Full Length Research Paper

Small, medium and micro enterprise owners’ perceptions regarding the implementation of the new companies act: A South African perspective

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The purpose of the study was to determine the perceptions of small, medium and micro enterprise (SMMEs) owners regarding the implementation of the New Companies Act. A quantitative approach was followed in the study where data were collected via structured questionnaires on a sample of 335 SMME owners from various provinces. The results indicate that most of the participants are not aware of the companies Act and its compliance requirements. It further emerged that no consultation and awareness made by the government or its agencies when the phasing out of close corporations was made. It was found that there are different perceptions on the implementation in terms of qualification levels. It is thus recommended that prior to the implementation of the Act, a thorough consultation and awareness be made to the businesses. Finally, it is recommended that sensitisation workshops be conducted among SMME owners to ensure that the business owners have full understanding of the Act so that they are able to comply with its provisions.

Key words: Small, medium and micro enterprise (SMMEs), New Companies Act of 2008, Old Companies Act of 1973.

INTRODUCTION

The new Companies Act No 71 of 2008, hereafter referred to as the Act was signed into law by the then interim President Kgalema Motlanthe in 2009. The purpose of the new Act was to repeal Companies Act No 61 of 1973 (South Africa, 1973) which was no longer relevant to the current situation. The Act as such has been modernised and deemed to be in line with the international practices. According to Booysen (2010), it is anticipated that the Act will simplify practices for instance, companies are allowed to effect certain change requirements in accordance with their environment or circumstance, the regulatory burden on companies has been reduced, but with strict accountability and transparency requirements. This implies that all entities regardless of their nature, size or form of incorporation will now comply with the provisions of the new Companies Act No* 71 of 2008 (South Africa, 2008). Section 29 and 30 of the new Act put emphasis on the promotion of governance and transparency as well as compliance to good governance.

Whilst the Act in itself as regulation poses many challenges to small business and close corporations, it is necessary to note that these challenges are of peculiar in nature due to the fact that the Act, which is directed to all business enterprises, such businesses are not aware of its provisions and this raises questions as to how they are going to comply with the provisions thereof. According Global Entrepreneurship monitor (GEM) of 2011, South Africa’s performance in terms of entrepreneurial activity of 9.1% is far below the average of comparable economies around the world (Simrie et al., 2012). This is as a result to poor education system that was carried from the past regulatory education policies. As it is universally known that education is one of the primary fundamental requirements for a competitive country, South Africa’s ranking with respect to primary education is not pleasing. In that the country continues to remain at the bottom end

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of the scale. The Global Competitive report (2010/2011) shows among others that South Africa ranked 130 out of 139 countries with regard to quality of education system and on the quality of mathematics and science it ranked 137 out of 139 countries. This is of particular concern as South Africa currently spends significantly more on education than many other African countries.

The on-going frustrations of poor education system propels one to ask continuous questions, of how will the New Companies Act provide solutions in such a complex environment where education is a must for understanding the legalities and formalities of converting from SMEs to Propriety (Pty) and Close Corporations to Public Companies (Ltd). SMMEs owners still struggles with understanding the formalisation of their business, tax returns and other matters such as capital constraints related to conducting their business is still a matter of concern. Although the argument of Rob (2010) laments that the Act will favour SMEs in that they will access capital from financial institutions at ease which was not the case before. Contrary to this argument, SMMEs on the other hand view this as an extra burden brought by the implementation of the New Companies Act which makes it even worse for small business taking into account that the Close Corporations were seen as stepping stone for business vehicle. The phasing out of Close Corporations and compliance based on Company Act requirements are perceived as a great obstacle in their business environment (Mashamaite, 2011).

Rob (2010) articulates that the challenge of the Act would require a well read and informed business sector which is aware of the Act and its provisions. This requires the business sector to be well sensitized through workshops with the view of giving them information pertaining to the Act. Therefore, implementing the Act without workshops could create some challenges regarding its intended success and this could results in a situation where SMMEs receive notification for non-compliance to the Act. The major concern lies in the fact that the New Companies Act regulates or enforces compliance or opportunity of small companies entering into a world of new rules. Small businesses which were previously not compelled to comply with stricter governance requirements are now obliged to comply with good governance. Subsequently, small business will need to formalise and comply with regulatory matters such as address various risk management, annual audit, audit rotation and appointment of secretariat that are stipulated by section 84 and 86 of the Act), in a later stage though now it is a pre requisite. The new regulatory measures as stipulated in the Act may undoubtedly become a major challenge facing smaller businesses that were not expected to meet the requirement before. This may result in uncertainties on how standards will be met and ultimately resistance to new rules (Entrepreneur Magazine, 2012).

On the other hand, the Close Corporation Act (CCA) has been abolished which means that all Close Corporations are henceforth regarded to be companies in accordance with the provision of the Act. In the context of this, the Act provides two types of companies, namely, non-profit companies and profit companies which include private companies, personal liability companies, public companies and state – owned companies. Previously, many small medium enterprises registered their businesses as CCs and enjoyed the limited liability clause which protected their business operations against liquidation and insolvency. Thus, the phasing out of CCs is perceived with mixed feelings, by most small businesses as it was an economic hub of their business. According to the companies intellectual properties (South Africa, 2008) database, the CCs comprises 78 % of the total registered entities, of which the sector contributed more than 20 % annual growth rate hence their phasing out is of a major concern and to the detriment of the SMEs (Mashamaite, 2011).

The international business landscape is undergoing significant changes with new emphasis on corporate governance. In recent years, the world has experienced high corporate failures. Many of these failures were as a result of lack of compliance to corporate governance. Having realized these effects, South Africa adopted an initiative to be on the forefront of the compliance of the code of corporate governance. This is evidenced by the implementation of the Act (Hitchcock, 2009).

The companies Act No 61 of 1973 did not meet the expectations of businesses anymore. The Act did not lay standard on insolvency and liquidation; also there was no inclusion of starting, growing and dissolving of small businesses. In fact, the small business did not form part of the regulation of the companies Act of 1973. In addition, the Act did not stipulate any measurement regarding directors. The emphasis of the Act lied in the procedure of running businesses within the context of memorandum and articles of associations. One of the worst weaknesses amongst others was its rigidity and insistence on adherence to formalities even though these formalities served no purpose as well as the lack of a simple statutory mechanism to cure an irregularity where the requisite formalities had, in error, not been observed. The courts had a limited extent permission to dispense the formalities where shareholders were in agreement in unanimous consent such as division to declare dividend whereas the new companies Act in section (74) allows directors to act otherwise. The Memorandum of Incorporation (MOI) provided that any decision voted at board meeting can be adopted or consented as long as it was communicated to all directors by either fax or electronically to fast-track internal formalities.

Hereto, the implementation of the New Companies Act amended the previous Act by incorporating the King III code of corporate governance is seen as an essential tool for all business leaders to understand and implement the regulatory compliance clause which establishes tough
penalties for Directors, as well as simplifying and unifying business regulation procedures for conducting business in South Africa. According to Rob (2009), the significance of the Act significance of the Act lies in the procedure for business rescue for companies in financial difficulties which were not the case with the old companies Act.

In the contrary to the implementation of the Act, it has been observed by Mashamaite (2011) that the SMEs were still far from operating in formalized business. This is a result of the fact that some of the close corporations used to work on a small scale and with minimal compliance requirements. As the stipulations of the Act, the requirements require a good orientation towards the Act. Among other issues is that close corporations will be converted to companies of which they still need to learn the provisions relating to the company provision.

The extra burden of the new business regulations with its compliance procedures among others, integrated reporting and disclosure, the standard of directors’ conduct is without doubt making it even more difficult to adjust with overall requirements such as preparation of annual financial statements, file the annual returns with Companies and Intellectual Property Commission (CIPC), all companies must satisfy the prescribed financial reporting stands and appointing an auditor becomes imminent and these requirements are enforceable by the new companies Act (Mashamaite, 2011). Based on the articulations, the research was aimed at determining SMMEs perceptions regarding the implementation of the Act. The above articulations can thus be hypothesised as: what effect does the companies’ act have on the SMMEs owners in pursuing their businesses.

**Aim and objectives**

The aim of the article was to determine the perceptions of small, medium and micro enterprise owners regarding the implementation of the new Act. The objectives were (i) to measure the level of understanding regarding how the Act stipulate in terms of enforcement requirements; (ii) how they perceive the new business regulations and (iii) to determine whether there are different views on the Act by qualifications.

**RESEARCH DESIGN AND METHODOLOGY**

In this research, a quantitative approach was followed and according to Leedy and Ormrod (2001), this is regarded as the most appropriate research approach for the research. As of this type, it involves acquiring information about a group of people, namely, SMMEs owners in the selected provinces of South Africa with regard to their perceptions regarding the implementation of the Act. Furthermore, quantitative approach was used for the research in the sense that it evaluates objective data consisting of numbers (Welman et al., 2005: 8).

The sample consisted of 335 business owners randomly selected from different provinces. Data were collected during November 2011 - February 2012. The researcher and three fieldworkers collected data using a structured questionnaire to measure demographic information of the SMMEs owners and their perceptions regarding the implementation of the Act. Prior to the field work, the researchers trained the field workers on how to approach the survey. A thorough explanation was given to them in terms of the content of the questionnaire. The researcher and the three fieldworkers explained the purpose of the study, the participants’ rights and assured them that the data obtained will be treated as confidential (Babbie, 2007). Once this major step was done, questionnaires were distributed to the respective SMME owners. Physical distribution of questionnaires was preferred since this option would ensure reasonable response rate from the respondents. Data collected were analysed through SPSS version 19 to generate descriptive and inferential statistics.

**FINDINGS AND DISCUSSION**

**Sample realization**

The researcher together with the three fieldworkers distributed 335 questionnaires. Of these questionnaires, 236 were returned which essentially made a response rate of 71%. The good response was due to the fact that they personally administered the questionnaire.

It was also important to determine the extent to which the new company’s act impacted on the SMMEs. Making use of Cronbach’s alpha coefficient on the eight statements relating to companies’ act, the reliability among constructs was tested. The overall Cronbach’s alpha for all eight statements yielded 0.754 which suggest that the statements as such were said to be reliable. This however, is consistent with what Bartholomew et al. (2000) attest that between 0.80 and 0.60 it is still an acceptable level.

Subsequently, factor analysis utilising principal component analysis (PCA) with Oblimin rotation was conducted for the purposes of (a) testing construct validity and (b) uncovering the existence of latent variables (or factors) within the data. First, it was instructive to test whether it was possible to proceed with factor analysis (Field, 2009). The factorability statistics were satisfactory (KMO = .827; Bartlett’s test of sphericity supports continuance towards analysis such as factor analysis $X^2 = 265.353; df = 36; p < .000$). The factorability enabled the researchers to continue with data analysis.

**Discussion at descriptive level**

The findings of the research are discussed in detail below.

**Reports on education**

According to GEM 2010 majority of South African participants who operates small business have a grade 12 or less than matric. The findings on qualification levels, agree with the GEM report articulated above. In terms of qualification level, it is evident with less than Matric and
Matric levels, 23.01% and 23.05% respectively have little knowledge and understanding of the Act. Contrary to this, those with degrees (13.72%) and diplomas (24.78%) stand a better chance of comprehending the Act. In order to eliminate this anomaly, emphasis should be put on improving capacity among South African majority on how to operate small business units is imperative. Another issue of concern identified amongst participants is the conversion from CCs to private companies, and the legalities associated with this conversion. 71% of the participants were aware that CCs were being phased out; yet 62.42% of those attested that they were highly affected by the phasing out of the CCs as opposed to 10.91% of those not affected. The bone of contention to this projection emanates from the fact that SMEs regarded CCs as the backbone of their business remedy. In addition, the lack of knowledge to pursue the procedure to converting CC to company makes it the more difficult for small business operators.

Provincial comparison between Gauteng and Mpumalanga

Cross tabulation results indicated that Gauteng participants knew about the Act. The number of participants who responded was 68. This indicated that 70.1% of participants in Gauteng were aware, and in Mpumalanga only10.3%. The findings indicated that there is a need to create much awareness of the Act in Mpumalanga. The weakness of participation was due to the fact that most businesses in Mpumalanga were not officially registered and operated illegally. On the contrary the high response rate of Gauteng could be attributed to the idea that CIPRO is in Gauteng and the Province is regarded as the economic hub of the country.

Perceptions about the Act

Regarding the extent to which participants understood the implication of new business regulations in South Africa, a small group with the highest score of 24.34% indicated that their capacity to understand the provisions of the Act was minimal. Another 23.68% affirmed that they had virtually no understanding of the provisions of the Act. The fundamental issue among others is low educational level and lack of adequate information dissemination by government agencies such as local business service centres (LBSC).

Phasing out of the CC

It emerged from the findings that most of the participants (62.42%) operating small business was affected by the phasing out of CC. This is because close corporation to them was seen as a panacea to their unemployment misery. As regards to consultation on the phasing out issue, most of the respondents (67.88%) attested that they were not consulted at all. This implies there is a need for decision makers to consider the custodians that would be affected by the decision, as well as civil society and other stakeholders.

Discussion at inferential level

The Pearson chi-square is greater than 0 (61.315) therefore null hypothesis is thus rejected. The p-value is .000 which shows highly significant difference in opinions regarding the perception of the act in terms of respondents with various qualifications. The Cramer’s V used to measure the effect size is 197. It can thus be concluded that there is difference in responses by education regarding the implication of the Act even though this variance is small/weak (Table 1).

From Table 2, it is evident that the Pearson chi-square yielded 46.321 which is greater than 0 and as such the null hypothesis is rejected. The p-value is less than 1% chance that the relationship occurred by chance. The Cramer’s V is .283 which suggests that the variance in the impact of the Act towards SMMEs is moderate.

The Pearson chi-square is greater than 0 (53.762) therefore null hypothesis is thus rejected. The p-value is .000 which shows significant difference in views regarding the enforcement of the act in terms of respondents with various qualifications. The Cramer’s V used to measure the effect size is .342. It can thus be concluded that there is difference in responses by education regarding the understanding of the enforcement requirements of the Act and association is moderate (Table 3).

Conclusion

Notably, it can be concluded that people with lower qualifications tend not to comprehend the effect of the Act. Respondents with higher qualifications appear to be at advantaged positions to understand the provision of the Act. It further indicated that the consultation and aware-ness made by the government or its agencies when the phasing out of CC was not intensified. This has negative consequences since SMMEs only received notification that their entities were deregistered due to the fact that they did not comply with the set requirements such as annual financial statements to CYPRO, now Company Intelligent Property Commission. It can further be concluded that most of the SMMEs operating in Gauteng province are more informed about the companies Act than those operating in Mpumalanga. The other revelation is that not many respondents are aware of the implications associated with the compliance requirements which is a clear factor regarding lack of consultation with the stakeholders. This is important in the
Table 1. The implication of new business regulation vs. education.

| The Chi-square test result | Value | df | Asymp. sig. (2-sided) |
|----------------------------|-------|----|-----------------------|
| Pearson Chi-square         | 61.315<sup>a</sup> | 25 | .000                  |
| Likelihood ratio           | 59.694 | 25 | .000                  |
| Linear-by-Linear association | .049  | 1  | .825                  |
| Number of valid cases      | 164   |    |                       |

Symmetric measures

| Value | Approx. Sig. |
|-------|--------------|
| Phi   | .394         |
| Cramer's V | .197         |

Number of valid cases 164

Source: researchers' own work (2012).

Table 2. Understanding on how the new act affects SMMEs vs. education.

| The Chi-square test result | Value | df | Asymp. Sig. (2-sided) |
|----------------------------|-------|----|-----------------------|
| Pearson Chi-square         | 46.321<sup>a</sup> | 20 | .001                  |
| Likelihood Ratio           | 50.077 | 20 | .000                  |
| Linear-by-linear association | .225  | 1  | .636                  |
| Number of valid cases      | 145   |    |                       |

Symmetric measures

| Value | Approx. Sig. |
|-------|--------------|
| Phi   | .565         |
| Cramer's V | .283         |

Number of valid cases 145

Source: Researchers' own work (2012).

Table 3. Understanding of the enforcement requirements vs. education.

| The Chi-square test result | Value | df | Asymp. Sig. (2-sided) |
|----------------------------|-------|----|-----------------------|
| Pearson Chi-square         | 53.762<sup>a</sup> | 16 | .000                  |
| Likelihood ratio           | 54.394 | 16 | .000                  |
| Linear-by-linear association | 27.298 | 1  | .000                  |
| Number of valid cases      | 115   |    |                       |

Symmetric measures

| Value | Approx. Sig. |
|-------|--------------|
| Phi   | .684         |
| Cramer's V | .342         |

Number of valid cases 115

Source: Researchers' own work (2012).
sense that for proper implementations to take place, it is imperative to make broader consultation. In terms of participants by qualifications, it appeared that there are different views articulated by various respondents.

RECOMMENDATIONS

The following recommendations were suggested:

The findings showed that most of the participants did not understand the Act and its implications.

1. This research recommends that building capacities among SMME owners is imperative.

2. The study also recommends that for the Act to be more effective in terms of compliance, sensitization workshops are important. This study recommends mentoring and networks that will inform small business owners on the Act.

3. The research also recommends a coherent monitoring and evaluation service by DTI to ensure that there is workshops taking place in all provinces.

LIMITATIONS OF THE STUDY

The current study is not without limitations. The study focused on the perceptions of the SMMEs regarding the perceptions of the Act. The findings as such do not demonstrate the actual outcomes. Since the study was voluntary, participants who opted not to participate could have provided a different perspective.

Future research direction

In conclusion, there exists a paucity of conclusive and empirically evident results in this research which indicates that there is no understanding of the Act. This research has provided valuable information to policy makers, which mainly refers to the South African Department of Trade and Industry, in that they can be use as a base to address the challenges that are occurring and are likely to affect the SMMEs negatively.

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