

REPUBLIC OF SOUTH AFRICA

EASE OF DOING BUSINESS BILL

(As introduced in the National Assembly (proposed section 75 Bill); prior notice of its introduction published in Government Gazette No 43090 of 13 March 2020)

(The English text is the official text of the Bill)

(Mr. Henro Kruger, MP)

[B - 2021]

ISBN

No of copies printed:

BILL

To provide for the assessment of regulatory measures developed by the executive, members and committees of Parliament and self-regulatory bodies, so as to consider the socio-economic impact of regulatory measures, including the detection and reduction of red tape and the cost of red tape for businesses; to provide for the establishment of an administrative unit to assist the executive, members of Parliament, committees of the Houses and self-regulatory bodies in the regulatory impact assessment process and to prepare regulatory impact statements; to provide for assistance to businesses in overcoming red tape and other challenges; to provide for the functions and powers of the administrative unit; to provide for mapping of legislation, regulatory impact assessments and the preparation of regulatory impact statements; to provide for exemptions; to provide for the evaluation of existing regulatory measures by the executive and self-regulatory bodies; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 85 of the Constitution of the Republic of South Africa, 1996 provides that executive authority is exercised by, amongst others, the development and implementation of policy and the preparation and initiation of legislation in the national sphere of government;

WHEREAS sections 55, 68 and 73 of the Constitution provide that members or committees of the National Assembly and National Council of Provinces may prepare and initiate certain legislation for introduction in the respective Houses;

WHEREAS self-regulatory bodies that exercise any form of regulatory authority of an industry or profession may issue regulatory measures that have a severe impact on that industry or profession;

AND WHEREAS the conducting of regulatory impact assessments and specifically calculating the cost when conducting business; inconsistencies in the depth of analyses undertaken when developing regulatory measures; the general absence of regulatory impact assessments in the development of regulatory measures, is a concern,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: —

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CHAPTER 1

DEFINITIONS, OBJECTS, APPLICATION AND INTERPRETATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—

“business” includes juristic and natural persons, regardless of nationality, that conduct a commercial activity in the Republic of South Africa and includes all sizes of business from micro to large as well as a multi-national business;

“business friendly” in relation to a regulatory measure means a regulatory measure that—

- (a) demonstrates an understanding for the manner in which businesses operate by reducing red tape;
- (b) ensures a level playing field;
- (c) protects consumers and businesses;
- (d) improves transparency;
- (e) provides an enabling environment for business; and
- (f) allows for a fair manner in which to adjudicate disputes;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“effective” in relation to a regulatory measure, means the extent to which the relevant regulatory measure is achieving its objective;

“**efficient**” in relation to a regulatory measure, means the relationship between the outcome of the relevant regulatory measure and the cost of that regulatory measure;

“**Gazette**” means the Government Gazette;

“**House**” means the National Assembly or the National Council of Provinces as may be applicable;

“**indirect cost**” in relation to a mapping exercise, means cost incurred by businesses or a community because of the consequences of the primary legislation or secondary legislation being implemented;

“**information obligations**” in relation to a mapping exercise, means obligations imposed on businesses by regulatory measures to provide information or data to the public sector or a third party by way of a—

(a) one off or regular submission, whether physical or electronic; or

(b) duty to have information or data available for inspection or supply on request;¹

“**mapping exercise**” means the mapping of primary legislation or secondary legislation contemplated in section 9;

“**member of Parliament**” includes the Speaker of the National Assembly or the Chairperson of the National Council of Provinces as may be applicable, or both of them where they are acting together;

“**Minister**” means the Minister in the Presidency unless the context clearly indicates otherwise, and “**Ministry**” means the component for which the Minister is responsible;

“**Ministers**” means the Ministers contemplated in section 91(3)(b) and (c) of the Constitution, specifically in relation to the organ of state for which each such Minister is responsible;

¹ The following key words are examples of “information obligations” (also referred to in practice as “administrative costs”). This list is not exhaustive: demonstrate (compliance); apply (for a license); (quality) assurance; (must) submit (information); (a person must) examine (an application before) approval; record (in a log book); (must) comply (with); report (to); monitor (a system); capture (data); collect (data); require (a license to do business). This footnote is explanatory in nature and does not form part of the Act.

“organ of state” means an organ of state in the national sphere of government as referred to in section 239 of the Constitution, that is developing or administering a regulatory measure, but does not include members of Parliament or a committee of a House;

“Parliament” means the Parliament of the Republic of South Africa as contemplated in section 42(1) of the Constitution;

“prescribed” means prescribed by regulation;

“primary legislation” means any law passed by Parliament and includes a Bill to be passed by Parliament;

“red tape” means the information that a business must submit or maintain and the procedures that a business must follow to gain administrative approval or to comply with prescribed requirements in one or more regulatory measures, where the submission or collection of such information or compliance with the processes and requirements are complex, time-consuming, and costly and includes—

- (a) completing paperwork;
- (b) obtaining licences;
- (c) requiring a decision to be approved;
- (d) filing requirements;
- (e) certification requirements;
- (f) reporting; and
- (g) investigative and inspection enforcement practices and procedures;

“regulation” means a regulation made under this Act;

“regulatory impact statement” means an impact statement that considers the socio-economic impact of a regulatory measure, and specifically whether that regulatory measure—

- (a) contains red tape and if so, what the impact of that red tape is on business; and
- (b) is business friendly;

“Regulatory Impact Assessment Unit” means the Regulatory Impact Assessment Unit established in section 4(1)(a);

“regulatory measure” means—

- (a) primary legislation or secondary legislation; or
- (b) a code, policy or similar measure developed by a self-regulatory body to exercise a form of regulatory authority over an industry or profession;

“responsible Minister” in relation to any matter referred to in this Act, means the relevant Minister responsible for the organ of state that is developing a regulatory measure;

“secondary legislation” means any proclamation, ordinance, delegated legislation or other enactment having the force of law made in terms of an enabling provision in primary legislation;

“self-regulatory body” includes boards, committees and agencies that operate nationally, whether created by statute or otherwise, and that exercises any form of regulatory authority over an industry or profession, whether in addition to statutory control or not;

“socio-economic impact” means the impact, unintended consequences, unanticipated outcomes, implementation risks anticipated and other burdens that a regulatory measure may have on—

- (a) an organ of state in respect of implementation of that regulatory measure;
- (b) the public, taking into account that the impact of that regulatory measure may differ from community to community given the unequal nature of South African society; and

- (c) a business, which includes the impact of red tape on that business and whether that regulatory measure is business friendly;

“standard cost model” means the formula:

price x time x quantity,

in which formula—

- (a) “price” consists of—
- (i) an average of labour costs in the sector for activities that are likely to be done by the business internally, which labour costs includes salary or wages, employee benefits and overhead costs of the business; or
 - (ii) hourly cost for external service providers determined from a national average figure;
- (b) “time” represents the amount of time required to complete the activity; and
- (c) “quantity” represents the size of the population of businesses affected, multiplied by the frequency with which a business must complete the activity each year;²

“substantive cost” in relation to a mapping exercise, means cost incurred by businesses to comply with actions or conduct imposed by primary legislation or secondary legislation; and

“this Act” includes the regulations.

Objects of Act

2. The objects of this Act are to—

² A basic calculation of the activity cost per information obligation is one where completing a form and submitting that form takes a total of 3 hours to complete (*time*). This form can be completed by a member of staff in a type of business where the average hourly wage is R300 including overhead (*price*). The price is therefore 3 x R300 = R900. If this requirement applies to 10,000 businesses (*population*) who each have to comply twice per year (*frequency*), the *quantity* will be 20,000. Hence the total cost of the activity will be 20,000 x 900 = R18,000,000. This footnote is explanatory in nature and does not form part of the Act.

- (a) create capacity in government to measure, control, and reduce the socio-economic impact of regulatory measures;
- (b) ensure the due consideration of multiple options by organs of state to achieve the objectives of government policy;
- (c) measure the impact of a regulatory measure, especially red tape contained in a regulatory measure, on business;
- (d) measure and reduce red tape and the cost associated with red tape when conducting business in the Republic of South Africa; and
- (e) create a business friendly environment for business in the Republic of South Africa.

Application and interpretation of Act

3. (1) This Act applies to—

- (a) all organs of state;
- (b) members of Parliament and committees of the Houses; and
- (c) self-regulatory bodies.

(2) In the event of any conflict between this Act and any other law in force at the commencement of this Act, this Act prevails.

CHAPTER 2

ADMINISTRATIVE UNIT

Establishment of Regulatory Impact Assessment Unit

4. (1) The Minister must—

- (a) within a period of one year from the commencement of this Act, establish a unit in the Ministry to be known as the Regulatory Impact Assessment Unit;

- (b) provide the Regulatory Impact Assessment Unit with the human resources, financial and other resources necessary to enable it to effectively execute its duties, functions and powers; and
- (c) develop a framework to address challenges experienced by businesses because of red tape and regulatory measures that are not business friendly.

(2) The officials of the Regulatory Impact Assessment Unit are subject to the provisions of, and the directives, rules and policies made under, the Public Service Act, 1994 (Proclamation 103 of 1994).

(3) The Regulatory Impact Assessment Unit may in the performance of its functions, upon request and after consultation with the Minister responsible for the public service, be assisted by officials in the public service seconded to the service of the Regulatory Impact Assessment Unit in terms of any law regulating such secondment.

Fiduciary duties of Regulatory Impact Assessment Unit

5. The Regulatory Impact Assessment Unit must perform its functions without fear, favour or prejudice in the interest of facilitating effective and efficient regulatory measures operating in the Republic.

Functions and powers of Regulatory Impact Assessment Unit

6. The Regulatory Impact Assessment Unit must—
- (a) develop and provide general guidelines on conducting regulatory impact assessments and on preparing statements on such assessments;
 - (b) provide support and technical expertise to organs of state, members of Parliament and committees of the Houses and to self-regulatory bodies;
 - (c) establish data collection processes that includes a database with information that is applicable across a range of regulatory measures;
 - (d) facilitate access for an organ of state, member of Parliament, committee of a House or self-regulatory body that is developing, or is contemplating the

development of, a regulatory measure, to the information contemplated in paragraph (c);

- (e) conduct research into global regulatory impact assessment developments and the reduction of red tape and report to the Minister thereon;
- (f) provide policy advice to the Minister;
- (g) provide advice to the Minister on any amendments to this Act;
- (h) review regulatory impact assessment practices and methods to—
 - (i) assess the effective and efficient implementation of regulatory measures;
 - (ii) consider the impact of regulatory measures on different communities; and
 - (iii) measure and reduce red tape,and develop best practice models in that regard;
- (i) establish competencies and capabilities in its operations by facilitating continuous skills development in its own office;
- (j) develop and implement frameworks and strategies to ensure uniformity, accountability and enhancement of regulatory impact statements;
- (k) consider regulatory measures, do mapping exercises and prepare regulatory impact statements thereon for—
 - (i) organs of state as contemplated in sections 9 and 10;
 - (ii) members of Parliament and committees of the Houses as contemplated in section 11; and
 - (iii) self-regulatory bodies as contemplated in section 12;
- (l) facilitate assistance to businesses—
 - (i) to reduce the impact of red tape in accordance with the framework contemplated in section 4(1)(c);

- (ii) regarding compliance with such quality procedure standards as the Minister may prescribe; and
- (iii) regarding business practices that negatively affect micro, small and medium sized businesses;
- (m) consider and analyse all international reports that provide an opinion or ranking in respect of the ease of doing business in the Republic, and provide the Minister with recommendations on improving the ease of doing business in the Republic; and
- (n) perform such other function as directed by the Minister.

Reporting

- 7. (1) The Regulatory Impact Assessment Unit must—
 - (a) prepare a report of all its activities, including—
 - (i) all matters in respect of which the Regulatory Impact Assessment Unit made recommendations to the Minister;
 - (ii) the regulatory measures considered during the period; and
 - (iii) the total indirect costs and substantive costs per regulatory measure and overall for the period; and
 - (b) annually, within one month after the end of each financial year, submit the report referred to in paragraph (a) to the Minister.
- (2) (a) The Minister must incorporate the annual report of the Regulatory Impact Assessment Unit in the report of the Ministry for tabling in the National Assembly.
- (b) The Minister must, in the report of the Ministry contemplated in paragraph (a), include a report on all exemptions granted by the Minister as contemplated in section 13(4)(a).

CHAPTER 3

EVALUATION OF NEW REGULATORY MEASURES

General responsibility

8. Ministers, members of Parliament and committees of the Houses must—
- (a) endeavour to develop regulatory measures that are business friendly;
 - (b) encourage stakeholder consultation by way of active engagement of stakeholders that are directly or indirectly affected by the relevant regulatory measure, during the development of a regulatory measure;
 - (c) ensure that all stakeholders are given access to a platform that is effective in allowing all stakeholders the opportunity to timeously and easily make inputs and for their inputs to be considered in the development of regulatory measures;
 - (d) encourage good governance in the process of developing regulatory measures; and
 - (e) ensure the continuous reduction of the cost that regulatory measures burden small businesses with.

Mapping of primary legislation or secondary legislation

9. (1) Whenever an organ of state develops primary legislation or secondary legislation, the responsible Minister must submit that primary legislation or secondary legislation to the Regulatory Impact Assessment Unit to ascertain whether the primary legislation or secondary legislation—

- (a) requires additional resources to be implemented by an organ of state;
- (b) poses implementation risks;
- (c) requires actions to be taken by a community, which actions may exact direct or indirect costs on that community;

- (d) imposes any information obligations;
- (e) imposes any substantive cost;
- (f) may result in indirect cost;
- (g) has unintended non-financial consequences for business; and
- (h) poses implementation risks related to the inadequate delivery of basic services offered by an entity in any sphere of government.

(2) The Regulatory Impact Assessment Unit must complete the mapping exercise within 14 days from the date on which the regulatory measure was submitted by the organ of state as contemplated in subsection (1).

(3) Where a regulatory measure is complex or lengthy, the Minister may determine a longer period within which to complete the mapping exercise and the Minister must notify the organ of state of the decision so taken.

(4) Where the mapping exercise identifies any information obligations, substantive costs or provisions that may result in indirect cost or have unintended non-financial consequences for business, the Regulatory Impact Assessment Unit must conduct a regulatory impact assessment on the primary legislation or secondary legislation so developed as envisaged in section 10.

Regulatory impact assessment

10. (1) Where the mapping exercise indicates that a regulatory impact assessment must be conducted on the draft primary legislation or secondary legislation developed by an organ of state, the Regulatory Impact Assessment Unit must, subject to section 13, prepare a regulatory impact statement that must include—

- (a) a breakdown of the estimated costs to obtain additional resources for the regulatory measure to be implemented by an organ of state;
- (b) risks associated with the implementation of that regulatory measure;
- (c) the actions that a community will be required to take and whether such actions exact direct or indirect costs on that community;

- (d) the impact of the regulatory measure on various communities given the unequal nature of South African society;
- (e) a list of the information obligations contained in the draft primary legislation or secondary legislation;
- (f) the activity cost per information obligation calculated according to the standard cost model or such model as may be prescribed and the total activity cost for the draft primary legislation or secondary legislation;
- (g) a list of activities that will result in substantive costs contained in the draft primary legislation or secondary legislation;
- (h) the estimated total substantive costs imposed by the draft primary legislation or secondary legislation;
- (i) any indirect cost envisaged by the draft primary legislation or secondary legislation;
- (j) any unintended non-financial consequences;
- (k) the risks to implementation of that regulatory measure due to the inadequate delivery of basic services offered by an entity in any sphere of government; and
- (l) such other information as may be prescribed.

(2) The Regulatory Impact Assessment Unit must complete the regulatory impact statement within 30 days from the date on which the mapping exercise was completed.

(3) Where a regulatory measure is complex or lengthy, the Minister may determine a longer period within which to complete the regulatory impact assessment and the Minister must notify the organ of state of the decision so taken.

(4) Upon receipt of the regulatory impact statement contemplated in subsection (1), the responsible Minister must—

- (a) publish a notice in the prescribed manner calling for public comments or submissions on the regulatory impact statement and the draft primary legislation

or secondary legislation within such time, being not less than 28 days from the publication of the notice, as is specified in the notice; and

(b) table the regulatory impact statement in the National Assembly for consideration by the relevant Portfolio Committee overseeing that organ of state.

(5) The responsible Minister must ensure that all comments and submissions are considered and, where applicable, incorporated into the draft primary legislation or secondary legislation and must prepare a report setting out—

(a) a summary of each of the comments and submissions received;

(b) how the comments or submissions were incorporated; and

(c) which comments or submissions were rejected by the organ of state, and the reason for such rejection.

(6) The responsible Minister must for the purpose of—

(a) primary legislation, or secondary legislation that requires Cabinet approval, include the regulatory impact statement and the report contemplated in subsection (5) in the Cabinet memorandum together with the draft primary legislation or secondary legislation; and

(b) secondary legislation that does not require Cabinet approval, consider the regulatory impact statement and the report contemplated in subsection (5) and accept or reject the secondary legislation.

(7) The regulatory impact statement and the report contemplated in subsection (5) must be tabled in the—

(a) relevant House together with the primary legislation when it is introduced in that House; or

(b) National Assembly together with the secondary legislation so developed, regardless of whether the secondary legislation is required to be considered by, or tabled in, a House.

Primary legislation prepared by member of Parliament or committee of House

11. (1) A member of Parliament or committee of a House that prepares primary legislation must, subject to section 13, submit that primary legislation to the Regulatory Impact Assessment Unit to conduct a mapping exercise, read with the changes to section 9 required by the context.

(2) Where the mapping exercise envisaged in subsection (1) identifies any information obligations, substantive costs or provisions that may result in indirect cost or have unintended non-financial consequences for business, the Regulatory Impact Assessment Unit must conduct a regulatory impact assessment and prepare a statement as is contemplated in section 10, read with the changes required by the context.

(3) Upon receipt of the regulatory impact statement, the member of Parliament or committee of a House must—

(a) publish a notice in the prescribed manner calling for public comments or submissions on the regulatory impact statement and the draft primary legislation within such time, being not less than 28 days from the publication of the notice, as is specified in the notice; and

(b) table the regulatory impact statement and the draft primary legislation in the House where the primary legislation is to be introduced, for consideration by the relevant Portfolio or Select Committee.

(4) The member of Parliament or committee of a House must ensure that all comments and submissions are considered and, where applicable, incorporated into the draft primary legislation and must prepare a report setting out—

(a) a summary of each of the comments and submissions received;

(b) how the comments or submissions were incorporated; and

(c) which comments or submissions were rejected by that member or committee, and the reason for such rejection.

(5) The regulatory impact statement and the report contemplated in subsection (4) must be tabled in the relevant House together with the primary legislation when it is introduced.

Self-regulatory Bodies

12. (1) Subject to section 13, a self-regulatory body that prepared a regulatory measure must submit the regulatory measure to the Regulatory Impact Assessment Unit to conduct a mapping exercise, read with the changes to section 9 required by the context.

(2) Where the mapping exercise envisaged in subsection (1) identifies any information obligations, substantive costs or provisions that may result in indirect cost or have unintended non-financial consequences for business, the Regulatory Impact Assessment Unit must conduct a regulatory impact statement as is contemplated in section 10, read with the changes required by the context.

(3) Upon receipt of the regulatory impact statement, the self-regulatory body must—

(a) publish a notice in the prescribed manner calling for public comments or submissions on the regulatory impact statement and the regulatory measure within such time, being not less than 28 days from the publication of the notice, as is specified in the notice;

(b) consider all the comments and submissions and where applicable incorporate the comments and submissions into the regulatory measure;

(c) prepare a report setting out—

(i) a summary of each of the comments and submissions received;

(ii) how the comments or submissions were incorporated; and

(iii) which comments or submissions were rejected and the reason for such rejection;
and

(d) submit the report contemplated in paragraph (c) to the Regulatory Impact Assessment Unit for consideration.

(4) The Regulatory Impact Assessment Unit must within 14 days from the submission of the report contemplated in subsection (3)(c), issue a certificate confirming whether or not the—

(a) self-regulatory body complied with this Act; and

(b) regulatory measure is business friendly.

(5) The self-regulatory body must publish the final regulatory measure and the certificate contemplated in subsection (4) in the prescribed manner.

(6) Subject to subsection (9), no regulatory measure developed by a self-regulatory body after the commencement of this section is valid or enforceable, unless the self-regulatory body has received a certificate contemplated in subsection (4) that confirms compliance with this Act and that the regulatory measure is business friendly.

(7) Any member of the self-regulatory body, or person affected by a regulatory measure developed by a self-regulatory body, may submit a complaint of non-compliance with this Act to the Regulatory Impact Assessment Unit.

(8) The Minister must make regulations to determine the process for complaints contemplated in subsection (7).

(9) Subsection (6) does not apply to regulatory measures that are developed by self-regulatory bodies in accordance with a process regulated by legislation.

Exemptions

13. (1) The following regulatory measures are exempt from the requirements of publication referred to in sections 10(4)(a), 11(3)(a) and 12(3)(a):

(a) Regulatory measures that pertain to matters of national security; and

(b) regulatory measures that pertain to matters that have been declared as privileged, confidential or secret in terms of the law.

(2) Organs of state, members of Parliament, committees of Houses and self-regulatory bodies are exempted from complying with the provisions of sections 9, 10, 11 and 12 respectively, in respect of the following regulatory measures:

(a) Regulatory measures that deal solely with the administration, procedure or practice of—

(i) a court or tribunal;

- (ii) a national department, provincial administration, provincial department or organisational component contemplated in section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994); or
 - (iii) a House;
- (b) regulatory measures that only repeal or cancel a regulatory measure that became obsolete; and
- (c) such other type of regulatory measure as may be prescribed.

(3) The Minister may, despite the contents of this section, determine by notice in the *Gazette* that—

- (a) certain types of regulatory measures are at all times exempt from the requirements of sections 9, 10, 11 or 12; or
- (b) certain types of regulatory measures must at all times comply with the requirements of sections 9, 10, 11 or 12.

(4) Where a regulatory measure is urgent—

- (a) the Minister may exempt an organ of state or self-regulatory body, as the case may be, from having to comply with sections 9, 10 or 12 respectively, by written confirmation to the responsible Minister or self-regulatory body; or
- (b) the Speaker of the National Assembly or the Chairperson of the National Council of Provinces may respectively exempt a member of Parliament or committee of a House by resolution of that House, from having to comply with section 11.

(5) A regulatory measure or a decision taken in respect of a regulatory measure is not invalid, and may not be reviewed or restrained merely on the grounds that there was a failure to comply with any of the provisions of sections 9, 10, 11 or 12.

CHAPTER 4

EVALUATION OF EXISTING REGULATORY MEASURES

Evaluation of existing regulatory measures

14. (1) Ministers and self-regulatory bodies are responsible to reduce red tape present in all regulatory measures under their control and to this extent must conduct an analysis to ascertain whether the primary legislation, secondary legislation or code, policy or similar measure developed by a self-regulatory body, is business friendly and imposes any—

(a) information obligations; or

(b) substantive cost.

(2) Ministers and self-regulatory bodies must—

(a) determine the activity cost per information obligation identified in subsection (1)(a), calculated according to the standard cost model or such model as may be prescribed, and the total activity cost per regulatory measure;

(b) determine the estimated total substantive costs identified in subsection (1)(b), imposed by each regulatory measure;

(c) conduct such other analysis or determination as may be prescribed;

(d) implement measures to—

(i) determine customer satisfaction;

(ii) improve service delivery; and

(iii) make regulatory measures business friendly; and

(e) reduce red tape.

(3) Ministers and self-regulatory bodies must complete the analysis and determinations contemplated in subsections (1) and (2)(a), (b) and (c) within two years of commencement of this Act.

(4) A report on the analysis and determinations contemplated in subsections (1) and (2)(a), (b) and (c) must respectively be—

(a) tabled in the National Assembly by the responsible Minister; or

(b) submitted to the Regulatory Impact Assessment Unit by the relevant self-regulatory body.

(5) The report contemplated in subsection (4) must be tabled in the National Assembly, or submitted to the Regulatory Impact Assessment Unit, within three months of the finalisation of the analysis and determinations.

(6) Ministers and self-regulatory bodies must reduce red tape and the cost of red tape in respect of all the regulatory measures under the control of that organ of state or self-regulatory body respectively, as identified in the exercise contemplated in subsection (2), by—

(a) 25 per cent within five years of commencement of this Act; and

(b) such percentage, every five years after the period referred to in paragraph (a), as must be prescribed by the Minister.

(7) Ministers must include the following in the annual report of the organ of state for which that Minister is responsible:

(a) The cost of red tape in respect of each primary legislation or secondary legislation which the responsible Minister administers, or the steps taken to determine that cost;

(b) steps to reduce the cost contemplated in paragraph (a); and

(c) the result of any steps taken to reduce red tape in that year.

(8) Self-regulatory bodies must annually report to the Regulatory Impact Assessment Unit on—

(a) the cost of red tape in respect of the regulatory measures used by that self-regulatory body, or the steps taken to determine that cost;

- (b) steps to reduce the cost contemplated in paragraph (a); and
 - (c) the result of any steps taken to reduce red tape in that year.
- (9) Within two years of commencement of this Act, Ministers must review all primary legislation or secondary legislation, which they administer and must—
 - (a) identify primary legislation or secondary legislation that can be repealed or replaced in order to reduce red tape and the cost of red tape; and
 - (b) after the lapse of two years from commencement of this Act, with the introduction of any new primary legislation or secondary legislation, repeal or replace at least one piece of legislation identified in paragraph (a).
- (10) The Minister may prescribe requirements for persons or institutions dealing with micro, small or medium businesses to comply with quality procedure standards.

CHAPTER 5

GENERAL PROVISIONS

Regulations and other notices

- 15.** (1) The Minister must make regulations by notice in the *Gazette* regarding—
- (a) any other information required in the regulatory impact statements contemplated in section 10(1);
 - (b) the manner of publication contemplated in sections 10(4)(a), 11(3)(a), and 12(3)(a) and (6);
 - (c) the complaints process contemplated in section 12(7), including—
 - (i) filing of complaints;
 - (ii) time frames within which to deal with complaints;
 - (iii) findings and sanctions; and
 - (iv) an appeal process; and

- (d) the percentage by which red tape must be reduced in five year intervals as contemplated in section 14(6)(b).
- (2) The Minister may by notice in the *Gazette*—
 - (a) declare an instrument or class of instruments to be a regulatory measure for the purposes of this Act; or
 - (b) exempt an instrument or class of instruments from being regarded as a regulatory measure for the purposes of this Act.
- (3) The Minister may make regulations by notice in the *Gazette* regarding—
 - (a) any matter that may or must be prescribed;
 - (b) the model to determine activity cost per information obligation as contemplated in sections 10(1)(f) and 14(2)(a);
 - (c) the type of regulatory measure where an organ of state, member of Parliament, committee of a House or self-regulatory body may be exempted as contemplated in section 13(2)(c);
 - (d) analyses or determinations to be conducted by Ministers or self-regulatory bodies as contemplated in section 14(2)(c);
 - (e) requirements for persons or institutions dealing with micro, small or medium businesses to comply with quality procedure standards;
 - (f) quality procedure standards;
 - (g) guides for procedure, implementation, measurements or such other matters that may assist the Minister in achieving the objects of this Act; and
 - (h) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Savings and transitional provisions

16. (1) For a period of 2 years from the commencement date of this Act, no action or omission in respect of a regulatory measure approved or passed during that period is invalid merely because of a failure to comply with the requirements of this Act.

(2) The Regulatory Impact Assessment Unit must populate the database contemplated in section 6(c) within two years from its establishment and may during that two year period prepare regulatory impact statements using reasonable assumptions in order to perform within the periods contemplated in sections 9(2) and 10(2).

Short title and commencement

17. (1) This Act is called the Ease of Doing Business Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The President may determine different dates for different provisions of this Act to come into operation.

**MEMORANDUM ON THE OBJECTS OF THE EASE OF DOING BUSINESS BILL,
2021**

1. INTRODUCTION

In March 1995, the Organisation for Economic Co-operation and Development (OECD) adopted a Recommendation on Improving the Quality of Government Regulation, which included the use of Regulatory Impact Analysis (RIA). The use of RIA was endorsed by Ministers of member countries on 27 May 1997 and in that same year the Regulatory Management and Reform Group compiled a report combining the experiences of 17 countries and comparing the RIA programmes of 7 countries – “Regulatory Impact Analysis – Best Practices in OECD Countries”.

Following a study into the lack of understanding of the full cost imposed by regulatory measures and the impact thereof on the economy, the South African Cabinet in 2007 decided that a need exists for the consistent assessment of the socio-economic impact of regulatory measures. The Presidency consequently issued guidelines on the conducting of Regulatory Impact Assessments in 2012, which guidelines provided for a Central Regulatory Impact Assessment Unit to be housed in Cabinet under the Deputy President in order to coordinate the development of Regulatory Impact Assessments. However, no clear compulsory measures were provided. In May 2015 the Presidency’s then Department of Planning, Monitoring and Evaluation (DPME) issued the Socio-Economic Impact Assessment system (SEIAS) guidelines. The SEIAS guidelines provided for a Central SEIAS unit to be established in DPME with corresponding units or functionality to be created in individual departments. The SEIAS guidelines also provided that from 1 June 2015, all Cabinet Memoranda that seek approval for draft primary legislation or secondary legislation must include an impact assessment that has been vetted by the Central SEIAS Unit.

SEIAS approaches impact assessments by requiring the estimate of costs and benefits to focus on the different socio-economic groups that inequality in the South African society has created. It further accepts that because of inequality, some costs may be unavoidable. Although the SEIAS approach is commendable, in this focus however SEIAS by itself does not sufficiently address the cost of red tape.

Assessing the impact of regulatory measures, from policy through to delegated legislation, before a final decision is made to implement that regulation will improve the effectiveness,

efficiency and the impact of government interventions. Conducting an evaluation of regulatory measures allows:

- the integration of multiple policy objectives and ensuring linkages of policies such as industrial, competition, trade, SMME and B-BBEE thus promoting early coordination of policies;
- the enhancement of competitiveness by reducing regulatory burdens;
- the increase of transparency and consultation when developing regulatory measures;
- the increased involvement and accountability of decision-makers at the highest political levels when developing regulatory measures; and
- provides a tool for policy monitoring and an evaluation benchmark for monitoring and evaluation processes although it is not synonymous to programme/project monitoring and evaluation.

Specifically for developing countries red tape impact assessments have the potential to contribute to poverty alleviation by reducing business entry costs and creating a regulatory environment that is friendly to small businesses, thus driving economic growth.

Entrenching the process of conducting assessments on the impact of regulatory measures before their final approval can be done in various ways. In the Czech Republic, Republic of Korea and Mexico, the duty to conduct impact assessments are contained in legislation. In the United States, this duty is contained in a Presidential decree, and in Australia, Austria, France, Italy and the Netherlands in Ministerial decrees. Other countries such as Canada, Denmark, Finland, Germany, Ireland, Japan, Norway, New Zealand, Portugal, Poland, Sweden and the UK operate on a Cabinet resolution. It is necessary for South Africa to entrench this duty in legislation as it allows for certainty, uniformity and the establishment of a central RIA Unit. Legislation also allows for the involvement of Parliamentary oversight over this important function.

In its report “Regulatory Impact Analysis – Best Practices in OECD Countries” the OECD identified ten elements of best practice. They are:

- “1. Maximize political commitment to RIA;
2. Allocate responsibilities for RIA programme elements carefully;
3. Train the regulators;

4. Use a consistent but flexible analytical method;
5. Develop and implement data collection strategies;
6. Target RIA efforts;
7. Integrate RIA with the policy making process, beginning as early as possible;
8. Communicate the results;
9. Involve the public extensively;
10. Apply RIA to existing as well as new regulation.”

The Red Tape Impact Assessment Bill displays all ten elements, as is set out below in the discussion of the Objects of the Bill.

2. OBJECTS OF THE BILL

- 2.1. This Bill seeks to provide for the assessment of regulatory measures developed by the executive, members and committees of Parliament and self-regulatory bodies. This assessment will consider the socio-economic impact of regulatory measures, including the detection and reduction of red tape and the cost of red tape for businesses. The Bill furthermore seeks to provide for the establishment of an administrative unit to assist the executive, members of Parliament, committees of the Houses and self-regulatory bodies in this process and sets out its functions and powers. The Bill also seeks to provide for assistance to businesses in overcoming red tape and other challenges. The Bill sets out the procedural aspects of regulatory impact assessments, including mapping of legislation, conducting regulatory impact assessments, preparing regulatory impact statements and the evaluation of existing regulatory measures by the executive and self-regulatory bodies. The Bill lastly also provides for exemptions to these processes.

3. CONTENTS OF THE BILL

- 3.1. Chapter 1 deals with definitions, objects of the Bill, and application and interpretation of the Bill.
 - 3.1.1. In this regard, clause 1 deals with definitions of words used in the Bill.

- 3.1.2. Clause 2 sets out the objects of the Bill.
- 3.1.3. Clause 3 deals with the application of the Bill and provides that in the event that this Bill conflicts with any other law, this Bill will prevail.
- 3.2. Chapter 2 deals with the setup of an Administrative Unit to manage the whole Regulatory Impact Assessment process.
 - 3.2.1. Clause 4 provides for the establishment of a Regulatory Impact Assessment Unit and the staffing of this Unit.
 - 3.2.2. Clause 5 sets out the fiduciary duties, and Clause 6 the functions and powers, of the Regulatory Impact Assessment Unit.
 - 3.2.3. Clause 7 stipulates reporting requirements for the Regulatory Impact Assessment Unit and requires the Minister to incorporate the annual report of the Regulatory Impact Assessment Unit in the report of the Ministry for tabling in the National Assembly. The Minister is also required to include a report on all exemptions that the Minister granted in terms of section 13.
- 3.3. Chapter 3 provides for the evaluation of new regulatory measures.
 - 3.3.1. Clause 8 sets out the general responsibilities of Ministers, members of Parliament and committees of the two Houses in respect of the development of regulatory measures.
 - 3.3.2. Clause 9 provides for the mapping of legislation to determine whether a Regulatory Impact Assessment is required and Clause 10 then sets out the process to be followed where a Regulatory Impact Assessment is required.
 - 3.3.3. Clauses 11 and 12 provide for the same mapping and subsequent process for a Regulatory Impact Assessment but in respect of, in the case of clause 11, legislation being developed by a member of Parliament or a parliamentary committee, and clause 12, in respect of regulatory measures prepared by self-regulatory bodies.
 - 3.3.4. Clause 13 provides for exemptions.

3.4. Chapter 4 deals with the evaluation of existing regulatory measures.

3.4.1. Clause 14 provides for the evaluation of existing regulatory measures by Ministers and self-regulatory bodies. It further requires reporting on these evaluations and a plan to be developed to reduce red tape and the costs thereof, where such were found in existing regulatory measures.

3.5. Chapter 5 deals with general provisions and includes regulations in clause 15 and savings and transitional provisions in clause 16. Clause 17 provides for the short title and commencement of the Bill.

4. CONSULTATION

4.1. The following literature was consulted and considered when drafting this Bill:

South African literature

- Bounds, G (OECD): Presentation: “Alternatives to Traditional Regulation A Principles Approach.” (Building capacity for RIA in South Africa 26/29 May 2009);
- DEAT (2006) Socio-Economic Impact Assessment, Integrated Environmental Management Information Series 22, Department of Environmental Affairs and Tourism (DEAT), Pretoria – ISBN 0-9585084-1-0;
- Framework for Regulatory Impact Analysis (RIA) in South Africa V3, (The Presidency: Republic Of South Africa, Policy Co-Ordination and Advisory Services (PCAS));
- Goldblatt, Michael (Director -Palmer Development Group): “Alternatives to Traditional Regulation” - Building capacity for RIA in South Africa, Presentation to Officials (27 May 2009);
- Guidelines for reducing municipal red tape: How municipalities can improve service delivery that supports small business (the dti and COGTA - Author: Rae Wolpe) (ISBN: 978-0-621-41266-6);
- Guidelines for the implementation of the Regulatory Impact Analysis/Assessment (RIA) Process in South Africa, 2012 (Presidency - Cabinet Operations);
- Irvine, Douglas (SBP): Scope of RIA: Building capacity for RIA in South Africa (26 May 2009);

- Jacobs, Scott (Managing Director, Jacobs and Associates): Regulatory Impact Analysis Training Course - Office of the Presidency, South Africa, 1-5 September 2008 (20 sessions) (www.regulatoryreform.com);
- Matsiliza, NS: “The application of result-based monitoring and evaluation to improve performance in small business”;
- Position paper on the implementation of regulatory impact assessment in South Africa (The Presidency and the National Treasury, 2005);
- Programme of Action (<http://www.poa.gov.za/Pages/default.aspx>);
- Socio-Economic Impact Assessment System (SEIAS) Guidelines, The Presidency: Department of Planning, Monitoring and Evaluation (May 2015);
- Socio-Economic Impact Assessment System (SEIAS) Templates, The Presidency: Department of Planning, Monitoring and Evaluation (May 2015); and
- Trnka, D (OECD): Presentation “Efficient scope of RIA and its implementation The OECD experience” (Building capacity for RIA in South Africa 26/29-05-2009).

International literature

- Better Regulation: Making Good Use of Regulatory Impact Assessments: Report by the Comptroller and Auditor General (HC 329 Session 2001-2002: 15 November 2001) (UK);
- Bounds, Gregory (Editor): “OECD Reviews of regulatory reform: Regulatory impact analysis, a tool for policy coherence.” ISBN 978-92-64-04354-1 (2009);
- Department of Jobs, Enterprise and Innovation: “Administrative Burden Measurement Handbook for use by Departments and Agencies” (www.djei.ie/.../ria/AdministrativeBurdenMeasurementHandbook.pdf);
- Department of Justice Canada: “Regulatory Impact Analysis Statement” (<http://www.justice.gc.ca/eng/dept-min/pub/legis/rm-mr/part4/rias-reir.html>);
- European Commission: “TOOL #53: THE STANDARD COST MODEL FOR ESTIMATING ADMINISTRATIVE COSTS”;
- Exner, Petra: “Principles of the Reduction of Administrative Burden using the Standard Cost Model” (Cyprus) (www.better-regulation.org.cy);
- Hennessy, Lisa: “Institutional Supports and Resources for RIA: The Irish Experience - Better Regulation Unit Department of the Taoiseach (Prime Minister) (May 2009);
- Morrall, John F. III, Ph.D.: US Experience with Regulatory Impact Analysis (27 May 2009);
- OECD: “Monitoring And Evaluation Mechanisms Related To The SME Development Strategy 2012-20 In The Republic Of Moldova”;

- OECD, SME Ministerial Conference (22-23 February 2018 Mexico City): “Monitoring and evaluation of SME and entrepreneurship programmes”;
- OECD 1997: “Regulatory Impact Analysis – Best Practices in OECD Countries”;
- Swain, A: “Legislation Review: The Deregulation Act 2015 and amendments to the law governing tenancy deposit schemes” (<http://invictuschamberslondon.co.uk/legislation-review-the-deregulation-act-2015-and-amendments-to-the-law-governing-tenancy-deposit-schemes/>);
- Torriti, Jacopo: “The Standard Cost Model: When ‘Better Regulation’ Fights Against Red Tape” (http://www.academia.edu/3446152/The_Standard_Cost_Model_when_better_regulation_fights_against_red-tape);
- Torriti, Jacopo: “Standard Cost Model: Three Different Paths and their Common Problems” (<http://www.jcer.net/index.php/jcer/article/viewFile/322/325>); and
- UNDP, 2019: “Results-oriented Monitoring and Evaluation”.

Acts compared

- Bill 81 – 1999: Regulatory Impact Statement Act (British Columbia, Canada);
- Comptabiliteitswet 2001 (The Netherlands);
- Regeling Periodiek Evaluatieonderzoek, 2012 (The Netherlands);
- Subordinate Legislation Act 1994 (Act No. 104 of 1994) Version incorporating amendments as at 17 September 2014 (Australia - Victoria) (http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/legis/vic/consol_act/sla1994250.pdf); and
- Wet houdende diverse bepalingen inzake administratieve vereenvoudiging Publicatie: 31-12-2013 nummer: 2013021138 bladzijde: 103694 (The Netherlands).

5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1. Minimal financial implications are foreseen at a national level in that a central Regulatory Impact Assessment Unit and regulatory impact assessment functions were already approved by Cabinet in February 2007 and later on confirmed in the SEIAS unit within the then DPME. A period of two years was foreseen for the initial roll out. These units and functions must thus already be in place.
- 5.2. The due application of the impact assessments will ensure that the cost of regulatory measures are reduced, thus facilitating increasing economic growth.

6. PARLIAMENTARY PROCEDURE

- 6.1. This Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution as its provisions do not deal, in a substantial manner, with any functional area of concurrent national and provincial legislative competence listed under Schedule 4 to the Constitution, nor do they deal with any other matter contained in sections 76(3), (4) or (5).

- 6.2. This Bill does not have to be referred to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.