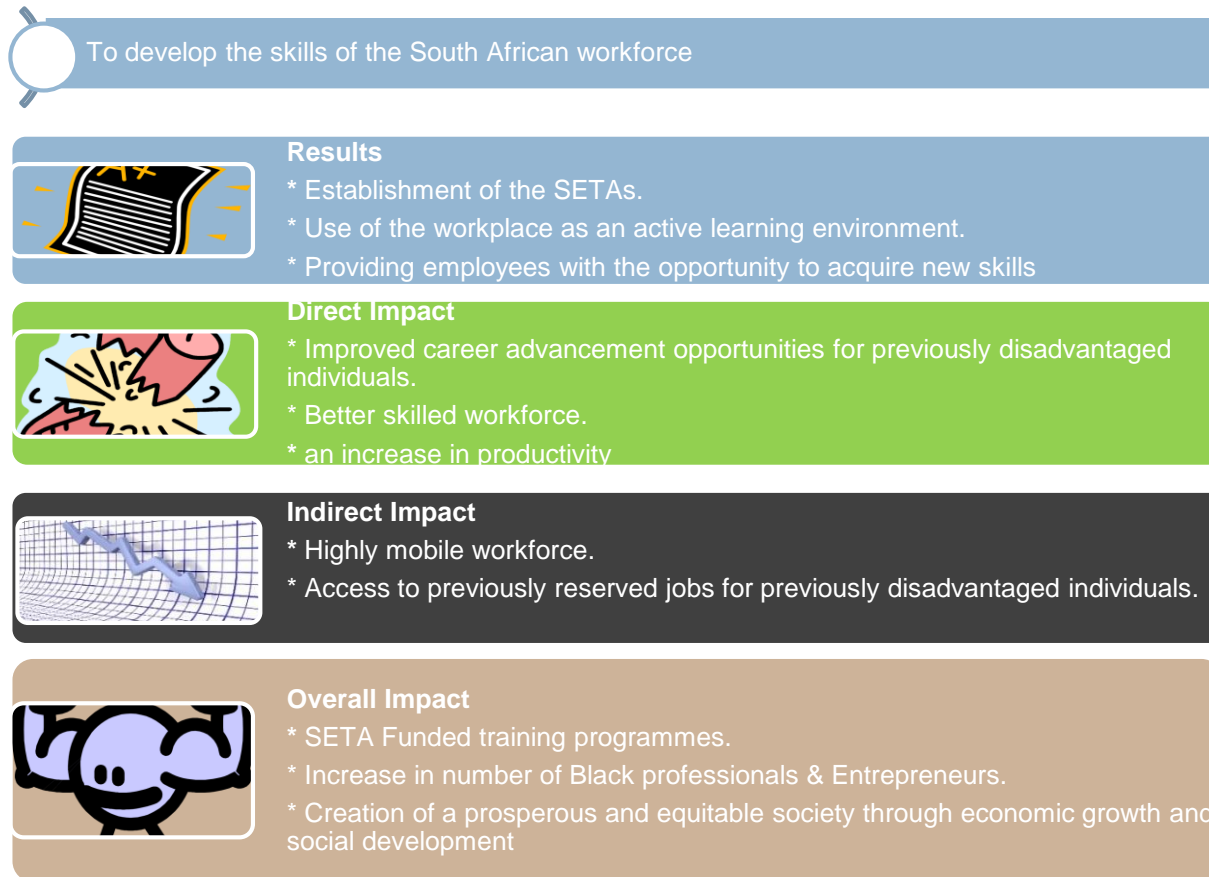
The aim of Skills Development Act is to provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide 'financing of skills development by means of a levy-grant scheme and 'a National Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.

Problem Statement

The biggest challenge facing South Africa's economy is the skills crisis. The key to any successful country in the modern world are access to information and access to skills. Those without skills are left behind. However,

South Africa need to ask three questions regarding skills in the retail sector. Are we retaining skills? Are we attracting skills? Are we producing our own skills? The answer to the question in short is no. The quality of our public schools is ranked 87 and the quality of math and science education 115 out of the 131 country sample. The biggest problem to the skills crisis lies in the South African education system. South Africa spends an enormous amount of money on education, yet nearly half of private businesses say a lack of skills is the biggest constraint to growth in South Africa, a survey by Grant Thornton annual International Business Report (IBR). The outcome was very clear, South Africa has a skills crisis, and it is affecting retail businesses negatively in South Africa. Economic growth can be enhanced by a number of ways. One way to enhance economic growth in South is to increase its production output. However, to increase production, retail businesses need skilled workers. This is where the big constraint on production lies. The aim of the Skills Development Act is to improve the working skills of South Africans so that the economy can grow and all South Africans can live a better life.

Objectives & Evaluation of the Skills Development Act



Impact of the Skills Development Act

The impact of the Skills Development legislation has been most noticeable in the larger companies. These large companies, previously invested substantial amounts of money in Human resources and training infrastructure, and now reap the financial rewards of that investment. As the large companies have the human resources infrastructure to adhere to the detailed requirements of the Act, they capitalise on the rebates and discretionary grants available. Small to medium (SMME) companies are not adapting to the new processes and in many

cases, are not complying with Skills legislation at all. SMME's lack the infrastructure required to introduce, implement and monitor the legislation in their organisations, they either don't comply, or hire consultants to window-dress the process in order to recoup a portion of the levies paid. The following solutions are proposed: A simple, uncomplicated administrative process allowing SMME's to register for the Skills Development Levy rebates.

A sustained marketing drive (or awareness campaign) from Government (W&R SETA), focusing specifically on SMME's, is required in order to educate owners of SMME's with regard to the benefits of legislative compliance.

India Context

Skills development in India is structured around the changing demographic profiles in India. The demographic profiles indicate that India has a unique 20 to 25 year window of opportunity called “demographic dividend”. The demographic dividend is due to two factors, the declining birth rates and improvement in life expectancy. The declining birth rate changes the age distribution and makes for a smaller proportion of the population in the dependent ages for a relatively larger share in the productive labour force. The result is a low dependency ratio which can provide a comparative cost advantage and competitiveness to the economy. India has the world's youngest work force with a median age way below that of China and OECD Countries. The National Skill Development Corporation India (NSDC) reaps the benefit of the “demographic dividend”. NSDC aims to promote skills development by catalyzing the creation of large, quality, for-profit vocational institutions. It provides funding to build scalable, for-profit vocational training initiatives. It provides support systems such as quality assurance, information systems and train the trainer academies either directly or through partnerships. However, no comprehensive training plan has been elaborated. There is evidence of lower level skill training is carried out by local governments, industry linkages with the training institutes are weak. The management of the Vocational Education and Training System is fragmented and shared between various institutions. Little attention is paid to financing public, private, in-service training. There is a lot of scope to improve national human resources skills development.

Republic of China Context

China has devoted a lot of attention to national human resources development. The human resources development has aimed to train millions of high-quality workers, millions of professionals and a large group of top-notch innovative personnel. The Chinese Government incorporated this strategy into the five-year plans for National Economic and Social Development. National Economic and Social Development is now on its 12th five year plan. The plans covered overall development of human resources in urban and rural areas, among different regions, industries and trades, among the public and private sectors, ensuring that everyone has an equal opportunity to benefit from related policies and participate in human resources development. This policy framework for skills development has been able to keep up with the demands for skilled workers.

Unemployment Rate in China has decreased to 4 percent in the third quarter of 2013 from 4.10 percent in the second quarter of 2013.

Opportunity

The South African government should consider the following acts which have been implemented in China such as:

- In tertiary industry, a large number of labourers are trained with skills such as IT, household management, tourist guides, equipment repairs, and in fields related to the development of a low-carbon economy and the green industry.
- A lot of public advanced demonstration and training centers have been established. By the end of 2020, it is estimated that 1 200 public training Centre's and 1 000 skill-master studios will be set up.
- Improving the vocational training system and strengthening the role of enterprises for establishing specific training standards, developing training content, and implementing skills training. The Chinese government encourages industries and businesses to up-skill workers in new knowledge, new materials and new technologies.

5.3 CONSUMER LEGISLATION

The Consumer Protection Act has had an impact on all businesses and is radically changing the way SMMEs do business in South Africa. The Act aims to provide for consumer protection and to prevent exploitation of consumers. Together with other laws which provide for consumer protection, for example the National Credit Act, the Consumer Protection Act is serving as a comprehensive legal framework for consumer protection.

5.3.1 The Consumer Protection Act

The Act now means South African consumers are in the fortunate position of being the most protected consumers in the world. Under the new Act the interests of the average South African consumer now enjoy greater protection than those of any other consumer in the world.

Impact of SMME's

The Consumer Protection Act has seen South Africa catch up to the developed world as it gives a voice to consumers. The Act raises the bar and levels the playing field. This piece of legislation has however been hard to implement as it is wide ranging and vague in many respects. People are working in a vacuum to work out how to apply the Act. The Act has added another layer of complexity to starting a business, and smaller retailers are now expected to behave like their larger counterparts. Retailers will need to put in place a complaints handling system, to make sure that issues are resolved. This has resulted in extra costs which some of the SMME's cannot even afford. Companies are also having to spend money on getting their terms on conditions redrafted in plain and understandable language. This is a very expensive process especially for an SMME. In addition, with the labelling disclosure requirements, suppliers may have to redesign product labels. Companies will also not be able to market goods in a deceiving way, such as advertising items that are not actually available for sale. This could be problematic especially if the SMME has been let down by its supply chain.

Objectives & Evaluation of the Consumer Protection Act



- * Promote and protect the economic interests of consumers
- * Develop effective means of redress for consumers;
- * Facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and



- * Improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;



- * Protect consumers from hazards to their well-being and safety;
- * Promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers opportunities



Results

- 6 month guarantee on all products purchased in South Africa,
- Avoidance direct marketing
- 5 day cooling off period after entering a sales agreement
- SMMEs can now safely back out of sales agreements with suppliers
- Establishment of Consumer courts, commission investigations and compliance notices



Direct Impact

- Fair Competition and Customer Loyalty for teh SMMEs
- More clearer sales agreement
- Elimination of "voestoets"
- Curbing of unwanted marketing by Businesses
- Force the supply chain to be far more concerned about its quality of goods and the defects or hazards or injuries it could cause to consumers



Indirect Impact

- Generation of significant costs for the SMME businesses
- Higher prices passed on to consumers because of extra compliance costs
- Exposing Business to time consuming administrative tasks, such as having to redraft all of their terms and conditions, sales agreements and so on into plain, easily understandable language
- Job losses when SMMEs close or downsize due to high compliance costs
- Growth of the returned Goods market thereby creating competition



Overall Impact

- Greate protection for Consumers
- Business planning is simpler when everyone is "playing fair".
- Companies have had to modify or discard some of their existing returns policies
- Creation of loyal and trusting consumers which is good fro building brand for SMMEs
- Companies using it as a marketing opportunity to tell cinstomers how much they protect them.

India Context

In India, Consumer Protection Act of 1986 is the law governing consumer protection. Under this law, Separate Consumer tribunals have been set up throughout India in each and every district in which a consumer can file his complaint on a simple paper without paying any court fees and his complaint will be decided by the Presiding Officer of the District Level.

Republic of China Context

The Consumer Protection Law (CPL) in the Republic of China specifically protects the interests and safety of customers using the products or services provided by business operators. The Consumer Protection Commission of Executive Yuan serves as an ombudsman supervising, coordinating, reporting any unsafe products/services and periodically reviewing the legislation. Although many agree that the intent of the CPL is fair, its weakness was highlighted as ambiguous terminology and favouritism towards consumer protection groups.

Opportunity

Consumer law is a necessary part of our legal infrastructure so as to make sure that the free market works in a way that considers both the interests of business and consumers. It does not go unnoticed that this does come at a cost for business and impacts the effectiveness of the economy. The big question is: Will the CPA continue protecting consumers at the expense of the retail business sector's economic spirit and comparative advantage? We can hope this will not be the case and that for most SMME businesses the transition will be smooth and uneventful as the Act has been in the public domain for quite some time now. Therefore what is needed is time to explore the implementation of the Act, and see how it will be interpreted by our courts once it comes down to enforcing it. We are sure legal precedent will become a keenly monitored subject once the first court cases begin to emerge. The SMMEs can only hope that this does not become another one of those pieces of legislation that, on paper at least, is one of the most advanced in the world, but in reality is nearly impossible to implement with the confines of their unique circumstances.

5.3.2 National Credit Act (NCA)

The object of the National Credit Act is to promote a fair and non-discriminatory marketplace for access to consumer credit. It codifies the basic rights which the consumer has with regards to the credit market. The purposes of this Act, which came into effect on 1 June 2007, are, amongst others, to promote a fair, transparent, competitive, sustainable, responsible and accessible credit market and industry and to protect consumers. It also discourages reckless granting of credit, assists people who are heavily in debt and regulates credit information.

Impact of the National Credit Act on SMMEs

One of the stated objectives of the NCA is to promote access to “developmental credit”. The NCA further categorizes funds loaned to small businesses as developmental credit. Thus the NCA should have a positive impact on small retailer's ability to access finance for their business. Developmental credit also allows for higher

interest rates in this regard to entice providers to lend to SMMEs, however the SMME will be burdened with high repayments (up to 36%).

✚ **The SMME as a consumer** -the act only applies to small business (consumer) that does less than 1million a year.

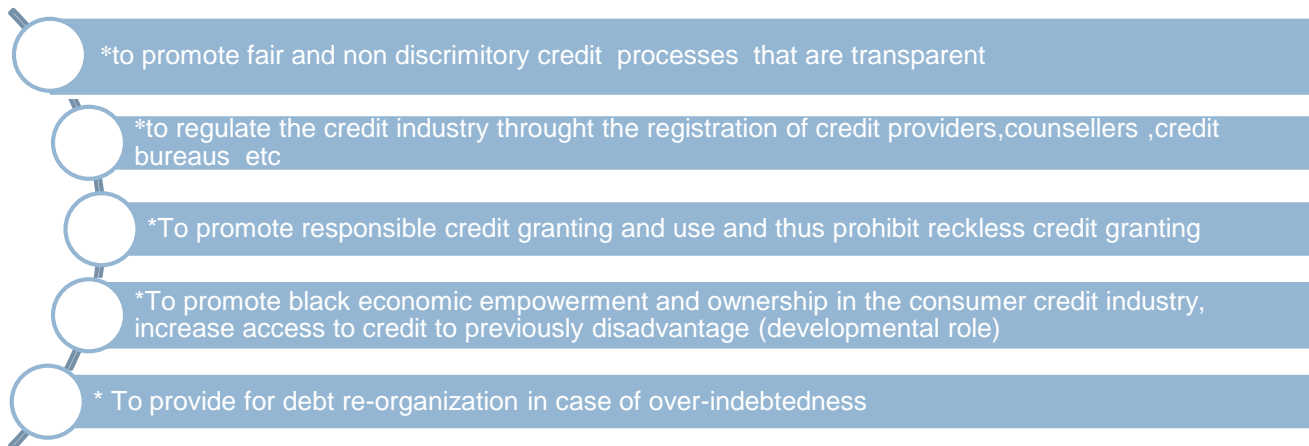
✚ **The SMME as a credit provider** –The act applies to all SMME who provide credit. The only relaxation here is that if the SMME does fewer than 100 agreements with a value less than R500 000 they don't have to register with the regulator.

✚ **SMME ADVERTISING (provider)**-all advertisements must state minimum amount of info i.e. total installments, interest rate, residual etc.

The national credit act requires all credit agreements to be recorded in a national credit register. This means that credit providers now have a full credit history of the SMME or entrepreneur to enable them to make loans to them, in the past lenders complained that this information was not available and thus were reluctant to lend. Where the SMME doesn't qualify for credit the act now allows the credit provider to advance credit provided the SMME takes out credit life insurance policy. This option does increase costs for the SMME.

The national credit act has had a positive overall impact on the consumer and the credit industry. By preventing reckless credit granting South African businesses especially SMMEs were shielded from the global economic crisis of 2008. Some of these positive impacts have been mitigated by loopholes in the act patching up these loopholes will further increase strengthen the credit system where both lenders and consumers are protected. The aim of the NCA is to make credit more accessible to SMMEs has not been achieved as credit providers view them as high risk and aren't able to charge higher interest rates to mitigate for this risk. This will have to be addressed if small business sector is to prosper.

Objectives & Evaluation of the National Credit Act





RESULTS

- * Consumers are protected through more transparent agreement, costs, interest rates etc.
- * Reduce credit granting through affordability assessments (Means test)
- * Registration of debt counselors, credit providers lead to more regulated credit environment



Direct Impact

- * The NCA is preventing exorbitant interest rates and fees from being charged thus loans are more affordable.
- * Reduced bad debts for SMMEs as a result of strict lending criteria
- * Debt counselors provide safety net to consumers



Indirect Impact

- * increase in unsecured lending
- * Consumers' abuse processes for e.g. 60 day period to restructure used as "holiday"
- * lenders not lending to previously disadvantaged as the capped interest rate doesn't allow them to compensate for increased risk profile of consumer
- * reduced revenue for retailers as interest rate and fees capped.
- * SMMEs and Businesses have fewer employees in debt, better productivity



Overall impact

- * The nca has shielded south Africa from the global credit meltdown
- * loans more affordable due to capped fees and rates
- * developmental credit has been adversely impacted due to higher risk of extending credit not being mitigated by higher interest rate
- * consumers exploiting loopholes, for eg lying in means assessment about expenses, has led to high indebtedness.

International Comparison

The NCA is widely credited with shielding South Africa from the global credit crisis of 2008. The fact the national credit regulator has received many international delegations who have come to study the NCA bears testimony to this. The Financial Access Survey provides a number of insights such as the following:

- Enforcement powers and monitoring ability of supervisors are often limited.
- Unregulated financial institutions are rarely covered by existing financial consumer protection legislation.
- Regulations on financial consumer protections are often recent and many countries are actively reforming in this area. Reforms have increased since the beginning of the global crisis in 2008 in both developed and developing countries. For example, Madagascar and Moldova are introducing consumer protection laws. France, the US and the UK all have reformed the structure of the regulatory bodies in charge of financial consumer protection. With regard to attempts to increase financial literacy, some countries especially India have adopted National Financial Literacy Strategy designed to achieve the following main objectives:
 - create awareness and educate consumers on access to financial services, availability of various types of products and their features
 - change attitudes to translate knowledge into behavior;

- make consumers understand their rights and responsibilities as consumers of financial services

Conclusion

SME's are often intimidated by new legislation and they fear that they do not have sufficient resources and finance to ensure adherence to legislation, which constitutes a major risk for the business. Those SMME's which acquire and keep updated on pending legislation often find that new legislation, as opposed to constituting a risk, provides business opportunities for their business.

5.3.3 Protection of Personal Information Bill (POPI)

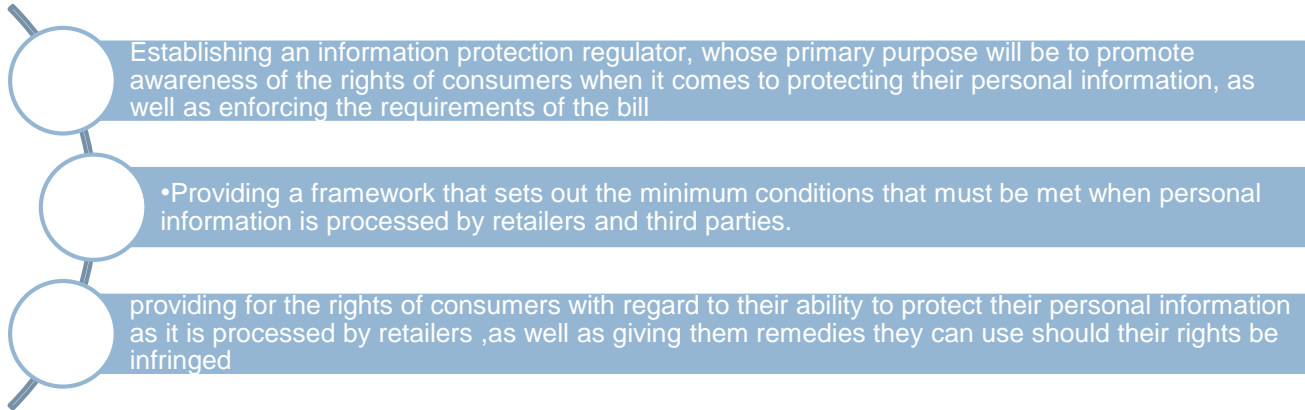
The advancement in technology over the years has meant that organizations and businesses have collected vast amount of data on those whom they interact with. From this information businesses are able to identify and profile customers and their needs and thus this information has become of strategic value. This information has been subject to poor information management practices and as a result consumers right to privacy (section 14 of constitution) has been compromised through identity theft, fraud etc. Internationally countries have already instituted data legislation to combat this. The bill has just passed in November 2013 and thus the full practical implication of the bill will only be apparent at a later stage.

Impact of POPI on SMMEs

POPI has just been signed into law. The true impact of POPI on small business will have to be evaluated. Small business (like big business) operate in the modern world where information technology at the heart of operations. Information on clients is gathered through a multitude of channels including their POS systems, CRM systems, websites, CCTV systems, loyalty systems etc. The key challenge for SMMEs is to gain an understanding of the what POPI requires and then have the capacity to implement. so for e.g. POPI would require SMMEs to have the necessary security around data in place .this would require further investments it in human capital (I.T experts, staff training) and physical IT infrastructure.



Objectives & Evaluation of the Protection of Personal Information Bill



Expected Results

- * Consumers will have personal information will be protected.
- * Minimum standards applied when handling data
- * Greater awareness of rights



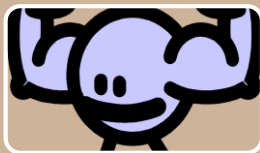
Direct Impact

- *Consumers will hold retailers to account if right infringed
- * Reduced spam marketing
- * Accountability on the part of information gatherers on how info was handled



Indirect Impact

- * Compliance burden on retailers to implement
- * Impact on the NCA in terms of credit info being shared by credit agencies
- * Full indirect impact will only be felt when the act come into full effect



Overall Impact

- Customers would be more inclined to give information if they believe the information will not be abused
- non-compliance could result in penalties of up to R10m plus jail time
- larger impact will only established once full force of legislation takes effect

India Context

India passed the information technology amendment act of 2011.this was done largely as result of the European Union data protection act which prohibited data from the E.U from being processed by other countries unless these countries had similar laws to the E.U. Thus to protect its outsourcing sector (e.g. call centres) it passed this act to bring it in line with E.U. Legislation. E-commerce in India is very small .formal retail is also very limited with the market dominated by Kirana stores. Thus information gathering is very limited from a consumer perspective.

Republic of China

E commerce is booming in china with companies like Ali Baba and J.D com having millions of registered users. Thus companies are handling millions of consumers' personal data. China has also instituted its own data protection law which are in line with EU laws.

The act now brings South Africa in line with European Union and international data protection laws. South African law has borrowed the elements from various legislation all over the world to which make it one of the best data protection laws in the world.

Conclusion

The bill will bring a significant level of protection to consumers and retailers in South Africa with regard to how information is handled from a consumer perspective it will be welcomed. For the retailer it will bring compliance burden. The legislation has just passed so the true impact will have to be evaluated

6. ALTERNATIVE SOLUTIONS TO RETAIL LEGISLATION CHALLENGES

6.1 Business Law Solutions

- ✚ Blanket registration of business is a good long-term goal, but cleaning up the current registry and eliminating corruption in the registration process would be a more sensible immediate goal. We recommend that a Regulatory Impact Assessment (RIA) be completed and also provided to the public for review. This inclusion of an RIA was a cabinet decision in 2007 however its influence seem to have diminished.
- ✚ The Competition Act is an important piece of legislation and it includes a clear policy of recognizing and supporting small business interests. It cannot achieve this if SMME's are unaware of their rights, interests and benefits of the legislation. This Act needs to be widely publicized within the SMME Sector and more significantly education workshops should be held to simplify the Act including the processes required from registration to appeal either under the auspices of the DTI or Competition Commission.
- ✚ South Africa needs to look at the China example. Effective on 1 August China suspended the VAT and turnover tax for small businesses with monthly sales less than 20 000 Yuan (\$3 262 US Dollars) which benefits more than 6 million small companies and boosts employment and income for tens of millions of people. This incentive was initially implemented in Shanghai in January 2012 (later extended to 11 other regions) and in the first five months of the year, the reform eased tax burdens by 40.6 billion Yuan for 1.29 million businesses according to the Chinese State Administration of Taxation (SAT). The structural tax reduction will significantly boost economic growth and optimize the country's economic structure, said Liu Shangxi, Deputy Head of Fiscal Science Research Institute.
- ✚ Although Small Business Tax rates do exist in SA, the Minister of Finance should review and increase the thresholds (VAT, Turnover and Income Tax) substantially to be hugely impactful for growth in the SMME Sector. Further it need to change the basis for VAT payments from an accrual basis to a cash basis which will result in improved cash flow for businesses, one of the key challenges for SMME's.

6.2 Labour Law Solutions

Legal compliance is a governance requirement for all businesses, and failure to comply has sanctions which can be imposed by the Department of Labour. Labour legislation has been classified by most of the people we interviewed as a hindrance to retail sector, especially SMMEs.

Our recommendation to SMMEs are that they:

- ✚ Must ensure that they develop their own policy guidelines on issues that affect them as a collective to strengthen their case as they approach authorities. This will ensure they have input into policies that address SMME issues, separating them from well-established business.
- ✚ Should ensure that they participate in the policy development process; through formalised SMME structures, to make inputs at white paper stage.
- ✚ Engage through existing structures like NEDLAC, BUSA and other such structures to present their case to the policy makers, SMMEs are the future for job creation, but if legislation remains at this onerous levels it discourages the creation of more SMMEs that will create more jobs.
- ✚ Join together as similar retailers and set up compliance support structures to ensure they can share the high cost of compliance.
- ✚ Make use of available government support structures to get assistance on how to comply with labour legislation.
- ✚ The W&R SETA ILDP Alumni should be utilised to build capacity in the SMME sector by translating complex legislation pieces into practical application for the SMMEs to improve their compliance levels.
- ✚ The SMME retail sector should consider a central Bargaining Council that will specifically focus on SMME sector to provide a forum for collective bargaining and for negotiating better working conditions for the SMME employers.
- ✚ SMMEs owners and managers should undergo training on Human Resource Management to ensure they understand their responsibilities towards the welfare of their employees and thus reduce the frequency of non-compliance.
- ✚ SMMEs should seek information from government on guidance and support to improve compliance.
- ✚ The SMMEs should collectively agree on minimum benefits for casual labour based on their unique situations and then negotiate these with the government for implementation.
- ✚ SMMEs should set up a self-regulation body and send their own inspectors to enforce the compliance levels and impose penalties for non-compliance instead of waiting for the government to action.

Government should also continue to provide more guidance and support to improve compliance

6.3 Consumer Law Solutions

Whilst the **Consumer protection Act** has significant powers in terms of drastic measures, in reality, there has been limited enforcement. The success of the CPA is dependent on the SMMEs having an industry body that has the capacity to monitor the industry and deal with transgressors effectively. This body should take up a role that ensures implementation after consulting and educating the SMME retailers especially considering that most of them are too small and therefore can't afford to join existing bodies such as the CGSA (Consumer Goods South Africa) due to exorbitant membership fees that they charge. Our main recommendation is for the SMME

retail sector to establish a self-regulation body instead of only looking up to government to enforce the consumer protection Act.

This will have the following advantages:

- ✚ Self-regulation is always more effective than government regulation because experts in the industry are able to identify genuine abusers quicker than government officials, and legitimate activities are less hampered by compliance rules.
- ✚ It will be accessible to all SMME retailers especially those that cannot afford exorbitant membership fees charged by existing bodies.
- ✚ The body will be easily accessible and representing the views of the small retailers and not that of the government.
- ✚ Protecting the vulnerable - Central to the work of the Body and to their Code of Practice will be the added protection it gives to particularly vulnerable groups of small businesses.
- ✚ Uniform enforcement of the CPA will ensure a level playing field resulting in fair competition
- ✚ The body will ensure that the existing SMME businesses become customer centric, which in turn drives profitability.

Although the **National Credit Act** tries to open funding for SMMEs in terms of providing some incentives to commercial institutions, these institutions use multiple criteria to advance funding. These criteria include the availability of collateral, the viability of the enterprise, and the management capability of the entrepreneur. Thus the act needs more non-financial incentives to commercial lenders to borrow to entrepreneur. There is need for creation of a pipeline of adequately skilled entrepreneurs (these skills should be integrated into the schooling system). In the short term mentoring mechanisms should be established to assist entrepreneurs with the skills gaps to be managed by the W& R SETA through regular workshops.

Viable business plans accompanied with good management will mitigate the risks lenders face. The government could further supplement this by providing credit insurance on behalf of SMMEs who qualify. This would further entice mitigate the risk of commercial lenders and they will provide more developmental credit. There are a number of Initiatives to support small businesses (NCR, 2011) but the awareness is very low and most potential beneficiaries are not aware of such programmes (DTI, 2008).

Regarding the **POPI**, SMMEs should look at contacting the regulator to get assistance in understanding the implications of the bill on their business. They should also lobby the regulator to increase the 1 year grace period to 3 years to allow them to time to comply. SMMEs should also bring to the regulators attention all the capacity constraints they would have in implementing the legislation.

SMMEs should determine how implementing the requirements of the bill will increase the value proposition their business offers over their competition who don't comply, e.g. the customers who are confident that their data will not be comprised will be more likely to share and update their information given to the business. This customer data is key to the business in understanding and reaching their customers and thus provides the business with data that is accurate. This data could then become a source of competitive advantage of their competitors who don't comply with the legislation.

7. RECOMMENDATIONS AND ACTION PLAN

7.1 Solution Generation Using Random Word Technique

Real Problem: Current income tax legislation does not support formation and growth of SMMEs in the Retail sector. The tax legislation is viewed more as a hindrance than a help to the SMME retailers.

Using the three best solutions from the solutions prescribed in the previous chapter:

Random word: **Arrow**

	Description	Detailed Solution	Business Solution
1	Strategic throw of a spear	Formation of an independent self-regulation body to help smaller retailers understand and Implement the Consumer Protection Act	The small retailers should draw up a CPA code of standards and practice, which it will formally agree to support, financially, morally and practically. They will then set up a body to apply the code and ensures that it is properly staffed and funded. The main aim of this body will be to keep retail consumers service standards high and ensure consumer trust and protection to the benefit to all.
2	Aim for several targets with one throw	Establishing a central bargaining council by retailers to negotiate salaries across the sector	Establish a bargaining council to promote centralised bargaining and conclude and enforce Collective Agreements for the Industry; to consider, advise and make representations on any legislation or proposed

			legislation that may affect the relationship between the Industry's employers and employees and their representative organisations
3	Bulls' Eye	Suspend income tax on all companies with a turnover of R1.2 Million per annum and reduce tax compliance costs by 100% with no submission of returns required for these SMMEs.	Based on the observation made in China, the South African legislators should look at suspending income tax for SMME businesses with annual sales of up to R1.2 million. This will hugely benefit the small retail companies and boost employment and income for millions of people. The structural tax reduction will significantly boost economic growth and optimize the country's economic structure.

7.2 The Decision Matrix

Based on the ideas created above and the solutions formulated thereof we then moved on to come up with a decision on which legislation if implemented would have the greatest impact. We used the decision matrix technique. A decision matrix is a list of values in rows and columns that allows an analyst to systematically identify, analyse, and rate the performance of relationships between sets of values and information.

Criteria	Ease Of Implementation	Time until solution is fully implemented	Financial Payback	Total Benefit
Weighting	1	2	3	

Formation of an independent self-regulation body to help smaller retailers understand and Implement the Consumer Protection Act	3 3X1=3	2 2X2=4	3 3X3=9	3+4+8=16
Establishing a central bargaining council by retailers to negotiate salaries across the sector	1 1X1=1	2 2X2=4	4 3X4=12	1+4+12=17
Suspend income tax based on turnover for all SMMEs with sales of up to of R1.2 Million per annum and reduce tax compliance costs by 100% with no submission of returns required from these SMMEs.	1 1X1=1	1 1X2=2	5 3X5=15	1+2+15=18

7.3 Top Recommendation (based on the decision making matrix)

Suspend income tax based on turnover for all SMMEs with sales of up to of R1.2 Million per annum and reduce tax compliance costs by 100% with no submission of returns required from these SMMEs.

Tax is levied on income and profit received by a taxpayer (which includes individuals, companies and trusts). It is the government's main source of income, although some income sources have exclusions, such as interest and donations. The form of tax that people generally associate with the concept of income tax is "normal" income tax, but the Income Tax Act is also the source of a number of other taxes that form part of the income tax system, including employees' tax and provisional tax. Turnover tax is a simplified tax system for micro

businesses and serves as an alternative to the current income tax, provisional tax, capital gains tax, secondary tax on companies and VAT systems.

Based on the observation made in China, the South African legislators should look at suspending income tax for small businesses with annual sales less than R1 200 000. This will hugely benefit the SMME retail companies and boost employment and income for millions of people. The structural tax reduction will significantly boost economic growth and optimize the country's economic structure.

Compliance costs for SMMEs are high: Compliance costs consist of costs of filing and complying with taxes, resources spent on external tax consultants, and "gifts and unofficial payments" to government appointed "tax consultants and other officials". Compliance costs account for an average 11 percent of an enterprise's pre-tax profits, implying that the total tax and related administrative burden is around 42 percent on average for medium sized firms.

7.4 BUSINESS CASE

Business Case for recommendation (Suspend income tax based on turnover for all SMMEs with sales of up to of R1.2 Million per annum and reduce tax compliance costs by 100% with no submission of returns required from these SMMEs.)

The following business case is to illustrate the benefits on a SMME if the recommendation to suspend income tax and the associated administration costs is implemented. The business case below is based a SMME Retail business currently earning below our proposed threshold of R1.2 million per annum.

The following other assumptions are made in the ensuing calculations of expected benefits:

- The SMME is already in business
- The SMME has selected to apply small business turnover tax;
- The SMME obtains income grants from Government;
- The SMME employs 5 staff members and qualifies for Youth subsidy for the 5 staff employed.
- The SMME tax *compliance costs averages about R15k per annum currently

*Compliance costs includes recording information, calculating taxes, completing returns, paying taxes, dealing with SARS, tax planning advice, using external advisors and self-education. The hype surrounding the implementation of corporate governance must be very daunting for any small medium enterprise (SME) and ultimately the business owner. Just the jargon around legislation, codes of practice and internationally recognized standards can be confusing – not to mention ensuring compliance.

Turnover Tax in South Africa

Turnover	Marginal Rates for 2013
R0 - R150,000	0%
R150,001 - R300,000	1% of each R1 above R150,000
R300,001 - R500,000	R1,500 + 2% of the amount above R300,000

R500,001 - R750,000	R5,500 + 4% of the amount above R500,000
R750,001 and above	R15,500 + 6% of the amount above R750,000

Basing the calculations on the table above on an SMME earning R1.2 million per annum:

ABRIDGED BUSINESS FINANCIALS (TAX COMPUTATION)

REVENUE	1 200 000
COST OF SALES	(420 000)
GROSS PROFIT	780 000
GOVERNMENT GRANTS	100 000
YOUTH LABOUR INCENTIVE	60 000
OPERATING EXPENDITURE	(250 000)
TAX COMPLIANCE COST	(15 000)
NET INCOME BEFORE TAX	490 000
*TAXATION EXPENSE	(42 500)
<u>NET INCOME AFTER TAX</u>	<u>447 500</u>

**TAXATION CALCULATION (R15 500 + 6% x R450 000)*

The calculations above shows that with the current systems in place, an SMME can expect to get up to R447 500 net income after tax if they earn up to R1.2 million per annum. However if our recommendation is implemented this income can increase to up to R500k per annum. This equates to almost a 10% jump and will go a long way in improving the profitability of business. The SMME can then choose to expand their business and hence resulting in more employment and an overall growth in the South African Economy.

7.5 The Business Model Canvas – (For an SMME Retailer earning up to R1.2m Per Annum.)

The business model canvas — as opposed to the traditional, intricate business plan — helps organizations conduct structured, tangible, and strategic conversations around new businesses or existing ones. This canvas's main objective is to analyze the response of a small retailer to the suspension of income tax for business earning up to R1.2million per annum.

KEY PARTNERS	KEY ACTIVITIES	VALUE PROPOSITION	CUSTOMER RELATIONS	CUSTOMER SEGMENTS
SMME Retailer SARS Treasury Employees	Tax Compliance with Treasury Consulting with Government to understand the requirements	Encourages small business growth and reduces the unemployment levels	South African Institute of Chartered Accountants; Business Unity of South Africa. Banks	SMME business Taxpayers Customers who shop at Retailer Employees Treasury employees SARS employees
	KEY RESOURCES		CHANNELS	
	Treasury & SARS Workforce Infrastructure Time Labour & Systems		Retail touch points e.g. flyers, advertisements Local Newspapers I and SARS website	
COST STRUCTURE			REVENUE STREAM	
* Cost of Compliance * Cost of Expansion of business * Administration Costs			*The SMME retailer will increase their revenue by up to 14%. *Expansion of the SMME business results in extra revenue. * Increased productivity due to more employees being employed * Better Value for the customer	

7.6 ACTION PLAN

Recommendation

Suspend income tax on all companies with a turnover of R1.2 Million per annum and reduce tax compliance costs by 100% with no submission of returns required for these SMMEs.

Implications:

For SMMEs earning up to R1.2 Million per annum:

- a) Up to R57 500 savings on taxes & compliance costs and added to bottom line
- b) Increase in profits from up to R447 500 to R500 000.

Purpose: To stimulate growth of small businesses by improving their cash flows and profitability through the introduction of tax incentives.

Goal: Reduce the cost of compliance for small businesses and encourage expansion of small businesses

Action Steps <i>What Will Be Done?</i>	Responsibilities <i>Who Will Do It?</i>	Timeline <i>By When? (Day/Month)</i>	Resources <i>A. Resources Available B. Resources Needed (financial, human, political & other)</i>	Potential Barriers <i>A. What individuals or organizations might resist? B. How?</i>	Communications Plan <i>Who is involved? What methods? How often?</i>
1. Review the recommendations both in terms of reduction of compliance cost &	Department of Treasury SARS	June 2014	Support will be received from Labour & Business including the Public as these are stimulatory measures which can potentially increase	The Government/SARS might resist to implement the recommendation because of potential loss of revenue	Treasury resources from assessment & administration.

suspension of income tax			employment and spending in the economy.		SARS Policy Division & IT Systems Division to input changes.
2. Calculate the impact or erosion on the existing tax base vs the incentives	Department of Treasury SARS	By June 2014	SARS Employees Analysts	Government and general public might resist because Tax exemptions cost countries a huge amount in resources that could be devoted to reducing poverty and dependence on foreign aid.	SARS should communicate the expected loss of Revenue to the government so that the Finance minister can make plans of recouping this loss through other initiatives. This information should also be published for the general public's viewing through newspapers, publications or the internet
3. Evaluate the reduction in compliance costs as this will also	Department of Treasury	By June 2014	SARS Employees	Tax Consultants could oppose because elimination of compliance costs also entails	SARS and the Finance Ministry should update their website, conduct tax

mean less administrative work for SARS.	SARS			getting rid of tax consulting costs for these companies	seminars or communicate through newspapers on who is really affected by this incentive and what is required of them going forward.
4.Update SARS systems and policies to reflect changes	Department of Treasury SARS	By June 2014	SARS Employees	Abuse of scheme by SMMEs and a consequential leakage of revenue to the Government. Tax incentives tend to reduce government revenues by 1—2% of GDP, according to the Organization for Economic Co-operation and Development (OECD).	SARS and Finance Ministry through internal workshops and publications. Through the SARS website and the government websites. SARS should also set up a series of seminars to educate the SMMEs

Evidence Of Success *(How will you know that you are making progress? What are your benchmarks?)*

- Raising the rate of formation of new SMMEs with growth potential (as these SMMEs will contribute to investment, employment, and income generation)
- Increase in the percentage of people employed by the SMMEs beyond the current 60%.
- Expansion of already existing SMME business and increase in their revenue

- Decreasing the undesirable mortality rate of SMMEs within their first 18 months of opening.

Evaluation Process *(How will you determine that your goal has been reached? What are your measures?)*






- When the GDP contribution by the SMMEs increases by 3% or above
- Increase in the rate of graduation of the micro into the small or medium-sized enterprise categories;
- Decrease in national unemployment rate in the next census
- If the percentage of employees in the sector reaches 80%.
- Less than 30% failure rate of small business in the first 18 months in the sector
- Increase of economic output to above 50% from the sector

7.7 Opportunity (Based on the Tax Recommendation)







If the government wants to boost the development of small and micro businesses, it has to provide them with a good business environment and solve their urgent problems. Their biggest problem today is getting funds. Commercial banks and other financial institutions are reluctant to give them loans because they do not have enough mortgages. Although the tax exemption can solve part of small businesses' fund problem, they need more favourable policies to realize their true potential and innovative capabilities.

To permanently solve their fund problem, the government should take measures to standardize their business operations, which will encourage banks and financial institutions to increase their investment in small businesses. The government should also cultivate a multi-layered financing system, like giving more tax benefits to commercial banks that provide loans for small businesses, increasing loans with lower interest rates and guarantees, and expanding the bond financing and private equity base for small companies.

What SMME businesses need?

-  A simple, robust and neutral income tax calculation system
-  Low compliance costs
-  Highest level of certainty
-  Easy access to reliable information
-  Cooperation with SARS

What business are faced with:

-  Complex income tax system, no flexibility for new business models
-  Language barriers since most of the SMMEs are not 100% illiterate
-  High compliance costs
-  Non-compliance due to lack of lead time for implementation of tax legislation
-  Heavy penalties for simple mistakes
-  Imposition of blanket rules by SARS on legitimate businesses in fear of (fraud) revenue losses.

If the above measures are taken together with the tax cuts, they will build a thorough support system for small companies, which can then help boost the national economy. By giving small businesses the tax relief, the government will have taken a welcome step to stabilize the economy. It can then use the policy's impact on the economy to implement further policy reforms.

8. CONCLUSION

If the government wants to boost the development of small and micro businesses, it has to provide them with a good business environment and solve their urgent problems. Their biggest problem today is getting funds. Commercial banks and other financial institutions are reluctant to give them loans because they do not have enough mortgages. Although the tax exemption can solve part of small businesses' fund problem, they need more favourable policies to realize their true potential and innovative capabilities.

To permanently solve their fund problem, the government should take measures to standardize their business operations, which will encourage banks and financial institutions to increase their investment in small businesses. The government should also cultivate a multi-layered financing system, like giving more tax benefits to commercial banks that provide loans for small businesses, increasing loans with lower interest rates and guarantees, and expanding the bond financing and private equity base for small companies.

Emerging Small Medium Micro Enterprises (SMMEs) should be afforded tax breaks to establish themselves and find their feet before being taxed. The government must play its role in the South African economy as an enabler and catalyst, and also intervene where necessary in order to establish a conducive environment for the development and growth of SMMEs in the country. The failure rate of SMMEs is high, but this could be reduced if they were to be exempted from the government administered prices.

The small business sector in South Africa has potential to make a significant contribution to economic growth and employment. Growth is stimulated internally, through innovation, while employment is a natural result of a larger number of small businesses as well as the expansion of small businesses into larger companies. In promoting the small business sector, however, the government effectively faces a trade-off between growth and employment, since not all small businesses will result in innovation. Thus, policy formulation should focus on supporting and nurturing an entrepreneurial mind set, which will contribute to innovation and create businesses that will have a greater probability of survival, with employment becoming a positive result rather than a direct goal.



APPENDICES

GLOSSARY OF TERMS

Act: A bill passed by the Legislature and approved by the President.

Assets: Those items of value the company owns such as cash in the checking account, accounts receivable, inventory, equipment, and property.

BCEA - Basic Conditions of Employment Act

Beneficiary: The person who receives or is to receive the benefits resulting from certain acts. In a tax context, the beneficiary is the person entitled to the benefits from trust property or from an insurance policy.

BUSA: Business Unity South Africa

CC: close corporation

CGT: capital gains tax

Commissioner: Commissioner for the South African Revenue Service

Capital assets: All property held for investment by a taxpayer.

Call option: Contract under which the holder of the option has the right but not the obligation to purchase securities or commodities on or before a specified date for a specified exercise price.

Capital expenditure: Expenditure on improvement rather than repair. Where expenditure is more closely connected with the business income-earning structure than its income earning capacity, it is capital expenditure.

Capital gain: A gain on the sale of capital asset.

Capital tax: A tax based on capital holdings, as opposed to a capital gains tax.

Capitalize: To record capital outlays as additions to asset accounts, not as expenses.

Capital loss: The loss from the sale of a capital asset.

CCMA: Commission for Conciliation, Mediation and Arbitration

CCTV: Closed-circuit television

Consumer Protection: Laws designed to protect consumers against unfair trade and credit practices

Contract: An agreement to do something, or a set of promises between two or more parties that the law will enforce. Some contracts have to be in writing – e.g. for the sale of a house, loans and credit contracts, sale of a car by a licensed dealer

CPA: Consumer Protection Act

CRM: Customer Relationship Management

Effective tax rate: The rate at which a taxpayer would be taxed if his tax liability were taxed at a constant rate rather than progressively. This rate is computed by determining what percentage the taxpayer's tax liability is of his total taxable income.

Independent retailer: Stores not associated with a chain

LRA: Labour Relations Act

Markdown: The difference between the original retail price and the reduced price.

Merchandising: Selecting, pricing, displaying, and advertising items for sale in a retail store.

NCA: National Credit Act

NEDLAC: National Economic Development and Labour Council

POPI: Protection of Personal Information Bill

PAYE: Pay-As-You-Earn (Employees' tax)

RIA (Regulatory Impact Assessment): A tool for assessing the impacts of regulation, which is used to examine and measure the possible benefits, costs and effects of new or changed regulation (OECD, 2008a: 7; OECD (Undated):16), in order to provide decision-makers with empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have (Rodrigo, 2005: 5).

Rebate: Term which in certain countries is synonymous with a tax credit

SBP: An independent private sector development and research company specialising in improving the environment for doing business

Shrinkage: Loss of merchandise at retail caused by shoplifting, internal theft, or bookkeeping errors.

SARS South African Revenue Service

SBC: small business corporation

SDL: skills development levy

STC secondary tax on companies

STT securities transfer tax

SMMEs - Small Medium and Micro Enterprises

According to the National Small Business Act (1996) "The definition covers all sectors of the economy as well as all types of enterprises, and consists of two parts. The first defines the qualitative criteria, which relate to the ownership structure of the business. The second shows the sectors and sub-sectors of the economy along with the limits of employment, turnover and asset value determining size-classes.

The limits are referred to as the quantitative criteria". In the South African business context, an enterprise must be a separate and distinct business entity and not part of a group of companies. A small business enterprise must be managed by its owner or owners. The enterprise can either be a natural person, a sole proprietorship or a partnership, or it can be a legal person.

Output tax: Term used in connection with VAT to denote the tax payable on the sales of goods or services by those who are subject to the tax and in contrast to the input tax for which a credit will be available.

Tax year: year of assessment

TA Act: Tax Administration Act 28 of 2011

Tariff -- in general the term "tariff" refers to a list (schedule) or system of levies (taxes, duties, charges) imposed by countries on foreign trade transactions (especially importations).

Tax -- A compulsory unrequited payment to the government.

Taxable base -- the thing or amount on which the tax rate is applied, e.g. corporate income, personal income, real property.

Taxable event -- term used to define an occurrence which affects the liability of a person to tax.

Taxable period -- taxes are levied by reference to a period of time called the "taxable period". Tax year

Taxable year -- the period (usually 12 months) during which the tax liability of an individual or entity is calculated.

Tax agent -- term which refers to a tax adviser who assists the taxpayer in fulfilling his obligations under the legislation.

Tax authorities -- the body responsible for administering the tax laws of a particular country or regional or local authority.

Tax base -- taxable base

Tax bill-- draft law on a tax matter which, after approval by the government of a country, is submitted to the parliament for debate.

Tax burden-- for public finance purposes the tax burden, or tax ratio, in a country is computed by taking the total tax payments for a particular fiscal year as a fraction or percentage of the gross national product (GNP) or national income for that year.

Tax clearance Certificate-- document issued to a taxpayer by the tax authorities certifying that the taxpayer has either paid all taxes due or that he is not liable to any taxes. In certain countries a tax clearance certificate must be produced before a person can leave the country.

Tax compliance -- degree to which a taxpayer complies (or fails to comply) with the tax rules of his country, for example by declaring income, filing a return, and paying the tax due in a timely manner.

Tax exile-- generally speaking, a natural or legal person who severs all ties which make him fiscally resident in a particular country and moves to another jurisdiction for tax reasons.

Tax expenditure -- this term denotes special preferences provided in income tax laws which depart from the normal tax structure and which are designed to favor a particular industry, activity or class of taxpayer.

Tax haven-- tax haven in the "classical" sense refers to a country which imposes a low or no tax, and is used by corporations to avoid tax which otherwise would be payable in a high-tax country. According to OECD report, tax havens have the following key characteristics; no or only nominal taxes; lack of effective exchange of information; lack of transparency in the operation of the legislative, legal or administrative provisions.

Tax holiday -- fiscal policy measure often found in developing countries. A tax holiday offers a period of exemption from income tax for new industries in order to develop or diversify domestic industries.

A **tax incentive** is defined as "a deduction, exclusion or exemption from a tax liability, offered as an enticement to engage in a specified activity such as investment in capital goods for a certain period"

Tax home-- a taxpayer's regular place of business or post of duty, regardless of where the taxpayer a family home.

Tax on tax -- the charging of tax on tax-inclusive prices.

Turnover: Number of times the average investment in merchandise is bought and sold during a given time.

Value added tax (VAT value-added Tax Act 89 of 1991): Specific type of turnover tax levied at each stage in the production and distribution process. Although VAT ultimately bears on individual consumption of goods or services, liability for VAT is on the supplier of goods or services. VAT normally utilizes a system of tax credits to place the ultimate and real burden of the tax on the final consumer and to relieve the intermediaries of any final tax cost.

UIF: unemployment insurance fund

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APPENDICES**ANNEXURE A****QUESTIONNAIRE****Name of Organization:** _____**Position/Title:** _____**Interviewee:** _____ **Interviewer:** _____

1. What is your company size based on the number of employees?

2. What is the principal activity of your business?

3. What is the legal status of your company i.e. sole proprietor, CC, Company etc.?

4. How many years is your business in existence?

5. Which regulations do you consider to be obstacles to the success of your business?

6. Which types of taxation do you consider to be obstacles to the success of your business?

7. Which legislations do you consider to be a big help to the success of your business?

8. What are the barriers that prevent your business from complying with legislation?

What are the barriers that prevent your business from being successful?

9. Do any of your employees belong to a Trade Union?

10. Do you think the enforcement of legislation is a huge challenge in the current trading environment?

11. Are the existing retail legislations relevant to the operation of your business?

12. Are the administrative processes supportive of service delivery expectations?

13. Are the objectives of the various retail legislations still relevant i.e. does the challenge/problem still exist?

Additional Comments:

ANNEXURE B

INDIVIDUALS INTERVIEWED

NAME	TITLE	COMPANY
1. Mano Moodley	Former head of Sourcing and Planning(Now CEO Ellerines)	Edcon
2. Zinzi Mgolodela	Head of Transformation	Woolworths
3. Stri Moodley	Head of Compliance	Woolworths
4. Ivan Molefe	General Secretary	SACAWU
5. Kinsley Juma	Regional Manager	Pick 'n Pay
6. Hardy Sitshange	Franchise Owner	Pick 'n Pay
7. Andy jury	Executive: Strategic Projects Manager	Edcon
8. Craig Prinsloo	Labour Relations Specialist	Massmart Discounter Pty Ltd.
9. Dr. Adelle van Schalkwyk	Business Governance/Legal services executive	Masscash Pty Ltd.
10. Naseera Ebrahim	Executive assistant(Admitted Attorney)	Massmart (Massbuild division)
11. Mr. David du Preez	Forecast Analyst	EDCON

12. Ms Queen Macu	Former HR Officer	Score Supermarket
13. Ms Seboke Motsiri	Clothing Supervisor	Woolworths
14. Mr Shawkat Mukadam	Board Member	Skye Group
15. Mr Riad Laher	Managing Director	Rand Outfitters
16. Deepak Kanjee	Business Process Manager	Edcon
17. Lewis Chidziva	Owner	Gourmet Fruit Bouquets
18. Alvin Phumudzo Rapea	Advisor	Minister for Public Service and Administration
19. Proffessor Izak Duenyas	Visiting Professor, CEIBS	China Europe International Business School (CEIBS)
20. Dr Bheki Langa	Ambassador to China	South African Consulate
21. Dr. Frank Aswani	VP and Director of Strategic Relations at African Leadership Academy	African Leadership Academy
22. Tony Chen	Export Department General Manager	JD.com - China
23. Ali Young	Director & Business Owner	Atta Group - China
24. Mr. F. Ding	Co-corporate Development Manager	Baidu Campus - China
25. Ruby Chen	Executive Education Director	CEIBS-China
26. Prof David Gosset	(Director of Euro- China centre for International Business Relations)	CEIBS - China
27. Karen Song	Programme Coordinator	CEIBS- China
28. Prof Joengwen Chiang	Marketing Proffessor	CEIBS-China
29. Dr Atish Chattopadhyay	Lecturer	University Of Mumbai - India
30. Ashish Kakwam	Consultant	Ernst & Young- Mumbai-India
31. Dan Luo	Programme Manager	CEIBS - China
32. David Wiid	Consul- S.A Embassy- India	South Africa Consulate - India

LEGISLATIVE EVALUATION								
LEGISLATIVE AIMS	RELEVANT	EFFECTIVE	EFFICIENT	ENFORCED	ACCEPTED			
TAX LEGISLATION	3	2	2	3	2			
COMPETITION ACT	3	3	2	3	2			
BUSINESS LICENSING BILL	3	3	2	2	2			
RATING (1-3)								
3=YES	RELEVANT - ARE THE OBJECTIVES STILL RELEVANT (DOES THE PROBLEM/CHALLENGE STILL EXIST)							
2=PARTLY	EFFICIENT - ARE THE ADMINISTRATIVE PROCESSES SUPPORTIVE OF SERVICE DELIVERY EXPECTATIONS							
1=NO	EFFECTIVE - ARE THE OBJECTIVES OF THE LEGISLATION BEING ACHIEVED							
	ENFORCED - IS LEGISLATION ENFORCED							
	ACCEPTED - HAVE ALL STAKEHOLDERS SUPPORTED THE LEGISLATION							

LEGISLATIVE EVALUATION: CONSUMER PROTECTION ACT					
LEGISLATIVE AIMS	RELEVANCE	EFFECTIVE	ENFORCEMENT	ACCEPTABILITY	CONSISTENCY
Promote and protect the economic interests of consumers;	3	2	1	2	1
Improve access to, and the quality of, information that is necessary so that consumers are able to make informed choices according to their individual wishes and needs;	3	2	1	2	1
Protect consumers from hazards to their well-being and safety;	3	3	1	3	1
Develop effective means of redress for consumers;	3	3	1	1	1
Promote and provide for consumer education, including education concerning the social and economic effects of consumer choices;	3	1	1	2	1
Facilitate the freedom of consumers to associate and form groups to advocate and promote their common interests; and	3	2	2	2	2
Promote consumer participation in decision-making processes concerning the marketplace and the interests of consumers opportunities	2	1	1	2	1
RATING (1-3)					
3=MOSTLY					
2=PARTLY					
1=NOT					

LABOUR LEGISLATIVE EVALUATION

LEGISLATIVE AIMS	RELEVANT	EFFECTIVE	EFFICIENT	ENFORCED	ACCEPTED
Basic Conditions of Employment	3	2	2	1	1
Labour Relations	3	3	1	3	1
Skills Development	3	3	3	1	2

COMPETITION ACT

LEGISLATIVE EVALUATION

LEGISLATIVE AIMS	RELEVANCE	EFFECTIVE	ENFORCEMENT	ACCEPTABILITY	CONSISTENCY
1. Promotion of Economic Efficiency	3	2	3	2	2
2. Competitive Pricing & Product choices for Consumers	3	3	3	3	3
3. Diversification of ownership	3	2	2	2	2
4. Creation of employment opportunities	3	1	2	3	2

D. Micro businesses (turnover tax)

Tax year ending during the 12-month period ending on	Taxable turnover (R)	Rate of tax (R)
31 March 2013	Not exceeding R150 000	0% of taxable turnover
	Exceeding R150 000 but not exceeding R300 000	1% of the taxable turnover exceeding R150 000
	Exceeding R300 000 but not exceeding R 500 000	R1 500 + 2% of the taxable turnover exceeding R300 000
	Exceeding R500 000 but not exceeding R750 000	R5 500 + 4% of the taxable turnover exceeding R500 000
	Exceeding R750 000	R15 500 + 6% of the taxable turnover exceeding R750 000

Table 5: Broad Definitions of SMMEs in the National Small Business Act

Enterprise Size	Number of Employees	Annual Turnover(S A. Rand)	Gross Assets, Excluding Fixed Property
Medium	Fewer than 100 to 200,depending on Industry	Less than R4 million to R50 m depending upon Industry	Less than R2 m to R18 m depending on Industry
Small	Fewer than 50	Less than R2m to R25 m depending on Industry	Less than R2m to R4.5 m depending on Industry
Very Small	Fewer than 10 to 20 depending on Industry	Less than R200 000 to R500 000 depending on Industry	Less than R150 000 to R500 000 depending on Industry
Micro	Fewer than 5	Less than R150 000	Less than R100 000

Table 7: Growth phases and funding requirements of SMEs

	Start-up Phase	Growth Phase	Stable/ Consolidation	Exit
Type of SME	Source of Finance			
Traditional small business. Provides employment for individual, family and friends	Family, friends, savings, equity in residential property, loans underwritten by government	Asset-backed finance, bank debt, factoring, trade credit	Bank debt if required	N/a
High Potential. Possibly export business	Angel finance, Team's equity , some venture capital	Venture capital, private equity, asset-backed finance, some bank debt	Venture capital high-yield debt market, bank debt	Exit via capital markets or direct access to stock market
High-tech, information and life sciences intellectual Property	Angel finance, venture capital, corporates	Venture capital, corporates, Asset-backed finance	Corporates, bank debt	Exit typically through trade sale

Source: Felkana et al., (2001)

Table 8: Number of Small Business in South Africa

	Category of employer/ self-employed	March 2005	Sept 2005	March 2006	Sept 2006	March 2007
Business owners	Number of persons of working age (15-65) working on [their] own or with a partner, in any type of business (including commercial farms)	1,836,000	2,060,000	1,999,000	2,105,000	1,942,000
	Number of elderly persons (66+) who run or do any kind of business, big or small, for [themselves]	56,000	87,000	73,000	65,000	59,000
Subsistence farmers	Number of persons of working age (15-65) working on [their] own small farm/plot or collecting natural products from the forest or sea	385,000	240,000	585,000	425,000	374,000
	Number of elderly persons (66+) who do any work in [their] own or the family's plot, farm, food garden, cattle post or kraal, or help in growing farm produce or in looking after animals for the household	64,000	42,000	89,000	71,000	57,000
	Total	2,341,000	2,429,000	2,746,000	2,666,000	2,432,000

Source: Stats SA Labour Force Survey (2008).

BUSINESS LEGISLATION PROBLEM STATEMENT AND ALTERNATIVE SOLUTIONS (In Detail)

Problem Statement 1: Lack of business legislation to encourage entrepreneurship

The small business sector in South Africa is in dire straits because there are not enough entrepreneurs to create sustainable, innovative businesses. The Global Entrepreneurship Monitor 2012 annual survey found that only 14% of South Africans intended to open a business in the next three years, well below the average of 27% for peer countries.

Solution

Entrepreneurship for SMMEs needs to be encouraged and their success is dependent upon effective interventions by both Government and Business. South Africa requires high economic growth, almost double of its present growth levels to achieve the objectives as defined in the Government's National Development Plan (NDP).

Action Steps

1. Create a separate unit/department within Government dedicated and accountable for entrepreneurial growth.
2. Allocate a budget to support start-ups including existing entrepreneurs that are in a growth stage which potentially may result in increasing employment within the company.

3. Introduce entrepreneurship in schools as a subject.
4. Train teachers in entrepreneurial skills so that entrepreneurship is taught from primary schools through to high schools.
5. Further identify entrepreneurs that are being supported through Government initiatives to allocate a proportion of their time when practically possible to mentor potential entrepreneurs from Grade 10 onwards.
6. Students that choose business subjects from Grade 10 must include entrepreneurship in their curriculum.
7. Government (Entrepreneurship Unit) should monitor the progress on entrepreneurs and provide support at various stages of their development.
8. The Entrepreneurship Unit should liaise with various other Government Departments such as DTI including independent bodies such as Business Unity SA so as to facilitate and provide support to entrepreneurs.

7.2 Problem Statement 2: Wage Subsidy is not being effective

The treasury recently released the Employment Tax Incentive Bill. The proposed tax incentives, designed to boost youth employment, have already garnered criticism — and only cautious support from some of their most ardent advocates.

According to the treasury, the incentive decreases the amount of tax that is paid by an employer to the state under the pay-as-you-earn (PAYE) system. Employees who qualify must be between the ages of 19 and 29, possess a South African ID and earn no more than R6 000 a month. The tax incentive on average is R1000.00 pm and after the first year, the incentive value is halved and the tax break will run for two years.

Would a wage subsidy raise employment levels, by how much, and at what cost? Is this an appropriate response to the unemployment crisis? And would it be sustainable? Is a wage subsidy a good idea?

The other critical question we must ask ourselves is what happens to participants in wage subsidies after the subsidy runs out? And secondly, are there longer-term benefits for participants, in the form of higher future employability? Will we only replace the older unsubsidized workers with younger workers?

Solution

A wage subsidy is not the first best policy response to addressing inadequate employment demand associated with slow economic growth. Rather, investment, education, infrastructure, market power, and industry concentration and openness have all been found to be important determinants of South Africa's growth process (Fedderke 2006).

South Africa's workforce has failed to adjust to the changing labour demand patterns. Semi- and unskilled workers remain in excess supply and do not have the skills necessary to compete for the kinds of vacancies that exist. By nature, structural unemployment is unlikely to correct itself without some form of policy intervention (Banerjee et al. 2007).

Action Steps

1. Government should develop a plan of appropriate (alternative) action if its unemployment targets are not met and/or the costs of administrating and monitoring the system exceed the benefits derived.
2. The potential for fraud is high and Government should ensure all checks and balances are built into the administrative function to ensure monies are not claimed by dishonest companies/individuals.
3. The fact that most jobs (the market) require more skilled labour than unskilled the Employment Tax Incentive Bill should be aligned to the SETA's so that it becomes imperative that all new employees (as defined for tax incentives) should obtain relevant training from the SETA's.
4. Some evidence does indicate that wages of semi and unskilled workers have risen sharply relative to those of skilled workers (see Lewis 2001). This may explain, in part, the poor employment prospects of low-skilled workers. Government needs to engage with Unions on this matter to ensure that future wage negotiations do not consistently increase to levels which impacts future employment of non-skilled workers.
5. The employment tax incentive bill should not have a time period of 2 years but should be open-ended and perhaps include a review period with specific measures (success/failure) to determine alternative courses of action or none required.
6. Government should have appropriate monitoring in place to ensure that older workers are not replaced by younger ones so as to benefit from the subsidy – SARS should be able to access UIF data/systems to establish compliance and follow-up.

7.3 Problem Statement 3: Business Licensing Bill

The Business Licensing Bill requires all businesses from transnational mining companies to street hawkers to be licensed by their local municipalities. According to some of the business owners interviewed, the Bill is viewed in a negative way because on paper : (1) The Act further increases the burden of red tape on businesses and makes entrepreneurship less attractive. (2) It gives sweeping powers to the often dysfunctional municipalities including broad search and seizure powers and the power to impose conditions on business at will and (3) it intends to make life harder for South African immigrants, therefore giving the Bill an ugly, populist aspect.

Solution

This Bill should be carefully considered before implementation. It should consider all unintended consequences and the impact on labour loss through closure of businesses including the economic impact.

Action Steps

1. The Bill should not be implemented without due consideration. (Government should discuss whether this Bills the best route to achieve its objectives)
2. The Regulatory Impact Assessment (RIA) should be re-evaluated as the unintended consequences were broadly ignored in the RIA after the bill was drafted.

3. Instead of immediately attempting to licensing all unregistered businesses, the Act should encourage engagement with small businesses and gather all necessary information (survey) and communicate with the SMMEs regarding the Act's objectives.
4. Assess the feasibility of the licensing cost to business and whether appropriate. Businesses are under strain and cannot bear additional costs.
5. Engage with various communities (immigrants/foreigners) so as to develop a basis of understanding and the approach by Government is not seen as confrontational and biased towards favoring locals.
6. The existing infrastructure of Government in the form of municipalities is weak – before a law is written it must take into account the capacity of the system to implement it. Further there are many cases of abuse by municipalities in the form of bribery and therefore the administration thereof should be performed by unit established within SARS.
7. Once adequate information is obtained, the Government should review the licensing cost and adjust, impact on labour (through possible closures) and the administrative cost including monitoring and enforcing and the best unit in Government to administer the process.

7.4 Problem Statement 4: Taxation and compliance costs too high for small businesses

Taxation on small business includes tax compliance costs and also the tax thresholds and rates applied to the various tax types such as VAT, PAYE, Income Tax, etc. The cost of compliance to tax legislation is high and the although there are various concessions of specific tax types their impact on small business is low when compared to countries like China that have made significant changes to their tax legislation so as to stimulate growth in the economy.

Solution

South Africa should follow the Chinese example in principle (suspension of VAT and Income Tax for small business) if it is to make a significant impact on small business growth (existing and new). The SA Government has commissioned a Tax Review Committee to investigate tax legislation in many areas and also includes aspects such as compliance costs for small business.

Action Steps

1. The total cost of administration of taxes by Government Departments including the South African Revenue Services and Municipalities should be investigated for inefficiencies and reduced to achieve immediate savings and future growth in costs to GDP is minimized.
2. Compliance costs should be reduced for small businesses especially for the larger taxes such as VAT, PAYE and Income tax.
3. The current compliance cost should be reduced to at least 50% of existing costs.
4. Relieving concessions should be investigated for Registration Thresholds, Simplified Accounting Rules and Time related Concessions.

5. Registration Threshold: The current VAT registration threshold is R1m or less – this should be increased to R2m.
6. Simplified Accounting Rules: The cash basis for accounting should be increased from R2.5m to R5m.
7. Time related concessions: Turnover of R1.5m or less to submit VAT every 4 months should be increased to a threshold of R3m.
8. Income Tax and VAT should be suspended for all businesses earning less than R1.2m per annum, a shift from the current VAT (14%) and progressive rates for Income Tax applied to SMMEs.

