

## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

### DEPARTMENT OF SMALL BUSINESS DEVELOPMENT

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### NATIONAL BUSINESS LICENSING POLICY (DRAFT)

1. I, Ms S Ndabeni-Abrahams, Minister of Small Business Development, hereby publish for public comment the draft National Business Licensing Policy.
2. Members of the public are hereby invited to send their comments to [MMasoga@dsbd.gov.za](mailto:MMasoga@dsbd.gov.za) or submit by hand at The dti Campus, Department of Small Business Development, 77 Meintjies Street, Sunnyside, Pretoria, Block G Ground Floor within 30 (thirty) days of publication of this notice.
3. Furthermore, members of the public are notified that the draft National Business Licensing Policy is accessible on the Department of Small Business Development website on [www.dsbd.gov.za](http://www.dsbd.gov.za) and is published in the Gazette for public comment.
4. Enquiries can be directed to Mr Mhlanganisi Masoga on [MMasoga@dsbd.gov.za](mailto:MMasoga@dsbd.gov.za).



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Ms S Ndabeni-Abrahams (MP)  
MINISTER OF SMALL BUSINESS DEVELOPMENT  
DATE: ..24.. /...02.. /2024



**small business  
development**

Department:  
Small Business Development  
**REPUBLIC OF SOUTH AFRICA**

# **NATIONAL BUSINESS LICENSING POLICY (NBLP)**

**DRAFT**

**FEBRUARY 2024**

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**SECTION 1. INTRODUCTION****1.1. Background**

Governments seek to achieve a wide range of social, economic, environmental, and regional and equity objectives through various legislative and fiscal tools most commonly through spending, taxation and regulation. Some Governments have attempted to exercise complete control over economic affairs in the interest of accomplishing social or political goals, while other governments have attempted to stay completely out of economic affairs in the belief that economies work best when they are unregulated. Today the roles that most governments play in their national economies fall somewhere between these two extremes. A Government's role in the economy can be broken down into two basic sets of functions: it attempts to promote economic stability and growth, and it attempts to regulate and control the economy. Its tools for promoting stability and growth are fiscal policy (alterations in tax rates and spending programs) and monetary policy (alterations in the amount of money in circulation).

Regulation is one of the state's core functions. It is also one of its classical functions. In a historical perspective the state engaged in regulation long before government also took upon it to provide welfare services to its citizens. Regulation defines the border between state and society, government and market (*J.G Christensen, 2010*). Regulations are indispensable to the proper functioning of economies and societies. They underpin markets, protect the rights and safety of citizens and ensure the delivery of public goods and services. Government regulation provides rules, standards and guidance to individuals and organizations.

In addition to these active forms of intervention into the economy, Governments have wide-ranging regulatory responsibilities in the economy. Social goals, such as consumer health and environmental protection, also serve as the basis for a substantial amount of government regulation. Trading or Business licenses form part of these regulatory tools at the disposal of governments. Trading or Business licenses are licenses issued by local governments that allow individuals or companies to conduct business within the government's geographical jurisdiction. It is the authorization to start a business issued by the local government. A single jurisdiction often requires multiple licenses that are issued by multiple government departments and agencies. In addition to the trading or business license, there may be sector and product specific licenses and also occupational licenses which are issued by respective sector departments and regulatory agencies.

South Africa has committed to building a developmental state that efficiently guides national economic development by mobilising the resources of society and directing them toward the realisation of common goals. A developmental state plays an active role in guiding economic development and using the resources of the country to meet the needs of the people. A developmental state tries to balance economic growth and social development. Section 22 of the South African Constitution provides that every citizen has the right to choose their trade, occupation or profession freely and that the practice of a trade, occupation or profession may be regulated by law. The Business Act no 71 of 1991 as amended in 1993 provides for the issuing of trade licenses and permits by Municipalities to both formal and informal businesses who want to operate in their geographic jurisdiction.

**1.2. Rationale for national business licensing policy**

The Businesses Act No. 71 of 1991 is the current national legislation that governs business licensing in South Africa. The Business Act emphasised a decentralised approach and disseminated powers to issue business licenses to the Provincial Governments and Municipalities, signifying a shift from the apartheid-era legislation for business licensing. There have been amendments to the act that have seen a significant shift towards a

deregulatory approach. However, there is a good argument for further reform of the Business Act, rendering it outdated due to the rapid developments within the business licensing environment.

Unfortunately, the current system for business licensing in South Africa is based on a very broad legislative framework without a national policy framework to provide sufficient guidelines for business licensing. Contradictory policies and a lack of effective enforcement mechanisms are the outcomes due to the lack of a national policy framework for the local and provincial authorities. There is a critical need for a national policy framework to support local and provincial authorities in tailoring business licensing practices to address unique regional and local requirements.

There is also a need for a national policy that will assist in identifying, updating and modernising licensing legislation that addresses challenges related to previously disadvantaged SMMs within specific local industries and protects priority local business undertakings, fostering integration and growth in targeted sectors. The current legislation leaves much to be desired in mitigating economic shocks and disasters that would limit inspection capacity and become an unfair burden on already struggling businesses which will have difficulties complying with business requirements.

The existing training framework for licensing professionals suffers from a lack of alignment with evolving industry practices. This restricts their professional development opportunities and hinders their ability to acquire the necessary knowledge, skills, and tools to optimally perform their regulatory roles. This misalignment leads to inconsistencies in the interpretation and application of regulations, potentially compromising the quality and fairness of licensing procedures and enforcement efforts. There is also a critical need for a national policy framework that will promote a centralized online business licensing platform to streamline and integrate all licensing procedures.

### 1.3. Defining business licensing

Business licensing is a commonly used form of regulation which affects specified businesses and occupations by regulating entry into markets and conduct within markets. **Licenses** typically impose on businesses a range of conditions, obligations and rights—often in the form of a specific license, permit or concession. Breaches of specified conditions typically involve imposition of sanctions by the relevant regulatory authority—such as a fine or revocation of permission to perform an *activity* (*Policy Framework on Business Licensing Reform and Simplification, World Bank 2010*).

According to the World Bank 2010 Paper titled Policy Framework on Business Licensing Reform and Simplification, licensing does not include general registration of businesses, including for business name, taxation and statistical purposes. **Permits** are usually (although not always) a sub-set of licenses and typically focus on providing regulatory approval for a defined activity. **Business registration** and licensing reforms have many similarities, but also critical differences. That said, from the end-user perspective (e.g., the entrepreneur wanting to register a business and commence business operations) business registration and licensing should be seamless and integrated.

Licensing can be distinguished from other types of regulatory requirements by usually obliging the regulated parties to obtain a certification of compliance with regulatory obligations *prior* to the commencement of a given business activity. The criteria and policies guiding the sectors and activities which should be subject to licensing vary widely between countries. Indeed, there is no definitive list of activities that should or should not be licensed. That said, many developed and developing countries officially limit licensing to business activities affecting the following areas:

- provision of services and goods relating to human and animal health, including the manner of sale of particular goods and services;
- safety or specific risks to human life, such as the sale of pharmaceuticals, medicines and fireworks. This can also include the production, transport, storage, handling and inspections of dangerous goods;
- networked services, such as telecommunications, energy and the financial sector; gambling and related activities;
- specified financial services;
- security, businesses involved in provision of law and order services, internal security and national security;
- use of scarce resources, such as natural resources and radio frequencies; and
- environment, including protection of specific environmental amenity (such as use of national parks and reservations).

#### 1.3.1. Four features of the licensing process

The features of licenses as well as the process of obtaining and administering licenses varies greatly between and within different countries. Licensing typically involves one or more of the following four broad features:

- a) **Search and application:** 'Search' where businesses identify regulatory requirements that apply to them, by visiting the offices of regulators, searching the Internet, telephoning or e-mailing relevant officials etc. 'Application' is where businesses provide specified information (often after completing a range of specified documents/forms and providing supporting evidence, etc) to a regulator, to apply for a license to conduct specified business activities which are often in a particular sector and for a defined period of time (e.g., one or two years). In some cases, businesses applying for a license also pay a fee or charge to the regulator which is responsible for issuing and administering licenses;
- b) **Prior approval to operate which require specified conditions to be met:** The regulator receives the business application for a license, assesses and verifies the application, ensures specified conditions have been met and provides formal approval to a business to operate in a specified sector. This can include notification, where business informs a regulator that it is in compliance and can then legally deliver a good or service;
- c) **Conditions:** Where businesses are expected to comply with standards, conditions and requirements specified in the license, sometimes including payment of a regular fee or charge. These can often be very onerous for business and generate significant administrative, compliance and economic costs. License conditions can be applied prior to approval and/or after approval has been granted by the regulator; and
- d) **Enforcement:** Regulator enforces specified license conditions, standards and requirements through a variety of measures. These can include screening processes prior to approval (e.g., verification of the information provided) and verification processes after the license has been issued, such as audits and inspections etc. Enforcement mechanisms such as inspections can also generate significant and often unnecessary administrative, compliance and economic costs on business.

#### 1.3.2. Potential benefits of licensing as a regulatory tool

Developed and implemented appropriately, licenses as a regulatory tool offer a number of potential benefits, including:

- the application and notification component of the licensing process allows governments to identify, verify and contact businesses;
- prior approval allows governments to test businesses and exclude those unlikely to meet minimum standards, such as businesses or business activities which generate significant health, safety, security, environmental or other costs and/or risks;
- licenses can allow the controlled use of valuable and scarce community resources, such as telecommunications spectrum, forests or fisheries; and
- licensing conditions can often be modified relatively easily resulting in adaptable and responsive regulation (including for sectors such as telecommunications where technologies are changing and evolving rapidly).

### **1.3.3. Potential disadvantages of licensing**

However as indicated above there are also significant costs and inherent risks which are often associated with the use of licenses to obtain policy goals. In most countries poor business licensing practices are generally accepted as a serious regulatory constraint to the business enabling environment. Direct costs on business can include unnecessary duplication and inconsistencies, delays, uncertainties and formal (and informal) compliance activities (including administrative, compliance costs and out of pocket expenses) associated with obtaining a license and complying with license requirements. Indirect costs on business and the broader community include lower levels of investment and economic activity, revenue foregone, lower employment, skills development, reduced technology transfer and economic growth.

In sum, the key risks and costs which can be generated by licensing include:

- unnecessarily restrict entry into a market and/or competition within a market;
- providing barriers to businesses operating in the informal sector moving to the formal sectors;
- severely limit the supply of important goods and services (e.g., taxis or medical services);
- result in standards being unnecessarily high and otherwise distortive;
- be costly and/or difficult for governments to administer and properly enforce; and licenses can be misused to provide a highly inefficient and costly way of collecting revenue.

### **1.3.4. Types of business licensing**

The following types of business licenses are common in many jurisdictions:

#### **1.3.1.1 General Business License or License to Conduct Business**

A general business license or a license to conduct business is a license and or permit issued by a local government that allow individuals or companies to conduct business within the government's geographical jurisdiction. It is the authorization to start operating a business withing that local jurisdiction issued by the local government.

#### **1.3.1.2 Sector or Industry Specific License at Provincial or National Level**

Sector or Industry specific licenses are licenses that regulate industries that may impact public health, safety, and national security. These license may be issued at either National or Provincial level or both. Examples of business activities which may require a sector or industry specific license include:

- construction;

- mining exploration, extraction and transportation;
- establishing and operating a bank or financial services;
- importing, exporting or trade in defined types of goods and services;
- use of particular equipment or production, transport, storage, handling and sale of specified materials (such as explosives, dangerous chemicals or pesticides);
- discharging gas, liquids or solid waste; and
- other requirements affecting doing business in particular sectors or for specific ed activities,
- including those which impact directly on national security (e.g., use and storage of weapons or other sensitive goods).

#### 1.3.1.3 Permits

Permits are often a subset of licenses. Permits can include governments providing business with permission (often in the form of a certificate or document) to enter a market and/or undertake a specified ed activity. Permits can also relate to the use of identified equipment or premises, or approval for particular one-off activities (such as commencing the construction of a building). Another example is that of permit allowing pedlars or hawkers to trade in public stalls, parks and designated areas on public streets.

#### 1.4. Global Context: Licensing

Business licenses vary between countries, states, and local municipalities. The form of constitutional structure of a country would also influence if licenses were regulated at the national level or shared between the national, provincial and local government spheres. A survey by DLA Piper, showed that out of fifty-five (55) countries, thirty-three (39) required a general business license and additional licenses while twenty-two (16) did not require a general business license but other types of license are required.

<b>Table 1: Comparison of license requirements in various Countries (DLA Piper Report 2018)</b>	
<b>License Required to conduct Business. = 39 Jurisdiction</b>	<b>License Not required to conduct Business. = 16 Jurisdiction</b>
Austria, Bahrain, Brazil, Canada, China, Colombia, Czech Republic, Egypt, France, Germany, India, Indonesia, Israel, Italy, Japan, Luxembourg, Malaysia, Mauritius, Mexico, New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Puerto Rico, Romania, Russia, Saudi Arabia, Singapore, South Africa, Spain, Taiwan, China, Thailand, Turkey, Ukraine, United Arab Emirates United States,	Argentina, Australia, Belgium, Chile, Denmark, Finland, Greece, Hong Kong, SAR, Hungary, Ireland, Netherlands, Portugal, South Korea, Sweden, Switzerland, United Kingdom, Vietnam



## 1.4.1. Comparative Analysis: Licenses and Permits

A business licences benchmarking study undertaken by the Australian Bureau of Industry Economics also shows different approaches to business licensing with four (4) out of five (5) countries had a “general business license/license to conduct business” requirement amongst other requirements for starting a business.

<b>Table 2: Australian Business Licensing Benchmarking Study</b> <b>Minimum licence and permit requirement: Australia, Canada and Japan, Malaysia and United States</b>					
License/Permit	Australia	Canada (British, Columbia)	Japan (Tokyo)	Malaysia (Selengor)	United States (Washington State)
<b>Planning approval</b>	Planning and development approval (municipal)	Zoning approval (regional district)	Land development permit (prefectural)	Planning approval from State Economic planning	Development permit (municipal)
<b>Building approval</b>	Building approval (municipal) approval to occupy (municipal)	Building permit (municipal)	Building permit (prefectural) Registration of completion of construction (prefectural)	Building approval (municipal) Certificate of fitness (municipal)	Building permit (municipal) Certificate of occupancy (municipal)
<b>Business name or incorporation</b>	Registration of a business name(state consumer affairs office)or registration as a limited liability company (Australian) Securities Commission	Registration of business name or incorporation as a limited liability company (Provincial Register of Companies)	Registration of incorporation (legal affairs bureau, ministry of justice)	Registration of a business name (personal name) on identification card or trade name Registrar of business or registration as a Malaysian company with Registrar of Companies.	Trade name registration or fling certificate of limited Partnership or Articles of Incorporation for a corporation with Corporation Division Office of Secretary of State (state)endorsement under master licence - annual renewal
<b>Licence to conduct business</b>	None	Business licence (municipal)	Registration for place of business (labour standards inspection office Notification of the establishment of a business (prefectural)	Business licence (municipal)	Application for united business identifier under Master Licence (state) Business or trading licence (municipal)-may not apply in all cities or countries

### 1.5. Comparative Analysis: General Business License or License to Conduct a Business

Globally, many jurisdictions require a general business license for businesses operating in various industries. By comparing to similar legislation in other countries, valuable insights can be gained into its effectiveness and identify potential areas for improvement. Table 3 (page 10) shows a comparative analysis of South Africa's Business Act No 71 of 1991 with Botswana, Japan, Alaska, Malta, Zambia, Belize, Kenya, and Uganda's business licensing legislation. This analysis probes the key provisions of the Acts, exploring its strengths and weaknesses in comparison to selected regulatory systems from the benchmarked countries. The analysis shows that the purpose, scope, and licencing requirements are similar for most of the benchmarked countries. The main difference is the approach to the business licensing system. A nationwide approach is administered by a ministry in some of the benchmarked countries and others implement systems administered by the national and local authorities. South Africa's business licensing is more focused on decentralization and local control over licensing, while other benchmarked countries like Malta put more emphasis on central government oversight. South Africa's business licensing process is more complex when compared to Botswana, which has a simpler licensing process for low-risk businesses. However, Botswana has more comprehensive business licensing regulations.

Table 3: South Africa's Business Licensing Benchmarking Analysis with Botswana, Japan, Alaska, Malta, Zambia, Belize, Kenya, and Uganda

Feature	Purpose	Scope	Licensing Requirements	Licensing System	Enforcement
<b>South Africa's Businesses Act 71 of 1991</b>	Repeal and amend laws regarding business licensing and shop hours, new provisions for licensing and business operations. Simplify procedures, ensure fair competition	Applies to all businesses in South Africa, with some exemptions.	Requires licenses for specific businesses listed in Schedule 1 (e.g., food services, health facilities, entertainment).	Three-tier system: National, Provincial and local authority licensing. Power is given to the provinces to appoint municipalities as local authorities.	Enforcement of the Act lies with Local authorities and inspectors.
<b>Botswana Trade Licensing Act</b>	Regulate the carrying on of businesses and trades in Botswana; promote economic development and fair competition. Regulate and license businesses, promote economic development, encourage formalisation	Applies to all businesses and trades operating in Botswana, with some exemptions.	Requires licenses for all businesses, categorized by type and risk profile.	Single-tier system: Nationwide licensing by Trade & Industry Ministry.	Enforcement of business licensing legislation is done by Trade Licensing Board and local authorities.
<b>Japanese Business Licensing Act (Shōgyō Menkyo Hō)</b>	Promote economic development through licensing businesses. Maintain public order and safety through licensing businesses. Protect consumers from unfair trade practices.	A defined list of businesses designated by the government, primarily in sectors like food, beverages, restaurants, entertainment, and healthcare.	The type of license required depends on the type of business, where some businesses require multiple licenses.	Two-tier system: Licenses are issued by the Ministry of Economy, Trade and Industry (METI) or local governments.	Enforced by local governments and relevant ministries. Non-compliance with the Act can result in fines or license revocation.

Feature	Purpose	Scope	Licensing Requirements	Licensing System	Enforcement
<b>Alaska Business Licensing Act - AS 43 70</b>	Establishes licensing requirements for businesses operating within the state of Alaska.	Applies to businesses operating within Alaska, regardless of their legal structure (sole proprietorships, partnerships, LLCs, etc.)	Applies to a wide range of businesses operating in Alaska, including corporations, partnerships, and sole proprietorships.	Two-tier system is implemented at both the state and local level.	Enforcement is handled by various state and local agencies depending on the type of license or permit
<b>Malta Trade License Act</b>	Regulate and control the issuance of trade licences to businesses in Malta.	Applies to all businesses operating in Malta, with some exemptions.	Licenses are required for all businesses operating in Malta, with different categories and fees depending on the type of business.	Two-tier system is implemented by the Trade Department and at local level.	Responsibility of the Trade Department and local councils. Penalties for non-compliance include fines and closure of business.
<b>Zambia Trades Licensing Act</b>	Primarily regulates the issuing and conditions of trade licenses for businesses in Zambia.	Applies to all businesses operating in Zambia, with some exemptions for specific sectors like agriculture and informal markets.	Vary based on type and location of business. May include proof of business registration, tax compliance, and meeting minimum standards for health and safety	Single-tiered system with the Ministry of Trade and Industry as the primary licensing authority	Enforcement of the Trades License Act primarily lies with the Ministry of Trade and Industry and local authorities.
<b>Belize Trade Licensing Act</b>	Regulate and control businesses for economic development and public safety.	Applies to all businesses operating in Belize, with specific categories requiring licenses outlined in Schedule 1.	Requires licenses for specific categories of businesses in Schedule 1, issued by the Trade Licensing Unit within the Ministry of Trade.	Single-tier system with the Ministry of Trade and Investment as the primary licensing authority.	Trade Licensing Unit and authorized officers have powers to inspect businesses and enforce the Act, with penalties for non-compliance.

<b>Kenya Licensing Laws (Repeals and Amendments), No. 17 of 2006</b>	To improve the efficiency and effectiveness of business licensing in Kenya, thereby encouraging investment and economic growth.	The Licensing Laws apply to specific sectors and activities listed in the Act and its schedules.	Licenses are required for activities listed in the Act and its schedules, but local authorities have broader discretion to add or remove activities and impose conditions.	Single-tier system: The Act establishes a single licensing authority at the national level, the Business Regulatory Authority (BRA).	Enforcement is primarily the responsibility of the Business Regulatory Authority (BRA) and other relevant agencies. The Act introduces new penalties for non-compliance with licensing requirements.
<b>Uganda Trade (Licensing) Act</b>	To create a centralised framework for business registration and licensing.	Applies to specific business activities requiring licenses, not all businesses.	Trading licenses are required for almost all businesses to trade legally but the type of license varies depending on the type of business.	Two-tier system: Uganda Registration Services Bureau (URSB) handles company registration and some licenses. Local governments issue others.	Uganda Registration Services Bureau and other relevant authorities enforce legislation.

Feature	Licensing Process	Fees	Appeals	Regulations	Key Differences
<b>South Africa's Businesses Act 71 of 1991</b>	Application to licensing authority (local or provincial). May involve inspections and public hearings.	License fees vary based on business type and location.	Right to appeal licensing decisions to relevant authority or court. Formal appeal process against licensing decisions.	Relevant Minister empowered to make regulations regarding licensing, shop hours, etc.	- Focus on specific types of businesses vs. all businesses. - More complex licensing process in South Africa. - Different appeal processes.
<b>Botswana Trade Licensing Act</b>	Application to Trade Licensing Board or local licensing authority. Simpler process for low-risk businesses. Streamlined online application process.	License fees vary based on business type, risk profile, and location.	Right to appeal licensing decisions to Trade Appeals Board or High Court. Informal appeal process through Ministry review.	Relevant Minister empowered to make regulations regarding licensing, fees, business conduct, etc.	- Simpler licensing process for low-risk businesses in Botswana. - More comprehensive regulations in Botswana.
<b>Japanese Business Licensing Act (Shōgyō Menkyo Hō)</b>	The licensing process is handled by local government offices. Applicants submit documents and undergo inspections specific to their industry and location.	Fees vary depending on the type of license. Generally, fees are higher than those in South Africa.	Japanese Act allows for direct appeals to the Governor.	Businesses must comply with all applicable laws and regulations. Regulatory compliance is monitored by the Ministry of Economy, Trade and Industry.	More interventionist, emphasizing government control over market activities and protecting existing businesses.
<b>Alaska Business Licensing Act - AS 43 70</b>	Streamlined process with standardised forms and online applications. Fewer steps and regulations compared to South Africa.	Generally lower fees compared to South Africa, with some exceptions. Flat fees or tiered based on business size or activity.	Limited appeal process, usually through administrative review within the Department of Commerce.	Regulations vary by industry, with some additional requirements for specific sectors like food safety or liquor sales.	- Focus on licensing requirements for business operation. - Less emphasis on corporate structure and governance. - Fewer regulations for smaller businesses.
<b>Malta Trade License Act</b>	Applications submitted to Central Licensing Unit or local councils. Streamlined process for certain businesses. Appeals process available.	Set by law and differ based on business class and location.	Appeals against licensing decisions can be made to the Appeals Board within the Trade Licence Unit.	Regulations issued by the Ministry of Economic Development.	South Africa's Business Act is more focused on decentralization and local control over licensing, while Malta's Trade License Act puts more emphasis on central government oversight.

Feature	Licensing Process	Fees	Appeals	Regulations	Key Differences
<b>Zambia Trades Licensing Act</b>	Paper-based application process with longer processing times.	Fees are set by the Ministry of Trade and Industry and can be relatively high.	Appeals process exists, but less well-defined and documented compared that of South Africa's.	Regulations primarily focused on trade licensing. Other regulations, like labour laws and environmental standards, exist but may be less stringent compared to South Africa.	Zambia's legislation has been amended less frequently than South Africa's. Has less emphasis on specific permits and sectoral regulations. System offers wider exemptions for small businesses.
<b>Belize Trade Licensing Act</b>	Standardized application process through the Trade Licensing Unit, with online and paper options available.	License fees vary based on business category and size, with a standard schedule outlined in the Act.	Appeals against licensing decisions can be made to the Minister of Trade, then the Supreme Court.	The Act is more detailed, including specific regulations regarding business premises, signage, employee qualifications, and health and safety standards.	More streamlined and focused on facilitating business registration and licensing.
<b>Kenya Licensing Laws (Repeals and Amendments), No. 17 of 2006</b>	Decentralized, with different government agencies responsible for licensing specific activities. The Act introduces a single business permit (SBP) to simplify procedures, but the application process can still be complex depending on the specific activity.	License fees are set by the Minister and are uniform across the country.	Appeals are made to an Appeals Tribunal established under the Act.	May impose conditions related to business operations, qualifications, and environmental protection	Aims to streamline and simplify the licensing process across various sectors, promoting economic growth and reducing bureaucratic hurdles.
<b>Uganda Trade (Licensing) Act</b>	Predominantly done online through the e-Registry portal	Set fees based on the type of license and business activity	Appeals can be done with the Business Licensing Appeals Tribunal if the trade license has been denied.	Regulations issued by the relevant ministries and regulatory agencies along with the Uganda Registration Services Bureau	More complex system with multiple licenses based on specific activities.

## SECTION 2. THE SOUTH AFRICAN CONTEXT

### 2.1. Broad overview: 1652 -1950

Trade regulation in South Africa has a long history beginning already in colonial times and continuing into the establishment of the Republic. It was also invariably inter-linked with colonial laws and apartheid laws especially laws that regulated access and ownership of land, housing and trade on the basis of race discrimination.

In 1651, on the advice of two of their officers who had been shipwrecked in Table Bay and had spent a year there, the Directors of the Dutch East India Company (VOC) decided to establish a small permanent station at the Cape of Good Hope. In doing so they did not hope for commercial gains in South Africa itself, and indeed the Cape station was run at a very considerable loss throughout the 143 years of its existence. (*Robert Ross, The Cape of Good Hope and the world economy, 1652-1835*)

From 1657 servants of the Company were encouraged to leave its employment at Cape Town and to set up as farmers. By 1700 the first agricultural free-burghers, men (and a few women) began to settle at the Cape to engage in a whole range of other occupations. Most importantly, they became keepers of drinking and lodging houses, serving the needs of the passing ships. From the earliest days, though, they began to fulfil a much wider range of urban functions, as shopkeepers and general traders, as bakers and brewers, as builders and carpenters, as smiths, coopers and potters and even as silversmiths. With an increasingly large Company establishment, Cape Town quickly grew into a modest town. By around 1700, then, the economic basis for the colony's continued existence had been laid.

The sale of foodstuffs was organised in a number of ways. The retailing of wine was closely contracted and there were also licensing systems for butchers and bakers. However, the retail sale of cakes and biscuits, fish, fruits and vegetables was largely in the hands of die slaves. Initially, retailing by slaves had been organised by the owners of the bakeries, the market gardens in Table Valley and, perhaps, the fishing smacks, but increasingly the slaves themselves came to act as petty entrepreneurs, agreeing to turn over a fixed sum to their master or mistress at the end of the week. If they failed, they risked a flogging, especially as it was believed (generally erroneously) that slave entrepreneurs gambled their proceeds away. A few of die successful slaves were able to use this system to build up their own capital, and thus to purchase their own emancipation. For this reason, there were considerable numbers of fruit-sellers and small retailers among the Free Blacks, who also owned Cape Town's first 'chop-houses' or cheap restaurants, usually in the vicinity of the harbour.

In the country districts a similar process of specialisation occurred, although the continuing expansion of the Cape colony meant that it had to be repeated regularly in district after district. The first persons who commercially penetrated a given district were the smousen. The smousen made it their business to wander about everywhere in the Interior, from one District to another, with goods and merchandise, conveyed on wagons, horses or pack oxen. Many of the smousen were financially backed by Cape Town merchants, including officials of the VOC. were already providing the financial backing for such trading trips. From 1774 on, until at least the 1830s, these travelling smousen were a regular feature of the Cape Colony's countryside. They also penetrated into Xhosa territory, north to the Tswana and the Ndebele and, after the Great Trek, into the Orange Free State and the Transvaal.

The land issue in so far as the indigenous African people in South Africa were concerned, was settled when their resistance succumbed primarily to military defeats. However, the issue of land ownership by the small but thriving community of Indians, who came to South Africa by invitation and inducement as free men, began to shape the modus operandi of dealing with people of colour. Prior to the first laws enshrining the principle of compulsory segregation, there were three laws that contained the seeds of apartheid legislation namely:



1. The '1849 Grondwet' of the South African Republic provided that Africans were not allowed to reside near town lands except with Volksraad permission.
2. Volksraad Resolution 159 of 1855 provided that non-burghers could not own fixed property and coloured persons could not become burghers.
3. Volksraad Resolution 104 of 1871 provided that no erf holder in any new village shall be entitled to allow the congregating of coloured persons on his erf except for employees.
4. Free State Ordinance 5 of 1876 dealing with the right of coloureds, precluded them from owning property unless one parent of the person was white.

In about 1881 when the first Indian settlers came to the Transvaal, they were free from restrictions of any kind. In 1884 the Transvaal Chamber of Commerce submitted a memorandum complaining about trade competition with Europeans. Many other memoranda followed. In 1885 the Wragg Commission was appointed in Natal and reported two years later that Indians had become formidable rivals in trade. It also referred to petitions from the Pietermaritzburg Chamber of Commerce.

In 1885 the anti-Asiatic agitation, primarily in the commercial field, resulted in the first formal group areas legislation in the country, namely Law 3 of 1852 of the Transvaal, which provided that:

1. Asiatics could not become citizens and were consequently not entitled to the franchise, nor could they own fixed property;
2. they had to reside and trade in *locations* set apart for them;
3. the government was empowered to set aside locations.

In 1908 two laws were passed by the Transvaal Government which had considerable effect on the trading rights of Asiatics. They were the Townships Amendment Act 34 of 1908 and the Gold Law Act 35 of 1908. In 1908, two further attempts were made in Natal to have bills adopted removing the rights of Asiatics to hold trade licences, but these Bills were, however, disallowed by the Imperial Government.

The Natal Act 22 of 1909 was enacted as a result of a threat by the Indian Government to stop the emigration of further labourers unless the licensing laws were relaxed for Indian traders. The Act provided for an appeal to the Supreme Court against refusals to renew trade licences.

In 1948 the National Party government on coming into power appointed two more committees; the Asiatic Land Tenure Laws Amendment Committees; one for Natal and the other for Transvaal and they submitted their report to the government in March 1949. A draft bill attached to the report became Act 53 of 1949.

The final report of the Joint Committee recommended inter alia,

- the replacement of Act 28 of 1946 by a comprehensive Act which should apply throughout the then Union of South Africa;
- that the population of South Africa should be classified into racial groups for purposes of the proposed legislation;
- that exclusive areas should be established for each racial group;

- that a certain measure of local self-government be given to members of the group concerned in such areas subject to the supervision of neighbouring European local authorities;
- that the group areas should be small relative to the whole of the country and the rest of the country should then become a controlled area in order to curb movement outside group areas;
- that suitable measures to curb the "nominee system" be incorporated in the proposed legislation;
- the establishment of a land tenure advisory board, its membership being confined to Europeans;
- that measures aimed at curbing Asiatic traders from trading in rural areas carrying large African populations be introduced. This could be achieved by the creation of "defined" areas. Traders in such "defined" areas would have to apply for permits.

In 1950 the net was cast countrywide under the blanket sweep of the Group Areas Act.

## 2.2. Developments during the 1980s to the early 1990s

The 1980s represented a period of deregulation in which the policy climate surrounding small-scale industry began to shift from outright repression to tolerance and, in some instances, initiatives for the limited promotion of black businesses. Beginning in 1980, under the leadership of the newly founded Small Business Development Corporation new efforts to stimulate small-scale black manufactures were gradually put in place as part of a wider growth strategy.

In 1987 the government issued a White Paper on "Privatization and Deregulation in the Republic of South Africa", that underlined the need to encourage entrepreneurship. This period also saw the abolition of a number of apartheid laws, initially the Influx Control Act in 1986 and subsequently the Group Areas Act, the Black Land Act, the Development Trust and Land Act, and the Population Licensing Act in 1991.

During the 1980s, much of the legal framework that the apartheid government had used for decades to control and restrict black business activity was removed. Most municipalities introduced a less restrictive approach to street vending, some health and labour regulations that negatively affected micro enterprises were removed. By the end of the '80s, restrictions on urban-based black business, which had seen blacks allowed to operate only fifty-two types of trades, businesses and professions from 1976 onwards and twenty-five before then, had been removed. Although these changes represented a long-awaited relief to the majority of the country's small firms, there was also opposition to this process of deregulation from three quarters which includes organised labour, consumer groups and established business.

A further development came in 1991 with the enactment of the Businesses Act no 71 of 1991, which repealed and amended a wide range of licensing laws relating to many different types of businesses as listed below:

### Cape of Good Hope

- Ordinance No. 16 of 1976; Shop Hours Ordinance, 1976 - *Amendment*
- Ordinance No. 17 of 1981; Licences Ordinance, 1981 - *Repeal*
- Ordinance No. 12 of 1985; Licences Amendment Ordinance, 1985 - *Repeal*
- Ordinance No. 19 of 1986; Licences Amendment Ordinance, 1986 - *Repeal*

### Natal

- Act No. 24 of 1878; Law to provide for the better Observance of the Lord's Day, commonly called Sunday  
- *Repeal*
- Ordinance No. 11 of 1973; Licences and Business Hours Ordinance, 1973  
- *Amendment*
- Ordinance No. 22 of 1985; Statutory Bodies (Periods of Office)  
- *Repeal of section 8*

#### Orange Free State

- Ordinance No. 19 of 1952; Shop Hours Ordinance, 1952 - *Amendment*
- Ordinance No. 8 of 1972; Licences Ordinance, 1972 - *Repeal*
- Ordinance No. 14 of 1974; Licences Amendment Ordinance, 1974 - *Repeal*
- Ordinance No. 7 of 1977; Licences Amendment Ordinance, 1977 - *Repeal*
- Ordinance No. 5 of 1981; Licences Amendment Ordinance, 1981 - *Repeal*
- Ordinance No. 8 of 1984; Licences Amendment Ordinance, 1984 - *Repeal*
- Ordinance No. 14 of 1986; Licences Amendment Ordinance, 1986 - *Repeal*

#### Transvaal

- Ordinance No. 19 of 1974; Licences Ordinance, 1974 - *Repeal*
- Ordinance No. 17 of 1979; Licences Amendment Ordinance, 1979 - *Repeal*
- Ordinance No. 10 of 1980; Licences Amendment Ordinance, 1980 - *Repeal*
- Ordinance No. 5 of 1982; Licences Amendment Ordinance, 1982 - *Repeal*
- Ordinance No. 12 of 1985; Licences Amendment Ordinance, 1985 - *Repeal*
- Ordinance No. 8 of 1986; Shops Hours Ordinance, 1986 - *Amendment*

#### Republic

- Act No. 8 of 1917; Lord's Day Act (Natal) Amendment Act, 1917 - *Repeal*
- Act No. 38 of 1927; Black Administration Act, 1927 - *Amendment*
- Act No. 102 of 1982; Black Local Authorities Act, 1982 - *Amendment*
- Act No. 9 of 1987; Rural Areas Act (House of Representatives), 1987 - *Amendment*
- Proclamation No. 208 of 1989; Removal of certain licensing and shop hours restrictions on economic activities - *Repeal*

The Businesses Act was amended in 1993 to amongst others, provide for the power of the Minister to amend Schedule 2 of the Act, which lists the businesses that require a business license, as well as provide powers for licensing authorities to impound goods and equipment where appropriate.

#### 2.3. Developments from 1994

Since 1994, a substantial body of new laws has emerged from all levels of government to fulfil the mandate presented by the Constitution. The journey towards a constitutional, democratic order began with the adoption of the Constitution in 1996 and has continued with the enactment of new laws as well as the amendment and or repeal of old laws. This effort has created new institutions, repealed some old exclusionary arrangements and changed the lived experience of many South Africans (*High Level Panel (HLP) on the Assessment of Key Legislation, Parliament, 2017*). This effort has been supported and bolstered by the South Africa Law Reform Commission (SALRC) whose mandate is "to do research with reference to all branches of the law of the Republic and to study and investigate all such branches in order to make recommendations for the development, improvement, modernisation or reform thereof, including (a) the repeal of obsolete or unnecessary provisions;

(b) the removal of anomalies; (c) the bringing about of uniformity in the law in force in the various parts of the Republic; (d) the consolidation or codification of any branch of the law; and (e) steps aimed at making the common law more readily available.

### 2.3.1. South Africa Law Reform Commission

- 2.3.1.1. The SALRC has established that there are 2800 Acts in the statute book. A 2004 provisional audit by the SALRC of national legislation that has remained on the statute book since 1910 established that roughly 2 800 individual statutes existed at that time. These comprised principal Acts, amendment Acts, private Acts, additional or supplementary Acts, and partially repealed Acts.
- 2.3.1.2. In its October 2016 provisional review, the SALRC identified 226 statutes that are administered by the then Department of Trade and Industry (DTI).
- 2.3.1.3. Of these 226 statutes, five had been transferred to two other departments whereby in February 2010 the administration of the Competition Act 89 of 1998 was transferred to the Department of Economic Development; and on 15 July 2014 four Acts with their amendment Acts were transferred to the Minister of Small Business Development these being (a) The administration of Section 2A of the Small Business Development Act 112 of 1981, (b) the Close Corporations Act 69 of 1984, (c) National Small Enterprise Act 102 of 1996 and (d) the Co-operatives Act 14 of 2005. The Businesses Act 71 of 1991 was only transferred to the Department of Small Business Development on the 27 October 2020.
- 2.3.1.4. In this 2016 review, the SALRC proposed that nineteen (19) Act be completely repealed, and also made recommendations on the amendments of a large number of Acts. The Businesses Act 71 of 1991 was however not identified for repeal or amendment in this review.
- 2.3.1.5. It should be noted that the primary focus of the SALRC is to test the constitutionality of old legislation, and not necessarily the modernisation, and legislative and regulatory improvements.

### 2.3.2. The High-Level Panel on the Assessment of Key Legislation

In addition to the continuing work of the SALRC, Parliament established "The High-Level Panel on the Assessment of Key Legislation" (*HLP*) was appointed in December 2015 to undertake the task of assessing the content and implementation of legislation passed since 1994 in relation to its effectiveness and possible unintended consequences. The Panel's mandate was to review legislation, assess implementation, identify gaps and propose action steps with a view to identifying laws that require strengthening, amending or change. The *HLP* concluded and submitted its report on November 2017.

- 2.3.2.1. In relation to the private sector's role in job creation, some submissions were received that focused on the desirability of requiring employers to draw staff from local communities. This issue arose especially frequently in relation to new mining activities, with mining firms accused of bringing outsiders into work on mines despite high levels of unemployment among local residents.
- 2.3.2.2. Relatedly, a number of submissions were made about the need to protect local traders and retailers from competition from foreigners, some of which was deemed unfair because foreigners may seek more aggressively to avoid tax (by, for example, staying out of the formal banking system).

- 2.3.2.3. In relation to self-employment and business formation, submissions were made to the effect that emerging entrepreneurs were unable to access affordable finance because of an absence of collateral and a financial track-record. In this regard, the absence of title deeds for land in rural areas and for homes in urban areas against which potential borrowers could secure finance was identified as a particular challenge that government should address.
- 2.3.2.4. In addition to the suggestions relating to the expansion of employment, many submissions from members of the public focused on two other issues relevant to the reduction of poverty and inequality: the low pay many workers receive and the degree to which government's poverty alleviation programmes achieve their goals.
- 2.3.3. While both the SALRC and the HLP did not recommend the review of the Businesses Act, the need for this legislation to be reviewed had been realised not only by Government but also by the very stakeholders that the Act impacts on, especially SMMEs both formal and informal who are involved in street trading.
- 2.3.4. The review of the Businesses Act began around 2010 and culminated in the gazetting of the Licensing of Businesses Bill on the 18<sup>th</sup> of March 2013 by the then Minister of Trade and Industry. This further extended to 30th April 2013. Public consultation suggested to the Minister that the time given for consultation was not enough. As a result, the Minister established a task team with particular terms of reference to consult with the general public and constituencies. This Task Team submitted its report in early 2014 for consideration by the Minister.
- 2.3.5. With the establishment of the Department of Small Business Development in 2014, two pieces of legislation were initially transferred from the DTIC to DSBD, viz. the National Small Enterprise Act and the Co-operatives Act. In the process of discussing the further transfer of functions, it was agreed that the Businesses Act would be transferred to the DSBD, but this process was never completed and finalised through a Presidential proclamation. In October 2020, the Businesses Act and thus the draft Licensing of Business Bill was assigned to the DSBD by Presidential proclamation.

#### **2.4. DSBD 2022 survey on business licensing**

The Department recently conducted a survey on the state of licensing in Municipalities and some of the key questions and findings are outlined below:

- **Does the municipality have dedicated unit for business licensing?**
  - From the survey conducted 53% of the municipalities indicated they are having a dedicated unit specifically for business license. This is indication that most of the municipalities in the country they are implementing Business licensing Act 71 of 1991. While 47% of the mostly in rural areas do not have a dedicated unit for business licensing, it has been incorporated in the Local Economic Development (LED) Unit.
- **Where does business licensing function sit within the structure of the municipality?**

- Number of the municipalities at 77% indicated that business license function sits within Local Economic Development (LED) unit of the municipalities. While some of the metro like City of Tshwane, they do have business licensing on the structure as business regulation.
- **Is there enough capacity in terms of personnel in the Business Licensing unit to assist in the process of business license applications? How is the unit capacitated?**
  - In terms of capacity or personnel municipalities indicated that there are 13 personnel who are responsible for process business license. The same personnel are also responsible for LED work at the municipalities.
- **Which systems is the municipality using for applying for business licensing?**
  - From the graph above it show that 93% of municipalities in the country still use manually system to process application. Only 7% use electronic system. This was also visible during lockdown when SMMEs and informal traders had to queue long line to apply for business license or permit.
- **How many businesses are currently licensed/permitted by the municipality?**
  - From the survey it was also gathered that the numbers of business licensed by municipality participated they are less than 100. While one look at most township, rural they are lots of business activities taking place, sell of meals to perishable goods, hair salons and hardware.
- **Is there any business license application backlog that is related to capacity constraints?**
  - Participating municipalities highlighted a capacity constraint resulting to backlog of business license. There are number of application with few personnel to handle applications.
- **Are all the businesses which have acquired a business license operating within the sectors which are stipulated by the Business Act No 71 of 1991?**
  - Larger number of business which applied for business license they operating business in sale of meals or perishable food stuff. This is common in all municipalities sale of meals at taxi ranks and busy city is daily activities in South Africa. The sale of perishable food, like vegetables is also common in every municipality.
- **In your view, what cause the backlog in application of the business licences?**
  - The municipalities indicated the cause of the backlog in processing business license application is lack of capacity or personnel. It took time for the municipalities to process application due to 2-4 people managing the process.
- **Does your municipality keep a database of all licensed business around jurisdiction/area?**

- 80% of the municipalities responded positively with regard to data capturing of licensed business at their jurisdiction. This mean municipalities there are aware of the business activities operated by businesses.
- **How does municipality implement Business licensing Act of No 71 of 1991 towards business?**
  - It has been indicated that the municipalities implement business licensing Act No71 of 1991 through partnership with other government agencies. In most case they conduct a joint operations with other state agencies e.g. SARS, SAPS and national department responsible for trade.
- **Do you think the current municipal by-laws are aligned to Provincial Legislation/Business Licensing Act No71 of 1991?**
  - 30% of the municipalities indicated that, the current by-laws they are aligned provincial legislation. Meaning the remaing 60% of municipalities their by-laws are not aligned to the Act 71 of 1991, resulting in some when faced with ligation case losing them based on non-aligned to main Act.
- **In terms of fine imposed by the municipality to businesses, is the fine below the threshold set by Business licensing Act No 71 of 1991 of R1000?**
  - In repsonding to the answer above, 27% of municipalities are complying with threshold set by Business licensing Act 71 of 1991. Their fines range from R200 to R500 which is within the threshold. While others are above the set threshold as stipulated in the Act.
- **The current fine or penalty which are issued by enforcement officers to business are they equivalent to the value of goods impounded or equipment?**
  - Larger number of municipalities at 72% alluded to fact that when enforcement office issues fine to business, they make sure penalty is equivalent to the value of goods.
- **Do you think municipal enforcement officer when they confiscate goods from informal business are complying with Business Licensing Act No 71 of 1991 or is wrongly implemented?**
  - Municipalities indicated that, their law enforcement office when confiscate goods from informal business are quided by their by-laws that aligned to Act of 1991.
- **As the municipality do you think all the sectors of business operating in the area need to be licensed?**
  - In response to above question 97% of municipalities would like to see all the sectors business operating at their area licensed. As it stand now not all business according to Act of 1991 are licensed.
- **In your view do you think a five-year validity period of a license/permit will reduce non-compliance of businesses?**

- The five years period of business licence is seen as good proposal because it can reduce non-compliance of business. This could result in number of business also spending less time at municipal offices to apply business license. They could focus on their business and less confiscation of their good by enforcement officers.
- **Are there any challenges encountered in the execution of business licensing/permit function?**
  - The number of municipalities indicated that they do experience challenges in the execution of business license. The major one has been alluded before is the issues of capacity or personnel by municipalities. Lack of capacity by municipalities resulted into incorporation of the function of business license with LED function leading to confusion in responsibilities.

In summary, it was found that a large number of municipalities in the country have incorporated the function of Business license to LED. This led to confusion to official and backlog on business license functions. The issue of capacity was also mentioned as contributor to backlog in rendering services to business. The survey also found that a large number of municipalities in the country still use manual application system in application process of business license. The holders of business license in all municipalities they are operating their business in sale of meals and perishable food stuff. In most case the implementation of business license by municipalities is conducted by joint operations of state agencies, such as SAPS AND SARS. Municipalities keep a database of business license they issue to business.



**SECTION 3. GUIDING PRINCIPLES OF SOUTH AFRICA'S NBLP****3.1. UN Treaties and Protocols**

South Africa conducts its foreign relations in accordance with the values and principles set out in the Constitution of the Republic of South Africa of 1996. While it is the President's prerogative to negotiate and sign all international agreements; all international agreements must be tabled in Parliament. Agreements that are not of a technical, administrative, or executive nature bind South Africa only after being approved by Parliament, which also approves the country's ratification of or accession to multilateral agreements. South Africa works together closely with the following international bodies and organisations to ensure that it benefits from trade, investment, industrialisation and innovation to address the triple challenges of poverty, inequality and unemployment, as espoused in the National Development Plan:

- World Trade Organisation.
- World Economic Forum.
- Organisation for Economic Cooperation and Development.
- International Labour Organisation.
- World Intellectual Property Organisation.

As a member of the World Trade Organisation and United Nations (UN), South Africa has to adhere to the rules and regulations that are set out in the various multilateral treaties, most notably the obligation to give national treatment. South Africa has also acceded to the 1951 Convention Relating to Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. In addition to these specific treaties South Africa has also acceded to other human rights instruments, and has in so doing, assumed certain obligations to receive and treat in its territory refugees in accordance with the standards and principles established in international law.

**3.2. National policy principles and coordination****3.2.1. National Development Plan**

In diagnosing the economic challenges of South Africa, the NDP points out that the "fragility of South Africa's economy lies in the distorted pattern of ownership and economic exclusion created by apartheid policies. The effects of decades of racial exclusion are still evident in both employment levels and income differentials. Some structural challenges are specific to South Africa, including:

- High levels of inequality and a relatively small market.
- Skewed ownership and control. The corporate landscape of South Africa has changed remarkably since 1994. However, it remains highly concentrated. This poses a barrier to business entry and expansion in key markets, which are essential for employment creation".

According to the NDP, "some of the long-term solutions to the skewed ownership and control is to grow the economy rapidly and focus on spreading opportunities for black people as it grows. Government procurement, licensing and other forms of economic rents should help reduce racial patterns of ownership of wealth and income. The NDP addresses licensing as a policy lever without referring to the 'general business license' but instead address some of the sector specific licenses; namely "energy generation and distribution; urban planning approval processes; water supply and waste-water management; the logistics platform, telecommunications; and licensing for water, minerals and environmental permits".

According to the NDP, *smart and effective* (my emphasis) licensing arrangements would not only contribute to reducing red-tape, but can also be used to drive empowerment *particularly* in mining, telecoms and broadcasting". With regards to SMMEs, the NDP calls for "a comprehensive regulatory review for small- and medium-sized companies to assess whether special conditions are required. This includes regulations in relation to business registration, tax, labour and local government".

Finally, the NDP emphasises that "Not only does the state have a role in setting the appropriate macroeconomic framework, but it must also provide the right microeconomic conditions, to ensure that the day-to-day decisions and actions of people and companies help deliver the best social and economic outcomes. Among other actions, the state must enhance regulation of market participation, identify and resolve market failures, provide appropriate public infrastructure and services, and help to lower transaction costs across the economy".

### 3.2.2. Medium-Term Strategic Framework (2019-2024)

The 2019-24 Medium-Term Strategic Framework (MTSF) was approved in 2019 as a five-year implementation plan for the Sixth Administration's priorities. The MTSF is a planned manifestation of the NDP Vision 2030 and the Election Mandate and provides a framework for the implementation of the Seven Apex Priorities. The MTSF highlights and re-emphasises the centrality of a '**Functional, efficient and integrated government**'. "A capable, ethical and developmental state underpins all seven apex priorities of the MTSF. It is a vision of strong leadership, a focus on people and improved implementation capability. Facilitating this vision into action will involve a transition to a more functional and integrated government, which is capacitated with professional, responsive and meritocratic public servants to strengthen relations and efficiency. To ensure the continued joint pursuit of a capable state, intergovernmental and citizen engagements are key enablers of this priority".

"Government needs to function efficiently and effectively to solve the development challenges of the country. In an effort to accelerate implementation and improve service delivery, government is committed to eliminating its fragmented approach to development and strengthening coordination across the public sector. Government has previously expressed intentions to establish a single public service. The Public Administration Management Act, 2014 (PAMA) provides for a more inclusive definition of Public Administration to include all three spheres of government. It also enables the transfer of staff between the three spheres of government. The challenge is the readiness of government in terms of structures, skills, finance and infrastructure to make this policy intention a reality. Transversal administrative systems are also outdated".

### 3.2.3. White paper Small Business 1995

According to the White Paper on the National Strategy for the Development and Promotion of Small Business in South Africa "establishing a user-friendly environment also calls for the simplification and standardisation of *not only procedures but also the documentation that entrenches such regulatory burdens* (my emphasise).

The following areas were identified:

- business registration and licensing;
- financial and loan applications;
- purchasing and sub-contracting (tender) document;
- export documentation and other commercial documents;
- registration of contracts at fair-trading boards;
- simplified tax return forms for small businesses;
- the collection of industrial data and other statistics.

The White Paper also called for the “appointment of a task group from among relevant government departments and concerned parties to study and make recommendations about the simplification of existing systems and to suggest improvements. Progress in this area will also be documented in the annual SMME review”.

#### **3.2.4. National Integrated Small Enterprise Development (NISED) Masterplan**

The second goal or outcome of the NISED Masterplan focuses on the reform of “Policy, laws and regulations to enable MSME growth and efficient governance”. The rationale and impact of this goal is outlined as follows:

- **Rationale and impact:** To build, monitor and encourage an enabling environment for MSMEs to formalise develop and grow, policy propositions which direct programmes and administrative efficiencies are necessary. This entails preparing and publishing, in the Annual Review of Small Business, policy direction to encourage MSME growth (Access to Finance, Markets, Infrastructure, IBDs, Entrepreneurship, etc) and recommendations of laws and regulations which require adjustment to better the business environment (Red-Tape Reduction). There are many complexities involved in building an enabling environment for business. Actions under this outcome therefore require consistent review, and political will, to adjust for the reforms and programmes necessary to enable change and uplift MSMEs growth and development. This will require many adjustments over time based on a live plan context which need to be signalled in the Annual Review for Small Business.
- **Red tape reduction and better service delivery to MSMEs:**
  - Increase efficiencies through streamlining administrative procedures, rules and regulations by applying e-Government practices to ease the burden of compliance costs and time for MSMEs to invest, grow and employ. To result in simplified, affordable and digitally led compliance which are easy to administer and comply with.
  - Review administrative procedures for business/enterprise compliance (a) by Sector (b); by Municipal Authority; (c) by Provincial Government Authorities; (d) by National Government Authorities •
  - Reports with recommendations to improve the compliance efficiencies with e-Governance practices • Implementation of e-Governance practices to improve the ease of doing business.

#### **3.2.5. White Paper on International Migration - 2017**

“South Africa, as a sovereign state, has defined borders that are recognised by approximately 200 other states into which the political and legal world is divided. As a sovereign state, South Africa reserves the right to determine who is allowed entry into the country, and under what conditions”. The Immigration Act, 2002 (Act No.13 of 2002) and partly the Refugees Act, 1998 (Act No. 130 of 1998) implement policy measures flowing from the 1999 White Paper on International Migration. The 2017 White Paper argued that the 1999 policy did not enable South Africa to adequately embrace global opportunities while safeguarding our sovereignty and ensuring public safety and national security. Therefore, the 2017 “White Paper on International Migration affirms South Africa’s sovereign right to determine the admission and residence conditions for foreign nationals in line with its national interest”. The White Paper proposes that international migration must be managed proactively and strategically in order to contribute to national priorities, such as nation building and social cohesion, inclusive economic growth and national security.

### **3.3. National legislation**

#### **3.3.1. The Municipal Systems Act , 2000 (Act No.23 of 2000, as amended)**

The Constitution of South Africa envisages a robust local government system, which can provide democratic and accountable government for local communities; ensure the provision of services to communities in a sustainable manner; promote social and economic development; promote a safe and healthy living environment; and encourage the involvement of communities and community organisations in the matters of local government. The Municipal Systems Act defines the legal nature of municipalities as part of a system of co-operative government. It also clarifies the rights and duties of the municipal council, local communities, and the municipal administration. Clarifying the rights and obligations of different parties is an important step towards strengthening the democratic contract at the local level. Many of the issues which municipalities deal with are common across local government nationally, or provincially.

The Municipal Systems Act therefore allows the national Minister or provincial MECs responsible for local government to make standard by-laws. A municipal council needs to adopt these by-laws before they apply in that municipality.

#### **3.3.2. Businesses Act, 1991 (Act No. 71 of 1991, as amended)**

The Businesses Act provides for the issuing of business licenses and permits by Municipalities to both formal and informal businesses who want to operate in their geographic jurisdiction. The Act provides that no person may carry on certain service-related businesses unless they hold a licence issued to it by the council, local authority or municipality where the business premises are situated and from which the business activity is operated. Ultimately the purpose of licences and permits, including building regulations, public safety and health requirements, is to protect the health and safety of consumers and the environment where the business operates in.

#### **3.3.3. National Small Enterprise Act 1996, (No.102 of 1996, as amended)**

To develop, support and promote small enterprises to ensure their growth and sustainability. Seda provides non-financial business development and support services for small enterprises, in partnership with other role-players in the small business development environment.

#### **3.3.4. Companies Act, 2008 (No. 71 of 2008, as amended)**

The Companies Act, 2008 (Act No. 71 of 2008) regulates the incorporation, registration, organisation and management of companies, including the fiduciary and “due care” duties and responsibilities of “directors” of a company. The purposes of the Act are amongst others to:

- Promote the development of the South African economy by :
  - encouraging entrepreneurship and enterprise efficiency;
  - creating flexibility and simplicity in the formation and maintenance of companies;

- encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation.
- Provide a predictable and effective environment for the efficient regulation of companies.
- Balance the rights and obligations of shareholders and directors in companies.
- Encourage the efficient and responsible management of companies.
- Provide for the efficient rescue and recovery of financially distressed companies in a manner that balances the rights and interests of all relevant stakeholders.

### **3.3.5. Competition Act, 1998 (Act No. 89 of 1998, as amended)**

The purpose of the Competition Act of 1998 is to promote and maintain competition in South Africa to achieve the following objectives:

- To promote the efficiency, adaptability and development of the economy.
- To provide consumers with competitive prices and product choices.
- To promote employment and advance the social and economic welfare of South Africans.
- To expand opportunities for South African participation in world markets and recognises the role of foreign competition in the Republic.
- To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy.
- To promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

### **3.3.6. Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)**

The Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) which came into effect in 2015 was established to provide a uniform system of spatial planning and land use management throughout South Africa in order for municipalities to apply land use control.

SPLUMA has instituted a framework to govern planning permissions and approvals and sets parameters for new developments and provides for different lawful land uses in South Africa. SPLUMA is a framework law, which means that the law provides broad principles for a set of provincial laws that will regulate planning. SPLUMA also provides clarity on how planning law interacts with other laws and policies.

### **3.3.7. Immigration Act, 2002 (Act No.13 of 2002, as amended)**

The Immigration Act, 2002 (Act No. 13 of 2002) regulates the lawful admission into and out of South Africa. The Act is also generally concerned with promoting migration into South Africa to promote economic growth and focuses on enabling businesses and industries to have access to foreign workers and “increasing skilled human resources” in the country. Further, it aims to facilitate investments from overseas. The Act sets out the thirteen types of temporary permits available to foreign nationals. Generally, each category confers the rights each permit gives to the holder, who can give the permit, and the eligibility requirements the person must meet. Permits that are focused or related to trade and the economy include the following:

- Treaty permit
- Business permit
- Crew permit

- Work permit
- Corporate permit
- Cross-border and transit permit

The granting of a business visa is subject to a number of conditions and requirements including amongst others:

- such foreigner invests the prescribed financial or capital contribution in such business; the contribution referred to in paragraph (a) forms part of the intended book value of such business;
- (c) such foreigner has undertaken to—
  - comply with any relevant registration requirement set out in any law administered by the South African Revenue Service; and
  - employ the prescribed percentage or number of citizens or permanent residents within a period of 12 months from the date of issue of the visa.
- No business visa may be issued or renewed in respect of any business undertaking which is listed as undesirable by the Minister from time to time in the *Gazette*, after consultation with the Minister responsible for trade and industry.

Similarly, No corporate visa may be issued or renewed in respect of any business undertaking which is listed as undesirable by the Minister from time to time in the *Gazette*, after consultation with the Minister responsible for trade and industry.

### **3.3.8. Protection of Investment Act, 2015 (Act No.22 of 2015)**

This Act provides for the protection of investors and their investments; to achieve a balance of rights and obligations that apply to all investors. The purpose of this Act is to:

- protect investment in accordance with and subject to the Constitution, in a manner which balances the public interest and the rights and obligations of investors;
- affirm the Republic's sovereign right to regulate investments in the public interest; and
- confirm the Bill of Rights in the Constitution and the laws that apply to all investors and their investments in the Republic.
- Provides for 'National Treatment' for foreign investors and whereby their investments must not be treated less favourably than South African investors in like circumstances.

While the Act provides for national treatment it also limits the treatment and ensures that citizens are not prejudiced. The Act states that national treatment must not be interpreted in a manner that will require the Republic to extend to foreign investors and their investments the benefit of any treatment, preference or privilege resulting from:

- taxation provisions in any international agreement or arrangement or any law of the Republic.
- government procurement processes;

- subsidies or grants provided by the government or any organ of state.
- any law or other measure, the purpose of which is to promote the achievement of equality in South Africa or designed to protect or advance persons, or
- categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability in the Republic;
- any law or other measure, the purpose of which is to promote and preserve cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage; or
- any special advantages accorded in the Republic by development finance institutions established for the purpose of development assistance or the development of small and medium businesses or new industries.

### 3.4. Jurisprudence

South African case law has reached important conclusions regarding the licensing of businesses to trade. Given that business licensing is administered and implemented at the local level, cases have been brought against municipalities with the Minister responsible for business licensing being cited as a 2<sup>nd</sup> or 3<sup>rd</sup> respondent if the premier of a province is also cited. A synopsis of some of the key cases is presented below:

#### (a) Power of the municipality to remove a street trader from a site he has occupied for a lengthy period with or without a license or permit:

##### **Bizimama vs EThekwini Municipality**

- In **Bizimama vs EThekwini Municipality**, the applicant alleges that he has been trading everyday including Sundays and public holidays as a barber near the corner of Queen and Russell Streets ("the trading space") since or about 1999/2000. He erects a gazebo (a tent structure) at the trading space at 7h00 and attends to his clients until the evening. On 16 May 2005 officials of the respondent and members of the Metro Police demanded that the first applicant and the applicant vacate their trading spaces. They complied but resumed trade on 17 May 2005. On 20 May 2005 officials and Metro Police arrived without warning and loaded the first applicant's equipment and gazebo into a police van. The applicant fears that he will meet the same fate.
- The applicant on the other hand has no right of retention equivalent to that of a builder. A builder's right of retention finds its origin in the contractual obligation to construct a building on the site, or a right of retention pursuant to a salvage or enforcement lien. The applicant has no right, inherent or bestowed upon him by contract or otherwise, to occupy a portion of the street to the exclusion of others. The applicant accordingly has no entitlement to be in possession of the site. It was not even

an area demarcated for street trading at the time of the application. The pavement from which he operates is a public area and he has no legal entitlement to it.

- *The Municipality states that pursuant to the powers granted to Local Authorities in terms of section 6A of the Business Act No 71 of 1991 ("the Act"), the respondent by resolution dated 20 June 1994 declared an area within the central business district of Durban ("the CBD") to be a restricted area within which street traders could ply their trade.*
- *In terms of the respondent's allocation policy governing trade opportunities and permits to informal traders on council owned properties a street trader who wishes to conduct business within the CBD has to lodge an application in writing with the respondent for the allocation of a site. If successful, permission is granted to the street trader to trade within the CBD at an identified site.*
- *There are certain areas within the CBD where the demarcation of sites is not feasible because it would substantially obstruct pedestrians in the use of that particular sidewalk. Street trading within the CBD has to be strictly controlled and monitored to prevent overcrowding. The municipality has for this purpose appointed liaison officers to ensure that trading takes place within the demarcated areas. They, however, do not have authority to enforce the by-laws. The Metro Police are from time to time requested to enforce the street trading by-laws, especially in problematic areas.*
- **The court concluded that the applicant has accordingly not been able to establish that he has a clear right to be granted an interdict. Furthermore, on the facts the applicant has a remedy available to him as he can apply to the respondent for permission to trade in the area. The applicant cannot choose the area he wishes to trade from. Specially demarcated sites have been created in the area in compliance with the requirements of the by-laws and the Act. The requirements for an interdict have accordingly not been satisfied and the applicant is not entitled to the relief claimed.**

#### **SAITF vs City of Joburg**

- SERI represented the South African Informal Traders Forum (SAITF) and over 1 200 informal traders who were forcibly removed from their trading sites as part of the Mayor's "Operation Clean Sweep" campaign, undertaken by the City of Johannesburg and the JMPD between 30 September and 31 October 2013. On 19 November 2013, SAITF and other informal street traders launched an urgent application (Part A) for an order stating that they are permitted to trade in a manner consistent with sections 9 and 10 of the City's Informal Trading By-Laws, at the locations they occupied immediately before their removal. The traders argued that they are in a desperate situation, have no income and



are in fear of losing their homes. They needed to return to their livelihoods urgently and could not wait till March 2014 to be heard, which was likely if an ordinary course of action is taken.

- *On 4 April 2014 the Constitutional Court handed down its judgment setting out the reasons for granting the interim order. The Court expressed concern that the City had described the eviction of several thousand informal traders as “convenient” and instead characterised Operation Clean Sweep as “indiscriminate” and “flawed”, finding that the City had “gone about achieving its objectives in flagrant disregard of the traders’ rights”. The City had resisted the traders’ application to be restored to their stalls on the sole ground that it was not urgent, and said that they could claim damages later for any loss caused by the evictions. The Court found that this attitude “may well border on the cynical”.*
- *The court also determined that:*
  - *The City’s intention to relocate informal traders to “alternative designated [trading] areas.” as provided for in Section 6A(3) of the Businesses Act which prescribes the steps the City must follow to designate a trading area for informal trading; that none of these requirements as per the Act have been followed. The City readily conceded, correctly so, in its papers and during the hearing before this Court that it had not met the prescripts of the statutory provision. The decision to relocate the traders appears flawed.*

**(b) Whether a by-law which allows an officer of the respondent to remove and impound goods of a street trader without an order of court, complies with the Constitution of the Republic of South Africa.**

❖ **Makwickana vs EThekwini Municipality, KZN EDETEA, DTIC**

- In *Makwickana vs EThekwini Municipality*, the Businesses Act 71 of 1991 (the Businesses Act) and the *eThekwini Municipality: Informal Trading By-law, 2014*<sup>1</sup> (the By-law) pertaining to the removal and impoundment of the trading goods of informal or street traders by the municipal police is scrutinised. The applicant contends that the removal and impoundment of the trading goods of a trader who fails to produce a licence to trade is *ultra vires* and invalid.
- The applicant pitched his challenge to the Businesses Act at two levels:
  - a) Although sub-sec (i) limits the term of imprisonment to a period not exceeding three months it imposes no limit on the fine. Consequently, police officers have an unfettered discretion to determine the amount of the fine regardless of whether it is proportional to the infringement.
  - b) Subsection (ii) proffers no guidelines about how ‘confiscated’ goods should be dealt with. It gives unfair discretion to police officers to remove and impound goods of street vendors.
- The applicant contended that any discretion given to officials must be accompanied by clear guidelines without which s 6A(1)(d) of the Businesses Act is in conflict with s 1(c) of the Constitution in that it is inconsistent with the rule of law. He relied on *Dawood and Another v Minister of Home Affairs and Others*;

<sup>1</sup> Government Gazette 1173 notice number 70 dated 27 June 2014.

*Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) to submit that:

‘(I)f broad discretionary powers contain no express constraints, those who are affected by the exercise of the broad discretionary powers will not know what is relevant to the exercise of those powers or in what circumstances they are entitled to seek relief from an adverse decision. In the absence of any clear statement to that effect in the legislation, it would not be obvious to a potential applicant that the exercise of the discretion conferred upon the ... officials ... is constrained by the provisions of the Bill of Rights and, in particular, what factors are relevant to the decision ... . If rights are to be infringed without redress, the very purposes of the Constitution are defeated.’<sup>2</sup>

- As a general principle of legislative drafting the principal aim of penal provisions must be to fix an appropriate maximum penalty having regard to the social implications of the offence, the profit to be made from it, the possible need to impose a deterrent sentence, the likelihood of persons charged with such an offence being able to pay a fine, and the reform potential of likely offenders. Habitually providing for imprisonment in all circumstances may be unnecessary and unsuitable.<sup>3</sup>
- Similarly, legislation should also specify entry, search and seizure powers to facilitate trouble-free exercise of such powers. Legislation must enable members of the public to understand the extent and conditions of the powers so that they can assess whether officials act within the scope of the powers.<sup>4</sup>
- Legislation permitting seizure of property should also provide for the return of the property and payment of compensation in certain circumstances. An obvious circumstance will be if the seizure is unreasonable, or the prosecution is discontinued.<sup>5</sup>
- Manifestly s 6A(1)(d) of the Businesses Act does not conform to these prescripts. The fact that it is deficient in this regard does not necessarily render it unconstitutional if the deficiency is cured in subordinate legislation.

The Judge agreed “with the respondents that the provisions of s 6(A)(1)(d)(i) of the Businesses Act are simply enabling and empowering,<sup>6</sup> a framework for further

- The applicant’s concerns about sub-sec (i) not prescribing a maximum fine can be addressed adequately in a constitutionally compliant by-law. The imprisonment for up to three months indicates what the amount of the fine should be. Not stipulating the amount of the fine finds precedent under ‘Offences and Penalties’ in s 89 of the National Road Traffic Act 93 of 1996.<sup>7</sup> Whether there should be a term of imprisonment at all was not an issue for the court to decide.
- Regarding guidelines about the disposal of goods impounded under s 6A(1)(d)(ii), s 6(1)(b) enables the Administrator of the province to make regulations for this purpose. Therefore, the two grounds on which the applicant challenges the legality of s 6A(1)(d) of the Businesses Act are unfounded.

<sup>2</sup> *Dawood* para 47.

<sup>3</sup> G.C. Thornton *Legislative Drafting* fourth edition (Butterworths) at 372.

<sup>4</sup> *Ibid* at 238.

<sup>5</sup> *Ibid* at 239-240.

<sup>6</sup> SRHOA at 7.

<sup>7</sup> Second Respondent’s Heads of Argument (SRHOA) para 14.3.

- However, a point not taken by the applicant is that s 6A(1)(d) does not provide specifically for the return of the property and payment of compensation. Nor does it enable subordinate legislation to so provide. By stipulating that disposal and not the return of impounded property should be regulated the Businesses Act might be tipping the balance disproportionately in favour of the administration and first respondent. Having regard to the authorities above it might also explain the lack of accountability on the part of the first respondent and its officials especially as the 1995 By-law was also silent on the return of property. However, the By-law now provides for the return of impounded goods. Whether the By-law cures the deficit in the Businesses Act is a discussion for another day. As the applicant did not raise this ground of challenge, I take it no further for now.
- Accordingly, on the submissions of the applicant I find no flaw in s 6(A)(1)(d) of the Businesses Act.
- As mentioned above, for contraventions for which impoundment is permitted s 6A(1)(d)(i) of the Businesses Act imposes a fine or imprisonment not exceeding three months, or both such fine and imprisonment. Penalties for other contraventions are marginally higher. For instance, s 5(1) imposes a fine not exceeding R1000 or imprisonment not exceeding three months or both such fine and imprisonment for trading without certain licences stipulated in s 2(3) of the Businesses Act. Section 6(3) of the Businesses Act permits regulations to prescribe penalties not exceeding a fine of R1000 or imprisonment for three months for any contravention or failure to comply with the regulations.
- Inconsistently with s 6A(1)(d)(i) and the tenor of ss 5(1) and 6(3) of the Businesses Act, s 38 of the By-law imposes penalties of a fine not exceeding R5 000 or imprisonment not exceeding 1 year, or both such fine and imprisonment for trading without a permit.<sup>8</sup> All other offences under s 37(1) of the By-law attract a lesser penalty of a fine not exceeding R1 000 or six months imprisonment, or both such fine and imprisonment.<sup>9</sup> A continuing offence attracts an additional fine of R150 or imprisonment not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment.<sup>10</sup> None of these penalties are foreshadowed in the Businesses Act, which prescribes only a fine or imprisonment not exceeding three months for all contraventions for which impoundment is authorised including trading without producing a permit. A provision in a by-law that exceeds the powers of its authorising statute is invalid.

#### The Order

- In the result the following order ensues:
  - a) The decision and act of the fourth respondent as representative of the first respondent of removing and impounding the applicant's goods on 6 August 2013 was unlawful and is set aside.
  - b) Compensation in the sum of R775.00 (seven hundred and seventy-five rand) being the value of the impounded goods plus interest at the prescribed rate is awarded to the applicant to be paid jointly and severally by the first and fourth respondents, the one paying the other to be absolved.

<sup>8</sup> Section 38(1) read with s 37(1)(a).

<sup>9</sup> Section 38(2) read with s 37(1).

<sup>10</sup> Section 38(3) read with s 37(1).

- c) Section 35 of the eThekweni Municipality: Informal Trading By-law 2014 promulgated in Government Gazette 1173 notice number 70 dated 27 June 2014 (the By-law) is declared unconstitutional, invalid and unlawful.
- d) Section 39 of the By-law is declared unconstitutional, invalid and unlawful.
- e) The declarations of unlawfulness in (c) and (d) above are suspended until 31 May 2015 or such further date as the parties may agree, pending the reform of the By-law.

❖ **The Union of Refugee Women and others vs PRISA**

The *Union of Refugee Women* instituted legal action against the provisions of section 23 of the PSIRA claiming that its provisions were discriminatory against refugees. Section 23(1)(a) of Private Security Industry Act provides that, "Any natural person applying for registration in terms of section 21(1), may be registered as a security service provider if the applicant is a fit and proper person to render a security service, and-

(a) is a citizen of or has permanent resident status in South Africa;" In considering whether there was unfair discrimination, the Constitutional Court stated that the following factors have to be taken into account:

(a) Under the Constitution a foreigner who is inside this country is entitled to all the fundamental rights entrenched in the Bill of Rights except those expressly limited to South African citizens.

(b) The Constitution distinguishes between citizens and others as it confines the protection of the right to choose a vocation to citizens.

(c) In the final Certification case this Court rejected the argument that the confinement of the right of occupational choice to citizens failed to comply with the requirements that the Constitution accord this "universally accepted fundamental right" to everyone. It held that the right of occupational choice could not be considered a universally accepted fundamental right. It also held that the European Convention for the Protection of Human Rights and Fundamental Freedoms embodies no such right to occupational choice nor does the International Covenant on Civil and Political Rights. It is apparent that "only a citizen" may claim the benefit of the first sentence of section 22.

The Business Act 71 of 1991 is not accommodative of the economic as well as social changes faced currently, and it is therefore imperative for legislation to be put in place to encompass the socio-economic changes faced. For any type of business to operate, it must be licensed for regulation purposes. National legislation must be promulgated to give effect to section 22 of the Constitution to avoid unnecessary litigation against government.

❖ **Somali Association of SA vs Limpopo EDETEA**

In the *Somali Association of South Africa and Others v Limpopo Department of Economic Development Environment and Tourism and Others* the applicants' equipment, stock and other items were confiscated from refugees and asylum seekers during 'Operation Hardstick' on allegation that they were operating without business licenses and further prohibited to conduct businesses in South Africa. The Supreme Court of Appeal held that, the refugees and asylum seekers are entitled apply for new business or trading licences in terms of section 8 of the Lebowa Business and Trading Undertakings Act 6 of 1977 or for a licence in terms of section 2(3) of the Businesses Act 71 of 1991;

- ❖ apply to renew existing business or trading licences in terms of section 9 of the Lebowa Business Act or in terms of the Businesses Act; and
- ❖ (apply for and renew written consent to operate tuck-shops or spaza shops in terms of the Musina Land Use Management Scheme of 2010.
- ❖ It is declared that the closure of businesses operated by refugees and asylum seekers in terms of valid permits is unlawful and invalid.

## **SECTION 4. POLICY OBJECTIVES, VISION AND PRINCIPLES**

### **4.1. Policy Objectives**

The National Business Licensing Policy (NBLP) has a fundamental role to play in achieving the goals of South Africa's national guiding frameworks in terms of economic growth, employment creation and alleviation of poverty. The NBLP is rooted in the principles of the South African Constitution and the objectives of the National Development Plan as well as other relevant national policies and frameworks.

The objectives of the policy are:

- 4.1.1** To affirm the guaranteed rights of citizens as per section 22 of the Constitution that states that every citizen has the right to choose their trade freely; and that the practice of a trade may be regulated by law.
- 4.1.2** To assert South Africa's sovereign right to determine the business licensing conditions for foreign nationals in line with its national interest.
- 4.1.3** To provide for the reservation of sectors in respect of which a license may only be granted to South African citizens.
- 4.1.4** To provide for smart and effective licensing legislation, by-laws and administrative procedures that not only contribute to reducing regulatory and administrative burdens but also drive transformation and empowerment.
- 4.1.5** To provide for fair, transparent, and ethical allocation of business operating licenses in a particular jurisdiction, in a manner that enables the citizens to actively participate in the economic life in that particular jurisdiction, while ensuring the protection of the environment, health and safety of all other citizens is critical in ensuring social and economic growth in local communities.
- 4.1.6** To promote and strengthen the coordination of concurrent constitutional national and provincial legislative competencies with respect to trade and trading regulations; as well as support provinces in their exclusive provincial legislative competence with regards to street trading.
- 4.1.7** To provide for preferential business licensing for SMME's thus increasing their opportunities to participate in the economy, and contribute to economic growth.
- 4.1.8** To provide for preferential business licensing for historically disadvantaged communities thus increasing their opportunities to participate in the economy, and contribute to economic growth.
- 4.1.9** To provide for measures to mitigate the effects emanating from economic shocks, crises, or disasters through the easing and emergency adjustment of business licensing regulations, procedures and requirements; as well as any other financial and non-financial relief.

#### **4.2. Vision**

The vision of the NBLP is that of :

- a predictable, competitive, equitable and socially responsible business licencing environment, conducive to investment, trade and enterprise development .
- coherent, predictable and transparent regulatory solutions that facilitate easy access to redress and efficient regulation for economic citizens.

#### **4.3. Business Licensing Principles**

The NBLP espouses norms and principles to guide the development, implementation of any business licensing legislation, regulations and systems as follows:

**The principle of licensing justice, whereby:**

- a) Past unjust business licensing and permitting policies and other development imbalances must be redressed through improved access to economic and business infrastructure.
- b) Business Licence Frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterised by widespread poverty and deprivation.
- c) Business licensing management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas.

**The principle of efficiency and suitability, whereby:**

- a) business licensing optimises the use of existing resources and infrastructure (for example, water licences, mining rights);
- b) decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts; and
- c) business licensing application procedures are efficient and streamlined and timeframes are adhered to by all parties;
- d) business licensing procedures and criteria minimise administrative compliance burdens and avoid creating regulatory burdens and constraints.
- e) business licenses are priced to cover administrative costs and not generate additional income as licenses serve as regulatory instruments rather than fiscal tools.

**The principle of good administration, whereby:**

- a) all spheres of government ensure an integrated approach to business licensing that is guided by the objectives, purpose and licensing framework as embodied in this policy;
- b) the consideration of business licensing applications include fair, open, and transparent processes that afford all parties the opportunity to provide inputs on matters affecting them; and
- c) policies and procedures are clearly set in order to inform and empower members of the public.





**SECTION 5. KEY AREAS OF INTERVENTION****5.1. KEY AREA OF INTERVENTION 1: Legislative and regulatory review****5.1.1. Problem Statement**

The existing legislative framework governing business licensing, enforcement procedures, and regulations suffers from systemic challenges across the three spheres of government, despite the critical role of business regulations in ensuring fairness, safety, and efficiency. Outdated laws, lack of intergovernmental coherence, ineffective enforcement procedures, and the inability to adapt to evolving market dynamics hinder businesses from operating optimally, pose barriers for economic participation, create compliance difficulties, and impede effective enforcement. Consequently, this regulatory environment fails to effectively balance the needs of businesses, consumers, and regulatory bodies. There is a need for ongoing review, redesign, and modernization of these regulations to foster an environment conducive to sustainable business growth, innovation, fair competition, and streamlined enforcement.

**5.1.2. Nature of the Intervention**

- a) Formulate a structured process for ongoing review and revision, incorporating mechanisms to sunset obsolete regulations and update existing ones.
- b) Continuous engagement with stakeholders including businesses, regulatory bodies, and consumers to gather feedback, insights, and concerns to ensure that the revised laws and regulations enable a conducive and adaptable environment.
- c) Provide revised resources and training programs for businesses, regulatory agencies, and consumers to enhance understanding and compliance with revised regulations. This can include workshops, online resources, and guidance materials.
- d) Foster collaboration among different government agencies involved in licensing, enforcement, and regulation to facilitate a cohesive approach, reducing redundancies, and ensuring consistency across various regulatory bodies.
- e) Monitor the impact of revised regulations and gather data on their effectiveness for making evidence-based adjustments and addressing unintended consequences.
- f) Establish a structured timeline for regular reviews, ensuring that the regulatory framework remains responsive to evolving market conditions, technological advancements, and societal needs.
- g) Maintain transparency throughout the review and redesign process to communicate changes, updates, and reasons behind revisions to maintain an understanding among stakeholders.

**5.1.3. Anticipated Benefits/Outcomes**

- a) Regular review allows for adapting regulations to keep pace with changing market dynamics, it ensures that businesses can operate efficiently without unnecessary bureaucratic hurdles.
- b) Provides a platform to identify and remove barriers that might hinder the growth and sustainability of businesses caused by outdated regulations.

- c) Enables regulatory bodies to enforce laws effectively, reducing ambiguities that could be misunderstood and exploited, it provides clear, updated regulations which make it easier for businesses to understand and comply with the law.
- d) Creates a more balanced regulatory environment by incorporating a feedback mechanism for stakeholders, which provides the opportunity to enhance transparency, ensuring fairness in how laws are applied.
- e) Streamlined processes decrease administrative burdens, leading to more efficient licensing procedures, potentially reducing costs, and allowing businesses to operate sufficiently within a conducive environment.
- f) Guides Provincial legislative and Municipal by-law alignment with the national business licensing framework.

## **5.2. KEY AREA OF INTERVENTION 2: Business licensing governance and intergovernmental support and monitoring**

### **5.2.1. Problem Statement**

- a) National, Provincial, and local governments often work in silos which results in poor coordination of programmes, policies, and the duplication of efforts. The overlapping of responsibilities often leads to confusion, redundancy, and inefficient policy intervention. Contradictory policies within the different spheres of Government negatively impact business industries, Government, and citizens at large due to the lack of policy effectiveness.
  - I. This creates a prerequisite for a national policy in place that informs and guides the Business Licensing policy for the provincial governments and municipal by-laws for local governments, restoring the balance between regulation and the development of SMMEs and co-operatives.
  - II. Furthermore, there is a need for a clear national policy supporting the local and provincial governments in implementing policies that address local and regional business licensing needs.
- b) Lack of support and monitoring of the implementation of the act ensuring appropriate Provincial licensing and Municipal business licensing by-laws
  - I. There is a lack of uniformity in monitoring business licensing by-laws aimed at implementation. Some municipalities have dedicated business licensing units, and some implement business licensing through their LED offices.
  - II. Lastly, there is weak coordination among the implementing and impacted agencies.

### **5.2.2. Nature of the Intervention**

- a) Business licensing governance and management will:

- I. Implement measures to break down silos and promote collaboration among national, provincial, and local governments. This aims to reduce duplication of efforts and enhance the coordination of programs and policies related to business licensing.
  - II. Clearly define and communicate roles and functionalities at the implementation stage. This includes establishing dedicated units for business licensing and determining whether implementation will be conducted centrally or through Local Economic Development (LED) offices in municipalities.
  - III. Establish structures to improve governance and to ensure that there is synergy and coherent implementation of the policy. It is critical that there be regular forums for information sharing to address the issue of coordination.
  - IV. The information sharing can take the shape of forming partnerships, sharing on the implementation of policies, and the system used by different organisations.
- b) Support and monitoring of the implementation of the act ensuring appropriate Provincial licensing and Municipal business licensing by-laws will:
- I. Comprehensive review and realignment of provincial licensing requirements, municipal business licensing by-laws, and the overarching Business Act.
  - II. Harmonisation of the national, provincial, and municipal business licensing to ensure synergy and alignment with regulations and business licensing by-laws.
  - III. Capacity-building measures to equip relevant authorities with the knowledge and skills necessary for effective implementation, monitoring, and enforcement of the aligned licensing framework.

#### 5.2.3. Anticipated Benefits/Outcomes

- a) Breaking down silos and improving collaboration between national, provincial, and local governments will result in streamlined processes, reduced duplication of efforts, and increased efficiency in the administration of business licensing.
- b) Clearly defining roles and functionalities at the implementation stage will lead to better clarity and understanding among stakeholders. This will contribute to smoother operations, reducing confusion in the licensing process.
- c) Establishing dedicated units for business licensing and clarifying the implementation approach will enhance the capabilities and focus of these units. This, in turn, will contribute to more effective enforcement and support for businesses. Partner with relevant stakeholders to implement the Act, inclusive of the agencies, provinces, and the municipality.
- d) There will be coordination between the Business Act, provincial licensing and the licensing by-laws.
- e) There will be uniform application of the Act across all spheres.

- f) Harmonisation will contribute to improved compliance rates, as businesses will have clearer and more consistent guidelines to follow.

### 5.3. **KEY AREA OF INTERVENTION 3: Preferential business licensing.**

#### 5.3.1. Problem Statement

South Africa has Broad-Based Black Economic Empowerment legislation aimed at correcting the unfortunate legacy of South Africa's previous discriminatory laws. These laws intend to promote participation among previously disadvantaged groups in South Africa, with a special focus on ownership targets to be achieved by organisations. Organisations from the private sector also receive incentives by investing in skills development programmes and reaching employment equity targets in management and board positions.

The South African Government departments also promote BBBEE internally through preferential procurement and supplier development programmes. There is a need for a national policy that supports the implementation of similar measures encouraging the participation of previously disadvantaged SMMEs in specific local industries in the form of preferential business licensing.

Section 22 also states that the practice of trade may be regulated by law, highlighting the importance of trade regulation for citizens and foreign investment aligned with the country's national interests. Unfortunately, existing laws and regulations are not effectively being enforced to ensure that foreign-owned businesses account and are compliant with business licensing. There is a need for a national policy to support legislation in addressing priority business undertakings for citizens and foreign investments.

#### 5.3.2. Nature of the Intervention

- (a) A national policy which supports the identification of local industries where SMMEs and previously disadvantaged communities would benefit from preferential licensing.
- (b) A national policy which supports provincial policy and local by-laws aimed at increasing opportunities for SMMEs and previously disadvantaged to participate in the economy.
- (c) A national policy that supports regulations designating business activities listed in Schedule 1 as business activities in respect of which a license may only be granted to South African citizens or juristic persons wholly owned by South African citizens.
- (d) Development of legal and administrative frameworks that govern the licensing, registration, and operation of foreign businesses in South Africa.
- (e) Setting out requirements and enforcing conditions that foreign nationals must meet to obtain business licenses, as well as visas and work permits where applicable.
- (f) Setting out clear requirements and conditions for foreign investment and entrepreneurship rather than reacting to specific incidents or challenges. This is a proactive approach and is

designed to create a stable and predictable regulatory environment that attracts foreign investment that is aligned with South Africa's national interests.

#### 5.3.3. Anticipated Benefits/Outcomes

- a) Encouraging Diversity and Inclusion: Preferential licensing can be utilised as a tool that promotes participation for SMMEs especially those that are identified, and, or located in previously disadvantaged communities. This creates a balanced, inclusive, and diverse landscape for certain industries.
- b) Improved Quality Control: License requirements can be attached to desired qualities and legal restrictions to set standards and prevent illegal or unauthorised activities that could endanger the public.
- c) Control of Entry Barriers: Preferential licensing can decrease entry barriers of specific industries that lack diversity or inclusion.
- d) Protection of local industries: By setting out conditions that protect local industries from unfair competition, South Africa can protect local jobs and support the growth of local businesses.

#### 5.4. **Key Area of Intervention 4: Mitigating economic shocks and disasters**

##### 5.4.1. Problem Statement

Economic crisis shocks present challenges and constraints to regulators and administrators given the speed at which economic crisis may deepen and spread, versus the speed at which policies and regulations may be changed to enable an appropriate and effective response. The ability of countries to respond rapidly and effectively to economic crisis shocks depends not only on the existence of a reasonable fiscal space but also on a number of governance factors such as policy and legislative agility or space; as well as institutional, administrative and technical capacity.

The 2008 Economic crisis and the Covid-19 pandemic exposed the lack of readiness by many governments quickly deploy relief and mitigating measures. According to the World Bank study "The global economic crisis: Assessing Vulnerability with a Poverty Lens", one quarter of the developing countries exposed to the impacts of the 2008 economic crisis had weak institutional capacity to design and implement effective and efficient policies to cushion the impacts of the crisis.

Enforcing business licensing conditions during an economic crisis or disaster presents amongst others the following problems and challenges:

- a) Reduced inspection capacity: Government agencies responsible for license enforcement may face budget cuts or staff shortages, hindering their ability to conduct on-site inspections and monitor compliance.
- b) Prioritization of emergencies: During a crisis, resources naturally shift towards immediate relief efforts, leaving less attention for regular licensing checks.
- c) Difficulty meeting compliance requirements: Businesses experiencing financial distress due to the crisis may struggle to meet specific licensing conditions, such as safety standards or waste disposal regulations. This can lead to inadvertent non-compliance.

- d) Unfair burden on struggling businesses: Rigid enforcement of license conditions during a crisis can disproportionately impact businesses already facing significant hardship, potentially pushing them towards closure and exacerbating economic downturn.
- e) Negative public image: Strict enforcement during a crisis may be perceived as insensitive or punitive, damaging the government's relationship with businesses and the public.
- f) Loss of trust in regulatory framework: Inconsistent or unclear application of licensing rules can erode public trust in the regulatory framework, jeopardizing its effectiveness in the long run.

#### 5.4.2. Nature of the Intervention

- a) Fee Reductions and Waivers:
  - I. Temporary fee reductions or waivers which would ease the financial burden on businesses struggling to cover licensing fees during a crisis.
  - II. Deferment of renewal fees allowing businesses to delay paying renewal fees without penalty, providing temporary financial relief and preventing license expiration and potential non-compliance.
  - III. Incentives for timely compliance wherein discounts or rebates are offered for businesses that renew licenses early before the relief period ends, encouraging responsible fiscal management and compliance.
- b) Regulatory Flexibility and Adaptation:
  - I. Temporary modification of licensing requirements wherein specific licensing conditions that may become impractical or irrelevant during a crisis are adjusted. This could involve extending deadlines, adjusting inspection schedules, or simplifying application processes.
  - II. Streamlined permitting processes wherein temporary expedited permitting options for businesses essential to disaster response or recovery efforts are offered. This can help them resume operations quickly to contribute to the broader crisis response.
  - III. Grace periods for non-compliance whereby temporary grace periods for minor licensing violations during the crisis would be implemented.
- c) Support and Education:
  - I. Outreach and communication wherein clear information about relief measures, modified licensing requirements, and available resources is proactively shared thus ensuring businesses understand and utilize available support.
  - II. Technical assistance and consultations wherein assistance to businesses struggling to comply with regulations due to crisis-related challenges is offered.
  - III. Resource-sharing platforms wherein online or offline platforms where businesses can share resources, best practices, and support each other during the crisis are created thereby fostering a sense of community and resilience.

## d) Partnerships and Collaboration:

- I. Collaboration and consultations with structures established in terms of the Disaster Management Act, 2002.
- II. Collaboration and consultations with social partners and structures established to respond to economic crises or to develop economic recovery interventions.
- III. Collaboration with business associations: Work with local business associations to understand the specific needs and challenges faced by different sectors during the crisis, allowing for targeted relief interventions.
- IV. Public-private partnerships: Partner with private entities to offer relief initiatives like subsidized insurance programs, loan assistance, or skills training for affected businesses.

## 5.4.3. Anticipated Benefits/Outcomes

- a) Enhanced financial stability through reduced fees, financial assistance, and compliance flexibility.
- b) Improved compliance and operations by streamlining processes, alternative compliance methods, and support resources thus making it easier for businesses to stay compliant with licensing regulations, allowing them to focus on recovery and innovation.
- c) Reduced administrative burden as a result of streamlined processes and targeted interventions that had been necessitated by the crisis response.
- d) Increased morale and motivation flowing from receiving speedy and timely support from government resulting in business confidence and perseverance through the crisis.
- e) Improved economic recovery and retention of jobs.
- f) Enhanced public health and safety as a result of relief measures helping businesses to be sustained while ensuring essential licensing requirements are met even during a crisis,

**5.5. KEY AREA OF INTERVENTION 5: Training and awareness**

## 5.5.1. Problem Statement

- a) The prevailing business license training standards for licensing officials and inspectors exhibit significant shortcomings, current training standards lack alignment with evolving industry practices. The absence of a structured and regularly updated training framework restricts professional development opportunities, it hinders their effectiveness in equipping these professionals with the requisite knowledge, skills, and tools needed to perform their regulatory roles optimally. This discrepancy leads to inconsistencies in interpretation and application of regulations, potentially compromising the quality and fairness of licensing procedures and enforcement efforts.
- b) Awareness campaigns and compliance training initiatives suffers from critical deficiencies in fostering widespread understanding and adherence to regulatory requirements among businesses and stakeholders. This limitation results in insufficient dissemination of crucial information regarding licensing regulations and compliance procedures, often failing to effectively target diverse demographics, industry sectors, and geographic regions. Offering outdated or generalized information, restricting accessibility, consistency, and inclusivity across various business sectors and

organizational sizes. Businesses encounter challenges in comprehensively understanding and meeting the varied licensing requirements, leading to non-compliance issues, operational inefficiencies, and legal risks.

#### 5.5.2. Nature of the Intervention

- a) Conduct a comprehensive assessment of existing business licensing training standards. Collaborate with subject matter experts to update and modernize standards, ensuring they align with current regulations and industry best practices.
- b) Identify gaps, outdated information, and areas requiring improvement in compliance training materials. Tailor messaging to different demographics and industries, emphasizing the importance of compliance and analyse the effectiveness in reaching diverse audiences and their impact.
- c) Develop a targeted and multichannel approach for awareness campaigns, utilizing digital platforms, social media, workshops, and community engagement initiatives. Create easily accessible, user-friendly, and interactive training modules that cater to various learning styles and levels of expertise.
- d) Implement training programs in collaboration with industry partners, educational institutions, and regulatory bodies. Provide ongoing support, workshops, and resources to facilitate understanding and implementation of updated compliance procedures.
- e) Ensure the sustainability of the intervention by embedding mechanisms for continuous review and improvement of training standards and campaigns.

#### 5.5.3. Anticipated Benefits/Outcomes

- a) Revised and updated training standards and awareness campaigns can lead to increased understanding of licensing regulations amongst officials and businesses, resulting in improved enforcement and compliance.
- b) Build partnerships with training agencies, eliminating duplicate functions, and strengthening partnerships within the public and private sectors in relation to capacity building.
- c) Provides licensing officials and inspectors with ongoing professional development opportunities, enhancing their skills and efficiency in regulatory enforcement, improving their ability to enforce regulations consistently and fairly.
- d) Clear and comprehensive training materials help mitigate the risks associated with non-compliance, reducing legal penalties and operational disruptions for businesses.
- e) Redesigned awareness campaigns can ensure broader and more inclusive access to information, reaching diverse demographics and industries effectively.



**5.6. KEY AREA OF INTERVENTION 6: Development of an integrated electronic business permitting and licensing system and portal.**

**5.6.1. Problem Statement**

Business licensing processes suffer from systemic limitations and inefficiencies in accessibility, transparency, and efficiency. Without standardized procedures and information dissemination, this leads to confusion and inconsistencies in compliance requirements among businesses across various industries and regions. Provincial and municipal administration use different systems lacking integration amongst applications, the absence of a centralized platform for licensing operations results in disjointed processes, prolonged wait times, administrative bottlenecks, scattered data islands and duplicate data. This fragmentation and complexity in licensing procedures inhibit business growth, innovation, and overall economic development. A digital platform allows for the potential of automation, real-time tracking, and seamless communication between businesses and regulatory authorities. There is a need for the development of an integrated online business licensing portal that centralizes and streamlines all business licensing procedures, offering businesses a user-friendly interface for submitting applications, monitoring progress, and ensuring compliance.

**5.6.2. Nature of the Intervention**

- a) Design a portal to facilitate online application submissions, status tracking, fee payments, license renewal and document uploads. Implement features for real-time communication between businesses and regulatory authorities, including automated notifications and alerts.
- b) Integrate the portal with existing databases and systems within regulatory bodies to ensure data consistency and accuracy. Develop interoperable systems to enable data sharing and streamline processes with other government departments.
- c) Establish a support system to address technical queries and assist users during the transition to the new system by providing comprehensive training materials and resources to assist businesses and regulatory staff in navigating and utilizing the portal effectively.
- d) Ensure the portal's functionality and user experience meet the diverse needs of stakeholders. Conduct rigorous testing to identify and address any technical glitches, security vulnerabilities, or usability issues.
- e) Develop a comprehensive plan to promote awareness and adoption among businesses and regulatory bodies. Implement a phased rollout strategy, starting with a pilot phase involving a limited number of users to gather feedback and make improvements.
- f) Establish continuous monitoring and feedback mechanisms to enhance the system based on user experiences and emerging technologies.

**5.6.3. Anticipated Benefits/Outcomes**

- a) The portal will streamline licensing procedures, reducing administrative burdens and time required for businesses to obtain licenses, renewals, or permits.

- b) The portal offers transparent and standardized processes, ensuring businesses have clear visibility into requirements, procedures, and application statuses. Better adherence to licensing regulations, reducing the likelihood of unintentional non-compliance.
- c) Reduced paperwork and decreased manual processing may lead to cost savings for both businesses and regulatory bodies.
- d) Regulatory bodies benefit from improved data collection, analysis, and monitoring capabilities, allowing for more effective oversight, enforcement and data-driven decision making.
- e) A more efficient and business-friendly licensing environment encourages entrepreneurship, investment, and economic growth by reducing barriers to entry.
- f) Ongoing updates, improvements, and adaptations based on user feedback and changing regulatory requirements.

#### **5.7. Key Area of Intervention 7: Research, monitoring, and evaluation**

##### **5.7.1. Problem Statement**

- a) Evidence-based policy making advocates for policy decisions to be grounded on, or influenced by, rigorously established objective evidence. The development of business licensing policies, legislation and regulations needs to be informed and supported by credible and up to date research and administrative data. Updated and reliable data on the state of business licensing in municipalities is critical in measuring the success of business licensing policies, legislation and regulations and their contribution to the improvement in the ease of doing business and increased growth of businesses operating within municipalities.
  - I. There is no body of research on business licensing whether by independent research organisations of Government. Our information points to that only one (1) Province has commissioned research to inform the development of their Provincial Business licensing policy and legislation.
  - II. Only a few municipalities have developed electronic systems to enable them to collect administrative data on business licenses and permits issued within their jurisdiction. Furthermore, many businesses are not included in this administrative data, given that the Businesses Act of 1991 only requires a limited number of sectors to be licensed.
- b) Monitoring and evaluation is crucial for ensuring that business licensing policies, legislation and regulations are effective, efficient, and meet their intended objectives.
  - I. Monitoring and evaluation has barely been undertaken by some provinces, but not consistently. There has not been any comprehensive national evaluation of business licensing policy and legislation implementation, neither any impact assessment.
  - II. Lack of monitoring and evaluation framework for business licensing at national, provincial, and local levels.

#### 5.7.2. Nature of the Intervention

- a) The research intervention will:
  - I. Drive and encourage the systematic collection of administrative data.
  - II. drive continuous qualitative and quantitative research on business licensing.
- b) The monitoring and evaluation intervention will:
  - I. Ensure the development of a Monitoring and Evaluation Framework for business licensing that can be implemented by all spheres of government as per their respective roles and mandates.
  - II. Data collection on various aspects like the number of licenses issued, processing times, compliance rates, and fees collected, delays in processing, unclear regulations, or complaints from applicants.
  - III. Data analysis: Utilizing data from licensing departments, surveys, and feedback forms to measure trends and identify patterns.
  - IV. Gather feedback from stakeholders: This includes businesses, licensing authorities, and the public, to understand their experiences and concerns.
  - V. Evaluating or assessing the effectiveness of policies, legislation, and regulations
    - i. This will involve determining whether the policy is achieving its intended goals, such as promoting economic growth, attracting investment, or simplifying regulatory processes.
    - ii. This will involve examining the costs and benefits of the policy and identifying areas for improvement.

#### 5.7.3. Anticipated Benefits/Outcomes

- a) A comprehensive data collection system will reduce unauthorised trading and promote fair competition among businesses by ensuring that all enterprises comply with licensing requirements.
- b) Attract investors, clear information business, for ease of regulation and monitoring.
- c) Accurate and up-to-date data will enable authorities to develop and implement targeted and effective business licensing regulations, fostering a more conducive regulatory environment. Integrate existing data set and create a centralised national system.
- d) The availability of reliable data will empower policymakers and programme developers to make informed decisions based on evidence, leading to more effective and efficient policies that support the growth of businesses.
- e) Increased awareness and understanding of international business licensing trends and best practice.
- f) Improved policy effectiveness: the M&E results will inform policy adjustments and amendments, leading to better outcomes.

- g) Enhanced efficiency: Identifying bureaucratic inefficiencies and streamlining processes will save time and resources.