

REPUBLIC OF SOUTH AFRICA

RED TAPE IMPACT ASSESSMENT BILL

*(As introduced in the National Assembly (proposed section 75 Bill); prior notice of its
introduction published in Government Gazette No of 2016)*

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

(Mr. Henro Kruger, MP)

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BILL

To provide for the assessment of regulatory measures developed by the executive, the legislatures and self-regulatory bodies in all three spheres of government, so as to detect and reduce red tape and the cost of red tape for businesses; to provide for the establishment of administrative units to assist in the red tape impact assessment process and to prepare red tape impact statements; to provide for assistance to businesses in overcoming red tape challenges; to provide for the functions and powers of the administrative units; to provide for mapping and the preparation of red tape impact statements; to provide for the evaluation of existing regulatory measures by the executive and self-regulatory bodies in all three spheres of government; and to provide for matters incidental thereto.

PREAMBLE

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 red tape impact assessments in the development of regulatory measures; and limited coordination across all spheres of government when conducting red tape impact assessments, 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;

“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;

“Department” means the department in the national sphere of Government responsible for small business development;

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

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

“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 as a result 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) once 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 10;

“Minister” means the Minister responsible for small business development;

“Ministers” means all members of Cabinet as referred to in section 91(1) of the Constitution, excluding the President and Deputy President, specifically in relation to the organ of State for which each respective member is responsible;

“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 committees of Parliament;

“prescribed” means prescribed by regulation;

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

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.

“red tape” means the information to be submitted or maintained and the procedures required 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;

“red tape impact statement” means the statements contemplated in sections 11(1), 12(2) and 13(2) respectively;

“regulation” means a regulation made under this Act;

“regulatory measure” means—

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

“responsible Minister” means the Minister responsible for the organ of State that is developing or administering a regulatory measure;

“RIA Unit” means the Red Tape Impact Assessment Unit envisaged in section 5(1);

“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 operates nationally, whether created by statute or otherwise, that exercises any form of regulatory authority over an industry or profession, whether in addition to statutory control or not;

“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 the activity must be completed 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

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 $3 \times R300 = R900$. 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 $20,000 \times 900 = R18,000,000$. This footnote is explanatory in nature and does not form part of the Act.

“this Act” includes the regulations.

Application and interpretation of Act

- 2.** (1) This Act applies to—
- (a) all organs of State;
 - (b) members of Parliament and committees of Parliament; and
 - (c) self-regulatory bodies.

Application of Act to provincial and local government

- 3.** (1) Subject to this section, this Act applies to provincial government.
- (2) In applying this Act to provincial government, a reference to—
- (a) Cabinet must be construed as a reference to the provincial Executive Council concerned;
 - (b) Department must be construed as a reference to the provincial department responsible for small business development;
 - (c) member of Parliament must be construed as a member of the provincial legislature concerned;
 - (d) Minister, as referred to in sections 5(1), 7(n) and 8(2), must be construed as a reference to the member of the Executive Council responsible for small business development;
 - (e) Ministers must be construed as a reference to members of the Executive Council;
 - (f) organ of State must be construed as a reference to an organ of State in the provincial sphere of government;
 - (g) Parliament, House or National Assembly must be construed as a reference to the provincial legislature concerned;
 - (h) primary legislation must be construed as a reference to provincial primary legislation;
 - (i) responsible Minister must be construed as a reference to the relevant member of the Executive Council responsible for the organ of State that is developing or administering a regulatory measure;

- (j) RIA Unit, save for the reference thereto in sections 7(a), (c), (d), (e), (f), (g), (h), (i), (j) and (k) must be construed as a reference to the impact assessment unit in the provincial department responsible for small business development;
 - (k) secondary legislation must be construed as a reference to provincial secondary legislation;
 - (l) self-regulatory body must be construed as a reference to a self-regulatory body that only operates within the province concerned; and
 - (m) tabling in the National Assembly or House must be construed as tabling in the provincial legislature concerned.
- (3) In applying this Act to provincial government—
- (a) the impact assessment unit established in each province as contemplated in subsection (2)(j), must—
 - (i) in addition to the functions referred to in section 7(b), (l), (m) and (n), read with the changes required by the context, prepare red tape impact statements for municipalities; and
 - (ii) in respect of the services contemplated in section 7(a), (c), (e), (i), (j) and (k), utilise the RIA Unit established in the department in the national sphere of Government responsible for small business development;
 - (b) the organs of State in the provincial sphere of Government and self-regulatory bodies that operate only in the province concerned, must utilise the services of the impact assessment unit established in the relevant province as contemplated in subsection (2)(j); and
 - (c) the timeframes contemplated in sections 15 and 17 apply from the date of commencement of subsections (1), (2) and (3).
- (4) Save for sections 5, 6, 7, 8, 12, 13 and 14(4)(b), and subject to this section, this Act applies to local government.
- (5) In applying this Act to local government, a reference to—
- (a) Cabinet must be construed as a reference to a Mayoral Committee;
 - (b) Ministers, must be construed as a reference to members of the Mayoral Committee;
 - (c) Minister must be construed as a reference to the member of the Executive Council responsible for small business development in the relevant province where the municipality is situated;

- (d) organ of State must be construed as a reference to an organ of State in the local sphere of government;
 - (e) Parliament, House or National Assembly must be construed as a reference to the municipal council concerned;
 - (f) primary legislation must be construed as a reference to a by-law;
 - (g) RIA Unit must be construed as a reference to the impact assessment unit in the provincial department responsible for small business development in the province where the municipality is situated;
 - (h) responsible Minister must be construed as a reference to the Mayoral Committee that is developing or administering a by-law as the case may be; and
 - (i) tabling in the National Assembly or House must be construed as tabling in the municipal council concerned.
- (6) In applying this Act to local government—
- (a) the Mayor or executive Mayor must utilise the services of the RIA Unit in the relevant province; and
 - (b) the timeframes contemplated in sections 15 and 17 apply from the date of commencement of subsections (4), (5) and (6).

Objects of Act

4. The objects of this Act are to—
- (a) create capacity in government to measure, control and reduce the economic impact of regulatory measures;
 - (b) measure the impact of regulatory measures on businesses;
 - (c) measure and reduce red tape and the costs associated with red tape when conducting business in the Republic of South Africa; and
 - (d) create a business friendly environment for business in the Republic of South Africa.

CHAPTER 2

ADMINISTRATIVE UNITS

Establishment of impact assessment units

- 5.** (1) The Minister must—
- (a) establish a unit in the Department to be known as the Red Tape Impact Assessment Unit within a period of one year from the commencement of this Act;
 - (b) provide the RIA 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 as a result of red tape.
- (2) The RIA Unit is subject to the provisions of, and the directives, rules and policies made under, the Public Service Act, 1994 (Proclamation 103 of 1994).
- (3) The RIA 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 RIA Unit in terms of any law regulating such secondment.

Fiduciary duties of impact assessment units

- 6.** The RIA Unit must perform their functions without fear, favour or prejudice in the interest of facilitating effective and efficient regulatory measures operating in the Republic of South Africa.

Functions and powers of impact assessment units

- 7.** The RIA Unit must—

- (a) develop and provide general guidelines on conducting red tape impact assessments and on preparing red tape impact statements;
- (b) provide support and technical expertise to organs of State, members of Parliament and committees of Parliament, the impact assessment units contemplated in section 3(2)(j) and to self-regulatory bodies;
- (c) establish data collection processes that includes a database containing information that is applicable across a range of regulatory measures;
- (d) facilitate access 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 measure and reduce red tape and develop best practice models;
- (i) establish competencies and capabilities in its operations by facilitating continuous skills development in—
 - (i) its own office; and
 - (ii) RIA Units established in the provinces;
- (j) facilitate regular interactions between the RIA Unit and RIA units established in the provinces;
- (k) develop and implement frameworks and strategies to ensure uniformity, accountability and enhancement of red tape impact assessments;
- (l) consider regulatory measures, do mapping exercises and prepare red tape impact statements thereon for—
 - (i) organs of State as contemplated in sections 10 and 11;

- (ii) members of Parliament and committees of Parliament as contemplated in section 12; and
 - (iii) self-regulatory bodies as contemplated in section 13;
- (m) facilitate assistance to businesses—
 - (i) to reduce the impact of red tape in accordance with the framework contemplated in section 5(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; and
- (n) perform such other function as directed by the Minister.

Reporting

8. (1) The RIA Unit must—
 - (a) prepare a report of all its activities, including—
 - (i) all matters in respect of which the RIA 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) The Minister must incorporate the annual report of the RIA Unit in the report of the Department for tabling in the National Assembly.

CHAPTER 3

EVALUATION OF NEW REGULATORY MEASURES

General responsibility

- 9.** (1) Ministers, members of Parliament and committees of Parliament must—
- (a) endeavour to develop regulatory measures that are business friendly;
 - (b) encourage stakeholder consultation during the development of regulatory measures;
 - (c) ensure that all stakeholders are given a platform to make inputs and for their inputs to be considered in the development of regulatory measures; and
 - (d) encourage good governance in the process of developing regulatory measures.

Mapping of primary legislation or secondary legislation

10. (1) Whenever a organ of State develops primary legislation or secondary legislation, the responsible Minister must submit that primary legislation or secondary legislation to the RIA Unit to ascertain whether the primary legislation or secondary legislation—

- (a) imposes any information obligations;
- (b) imposes any substantive cost;
- (c) may result in indirect cost; or
- (d) have unintended consequences for business.

(2) The RIA Unit must complete the mapping exercise within 14 calendar 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, after consultation with the Portfolio Committee in Parliament overseeing the development of small business, 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 envisaged in subsection (1) identifies any information obligations, substantive costs or provisions that may result in indirect cost or have unintended consequences for business, the RIA Unit must conduct a red tape impact assessment on the primary legislation or secondary legislation so developed as envisaged in section 11.

Red tape impact assessment

11. (1) Where the mapping exercise indicates that a red tape impact assessment on the draft primary legislation or secondary legislation so developed must be conducted, the RIA Unit must, subject to section 14, prepare a red tape impact statement that must include—

- (a) a list of the information obligations contained in the draft primary legislation or secondary legislation;
- (b) 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;
- (c) a list of activities that will result in substantive costs contained in the draft primary legislation or secondary legislation;
- (d) the estimated total substantive costs imposed by the draft primary legislation or secondary legislation;
- (e) any indirect cost envisaged by the draft primary legislation or secondary legislation;
- (f) any unintended consequences; and
- (g) such other information as may be prescribed.

(2) The RIA Unit must complete the red tape impact statement within 30 calendar days from the date on which the mapping exercise was completed.

(3) Where a regulatory measure is complex or lengthy, the Minister may, after consultation with the Portfolio Committee in Parliament overseeing the development of small business, determine a longer period within which to complete the red tape impact assessment and the Minister must notify the organ of State of the decision so taken.

(4) Upon receipt of the red tape 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 red tape 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 red tape impact statement in the National Assembly for consideration by the Portfolio Committee overseeing the development of small business.

(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 and the reason for such rejection.

(6) The responsible Minister must—

- (a) for the purpose of primary legislation, or secondary legislation that requires Cabinet approval, include the red tape impact statement and the report contemplated in subsection (5) in the Cabinet memorandum together with the draft primary legislation or secondary legislation; or
- (b) for the purpose of secondary legislation that does not require Cabinet approval, consider the red tape impact statement and the report contemplated in subsection (5) and accept or reject the secondary legislation.

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

- (a) relevant House together with the primary legislation to be introduced for the purpose of the legislative process to be followed in Parliament; or
- (b) National Assembly together with the secondary legislation so developed, regardless of whether the secondary legislation is required to be considered by Parliament.

Primary legislation prepared by members of Parliament or committees of Parliament

12. (1) A member of Parliament or committee of Parliament that prepares primary legislation must, subject to section 14, submit that primary legislation to the RIA Unit to conduct a mapping exercise, read with the changes to section 10 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 consequences for business, the RIA Unit must conduct a red tape impact assessment and prepare a red tape impact statement as is contemplated in section 11(1).

(3) Upon receipt of the red tape impact statement, the member of Parliament or committee of Parliament must—

- (a) publish a notice in the prescribed manner calling for public comments or submissions on the red tape 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 red tape impact statement in the National Assembly for consideration by the Portfolio Committee overseeing the development of small business.

(4) The member of Parliament or committee of Parliament must ensure that all the 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 and the reason for such rejection.

(5) The red tape impact statement and the report contemplated in subsection (4) must be tabled in the relevant House together with the primary legislation to be introduced.

Self-regulatory bodies

13. (1) A self-regulatory body that prepares a regulatory measure must, subject to section 14, submit the regulatory measure to the RIA Unit to conduct a mapping exercise read with the changes to section 10 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 consequences for business, the RIA Unit must conduct a red tape impact assessment and prepare a red tape impact statement as is contemplated in section 11(1).

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

- (a) publish a notice in the prescribed manner calling for public comments or submissions on the red tape 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 RIA Unit for consideration.

(4) The RIA unit must within 14 calendar days from the submission of the report contemplated in subsection (3)(c), issue a certificate confirming whether or not—

- (a) the self-regulatory body complied with this Act; and
- (b) the regulatory measure is business friendly.

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

(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 RIA 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

14. (1) The following regulatory measures are exempt from the requirements of publication referred to in sections 11(4)(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 Parliament and self-regulatory bodies are exempted from complying with the provisions of sections 10, 11, 12 and 13 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) Parliament.
 - (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 10, 11, 12 or 13; or
 - (b) certain types of regulatory measures must at all times comply with the requirements of sections 10, 11, 12 or 13.
- (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 10, 11 or 13 as may be applicable, by written confirmation to the responsible Minister or self-regulatory body; or
 - (b) Parliament may by resolution of both Houses exempt a member of Parliament or committee of Parliament from having to comply with section 12.
- (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 10, 11, 12 or 13.

CHAPTER 4

EVALUATION OF EXISTING REGULATORY MEASURES

Red tape evaluation of existing regulatory measures

15. (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 or secondary legislation is business friendly and—

(a) imposes any information obligations; or

(b) imposes any 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) The analysis and determinations contemplated in subsections (1) and (2)(a), (b) and (c) must be completed 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 RIA Unit by the relevant self-regulatory body.

(5) The reports contemplated in subsection (4) must be tabled in the National Assembly, or submitted to the RIA Unit as the case may be, 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 (3), by—

(a) 25 percent (25%) within five years of commencement of this Act; and

(b) such further percentage, every five years thereafter, as must be prescribed by the Minister.

(7) Ministers must in the annual report of the organ of State for which they are responsible include —

(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 RIA 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) Ministers must within two years of commencement of this Act 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

- 16.** (1) The Minister must make regulations by notice in the *Gazette* regarding—
- (a) any other information required in the red tape impact statements contemplated in sections 11(1), 12(2) and 13(2) respectively;
 - (b) the manner of publication contemplated in sections 11(4)(a), 12(3)(a), 13(3)(a) and (5);
 - (c) the complaints process contemplated in section 13(8) 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 15(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 11(1)(b) and 15(2)(a);
 - (c) the type of regulatory measure where an organ of State, member of Parliament, committee of Parliament or self-regulatory body may be exempted from the provisions of sections 10, 11, 12 and 13 as contemplated in section 14(2)(c);
 - (d) analyses or determinations to be conducted by Ministers or self-regulatory bodies as contemplated in section 15(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.

Transitional provisions and savings

17. (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 RIA Unit must populate the database contemplated in section 7(c) within two years from the establishment of the RIA Unit and may during that two year period prepare red tape impact statements using reasonable assumptions in order to perform within the periods contemplated in sections 10(2) and (3), and 11(2) and (3).

Short title and commencement

18. (1) This Act is called the Red Tape Impact Assessment Act, 2016, 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 RED TAPE IMPACT ASSESSMENT BILL, 2016

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. Guidelines on the conducting of Regulatory Impact Assessments were consequently issued by the Presidency in 2012, which provided for a Central Regulatory Impact Unit to be housed in Cabinet under the Deputy President to coordinate the development of Regulatory Impact Assessments. However, no clear compulsory measures were provided. In May 2015 the Presidency’s 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 provides 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.

Conducting an evaluation of the cost of red tape 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
- for the provision of 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, the legislatures and self-regulatory bodies, in order to determine and reduce red tape and the cost of red tape for businesses. Further it seeks to provide for the establishment of administrative units to assist in the assessment process as well as their functions and powers. The Bill also provides for the mapping of regulatory measures and the preparation of a red tape impact statement, as well as for the evaluation of existing regulatory measures.

3. CONTENTS OF THE BILL

- 3.1. Chapter 1 of the Bill deals with the interpretation, application and objects of the Bill. Clause 1 contains definitions for the various terms used in the Bill. Clause 2 stipulates the extent to which the Bill will be applicable, namely to all organs of State, members and committees of Parliament and self-regulatory bodies. Clause 3 makes the Bill applicable to provincial government and to local government and determines the interpretation of the Bill when it is so applied. Clause 4 sets out the purpose of the Bill, which is to provide for the assessment of regulatory measures developed by the executive, the legislatures and self-regulatory bodies, in order to determine and reduce red tape and the cost of red tape.

- 3.2 Chapter 2 of the Bill provides for administrative capacity to assist the executive, legislatures and self-regulatory bodies in conducting assessments on regulatory measures. Clause 5 requires that a Red Tape Impact Assessment unit be set up in the Department responsible for small business development. Clause 6 sets out the fiduciary duties of the RIA Units and clause 7 captures their functions and powers. For the RIA Unit at National level these include support and technical expertise, establishing a database, training of other assessment units, establishing frameworks and strategies, and advising the Minister on the Act. The RIA unit will conduct all assessments from departments, members of Parliament, committees of Parliament and self-regulatory bodies and will assist businesses to overcome red tape challenges. Clause 8 contains the reporting requirements for the RIA Unit.
- 3.3 Chapter 3 deals with the actual evaluation of regulatory measures. Clause 9 places a general responsibility on Ministers, members and committees of Parliament to encourage stakeholder consultation and good governance during the development of regulatory measures. Clause 10 provides for the mapping of a regulatory measure to determine if a red tape impact assessment is required. The process for red tape impact assessments on regulatory measures developed by an organ of State is set out in clause 11; iro Parliament in clause 12; and iro self – regulatory bodies in clause 13. Clause 14 provides for instances that are exempt from the requirement to conduct red tape impact assessments.
- 3.4 Chapter 4 deals with the evaluation of existing regulatory measures and requires the identification of red tape, setting a baseline and reducing that baseline with 25% within five years of commencement of the Bill, and thereafter at such a percentage as the Minister determines.
- 3.5 Chapter 5 deals with the general provisions such as the making of regulations, transitional provisions, the repeal of laws, the short title and also the commencement of the Act.

4. CONSULTATION

- 4.1. The following institutions / persons were consulted:

South African

- Garreth Bloor: Mayoral Committee, City of Cape Town;
- Nadia Carolson: Manager Entrepreneurship, Afrikaanse Handels Instituut;
- Toby Change: Shadow Minister Small Business Development, National Parliament;
- DA Caucus: DA National Parliament Caucus, Parliament;
- Prof. William Gumede: Professor and Convener, Political Economy, Wits;
- Mike Levin: National Director, BNI;
- Leon Louw: CEO, Free Market Foundation;
- Dr. Erenst Messina: CEO, Afrikaanse Handels Instituut;
- Anna-Mart Ott: CEO, SACCI Mpumalanga;
- Red Tape Unit: Department Economic Development, Western Cape Government;
- Dawie Roodt: CEO, Economist / Author: “Red Tape and Lies”;
- Dr. Rob Smorfit: Small Business Consultant, Rob Smorfit Consultancy ;
- Christo van der Rheede: Deputy Executive Director, AgriSA;

International

- Dr. Peter Bex: Director, Sira Consulting (Red Tape Expert) - The Netherlands;
- Prof. Dr. Wim Marneffe: Professor Professor - Research Group Law & Economics at Hasselt University (Antwerp Area, Belgium);
- Rudy van Zijp: Director Actal, Advisory Board on Regulatory Burdens - The Netherlands;
- Lode Vereeck: Senator, Belgium Senate – Belgium;
- Eric Zings: Member of Parliament, Parliament - The Netherlands

4.2. 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);
- 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);
- 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";
- European Commission: "Commission initiatives to cut red tape and reduce regulatory burdens – Questions and Answers" - Brussels, 19 September 2013 (http://europa.eu/rapid/press-release_MEMO-13-786_en.htm);
- 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);
- Regulatory Impact Analysis – Best Practices in OECD Countries, OECD 1997;
- 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>);

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);
- Wet houdende diverse bepalingen inzake administratieve vereenvoudiging Publicatie: 31-12-2013 nummer: 2013021138 bladzijde: 103694 (The Netherlands);

5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1. It is envisaged in the Bill that a Red Tape impact assessment unit will be established in the Department responsible for small business development, and corresponding provincial departments, which will have financial implications.
- 5.2. However, the due application of the impact assessments will ensure that the cost of regulatory measures are reduced, thus facilitating increasing economic growth. The European Commission in 2013 estimated a saving of €37.5 billion, and an increase in EU GDP of 1,4% as a result of cutting the cost of the administrative burden (red tape) placed on small business (http://europa.eu/rapid/press-release_MEMO-13-786_en.htm).

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 in a substantial manner deal 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.