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LABOUR LEGISLATION AND PERFORMANCE AMONG SMALL ENTERPRISES IN THE GAUTENG PROVINCE OF SOUTH AFRICA

by

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Johannesburg

Supervisor: Professor Emeritus Frederick Ahwireng-Obeng

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DEDICATION

This work is dedicated to my late father, Chief Iriata Thomas Okharedia, 1900–1977.

AND

My Grand Children

Miss Omoyoya Ejiro OKHAREDIA

Miss Omo-Afe Teniola BAYODE

Miss Ekemhengbale Osele OKHAREDIA

ABSTRACT

The principal aim of this study is to analyse how the three (3) labour legislations, namely, (a) the Labour Relations Act 66 of 1995, (b) the Basic Conditions of Employment Act 75 of 1997 and (c) the Employment Equity Act 55 of 1998 influence the growth, management and governance of small enterprises in Gauteng Province of South Africa. This research also investigates if the complete exclusion, selective exclusion or parallel application of the above three labour legislations will help in the management, growth and good governance of small enterprises in Gauteng Province. In addition to the above issues, this research also investigates how disputes are resolved in small enterprises. Furthermore, this research investigates the issue of organisational rights in small enterprises.To investigate all the above issues, the researcher used both qualitative and quantitative research techniques and both techniques were quite useful in the data analysis.The inference that was drawn from the data analysis is that application of the three (3) labour legislations in terms of complete exclusion, selective exclusion and parallel application of the three labour legislations is very important for the growth, management and good governance of small enterprises and this is fully discussed in the thesis. The analysis of the research data indicates that small enterprises cannot benefit from the organisational rights entrenched in the Labour Relation Act of 1995 and the reasons for this are discussed in the thesis. This research also found that small enterprises cannot resolve their disputes efficiently through the current process of dispute resolution as stipulated in Section 135 of the LRA.

The reasons why small enterprises find it difficult to follow the process is discussed in the thesis. The recommendations in this thesis, attempt to offer solutions to the identified problems.

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Finally, I wish to thank all members of my extended family and those academic colleagues who contributed to the successful completion of this research.

These contributions and this assistance notwithstanding, the responsibility for what follows in the form of omission and/or errors remains solely mine.

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ABBREVIATIONS

ASGISA	Accelerated and Shared Growth Initiative for South Africa
B-BBEE	broad-based black economic empowerment
BCEA	Basic Conditions of Employment Act 75 of 1997
BDS	business development strategy
BEE	Black economic empowerment
BFPA	Business Finance Promotion Agency
BRIN	Business Referral and Information Network
CCMA	Commission for Conciliation, Mediation and Arbitration
CEO	chief executive officer
CPPP	Community Public Private Partnership Programme
DEAT	Department of Environmental Affairs and Tourism
DTI	Department of Trade and Industry
ECDC	Eastern Cape Development Corporation
EEA	Employment Equity Act 55 of 1998
EPWP	[Department of Public Works'] Extended Public Work Programme
ERTA	Economic Recovery Tax Act
FDC	Free State Development Corporation
FET	Further Education and Training College
GDP	gross domestic product
GEP	Gauteng Enterprise Propeller
GNP	Gross national product
GTZ	German Technical Co-operation
GWSA	General Workers' Union of South Africa
ICT	information and communication technology
ID	identity document
ILO	International Labour Organization
IT	Industrial Tribunal
JIPS	Joint Initiative on Priority Skills Acquisition
LAC	Labour Appeal Court
LRA	Labour Relations Act 66 of 1995
MCP	micro credit programme
MED-ARB	mediation–arbitration
MSE	micro and small enterprise
NAMAC	National Manufacturing Advice Centre Trust
NEF	National Empowerment Fund
NPI	National Productivity Institute
NSBAA	National Small Business Amendment Act
NTSIKA	Ntsika Enterprise Promotion Agency
NUMAWSA	National Union of Metal Workers of South Africa
OECD	Organisation for Economic Co-operation and Development
PPS	probability proportional to size
RED	Real Enterprise Development Initiative

RFI	Retail financial institution
S	section
SAMAF	South African Micro-Finance Apex Fund
SAWEN	South African Women Entrepreneurs' Network
SBA	Small Business Administration
SE1F	Small Enterprise Foundation
SEDA	Small Enterprise Development Agency
SETA	Sector Education and Training Authority
SMAF	South African Micro-Finance Apex Fund
SMME	small, medium and micro enterprise
TEP	Tourism Enterprise Programme (TEP)
TTO	Triple Trust Organisation
TWIB	Technology for Women in Business
UK	United Kingdom
UNDP	United Nations Development Programme
US	United States of America
UYF	Umsobomvu Youth Fund
VAT	Value-added tax

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CHAPTER ONE: INTRODUCTION

1.1 Contents of the study

1.1.1 Point of departure and focus of study

The focus of this study is on exploring how labour legislation influences the performance of small enterprises in the Gauteng Province of South Africa. The performance of small enterprises will be viewed from three perspectives, namely the (i) management, (ii) governance and (iii) growth of small enterprises. Management focuses on the relationships between employers and employees, while growth examines the capacity for small enterprises to expand their businesses; governance deals with accountability in terms of how small enterprises consider themselves as legal and independent entities. Governance covers also the element of transparency in terms of how the business entities are transparent to all stakeholders.

The three pieces of labour legislation that are examined in this research are (i) the Labour Relations Act 66 of 1995 (LAR) (ii) Basic Conditions of Employment Act 75 of 1997 (BCEA) and (iii) the Employment Equity Act 55 of 1998 (EEA). To understand the aforementioned legislation, it is necessary to analyse the historical background of the employment relationship in South Africa.

The work of Nel, Swanepoel, Kirsten and Erasmus (2005:69) on employment relations shows that historical factors, socio-political forces, economic elements and the level of technological advancement inside and outside a country shape its employment relations system. In turn, the established employment relations system helps to shape a country's history, simultaneously affecting other subsystems both inside and outside a country.

South Africa, it is not an exception in this regard. Great Britain, in particular, had a major influence on South Africa after the discovery of diamonds and gold in the 1870s. After these discoveries many thousands of blacks were drawn into South Africa's industrialisation process, but no formal trade unionism was recorded, and the employer–worker relationship was conducted mainly on an individual basis (Nel et al., 2005). Originally, blacks were not

involved in the trade union struggle, but they soon realized that involvement in such a system could have distinct advantages. A strike by black workers at the diamond fields in Kimberly in 1883 was one of the first recorded strikes by blacks in the country, although it was unorganized. In 1884 South Africa had its first official strike. Five white miners died and forty were injured in a strike at the Kimberly diamond fields. The miners were objecting to a regulation that required them to be stripped and search when coming off duty (Nel et al., 2005).

By the turn of the century, the white trade unions were often in conflict with management, particularly over membership and pay, which resulted in hostility and retaliation by employers. Employers tried to contain British-orientated trade unions whenever possible by introducing South African whites and blacks into what might have been considered skilled jobs previously held by union members. Although the unions met with hostility from employers and public bodies, they were not statutorily banned in South Africa in the early years. Moreover, while strikers were prohibited by law, trade unions functioned at the time in all four of the South Africa colonies.

By approximately 1900, the mining sector in particular had developed to such an extent that white workers were no longer able to supply all the necessary skills. Consequently, more black workers, as well as workers imported from countries such as China, were introduced into the system. Some of these workers were placed in skilled jobs but at unskilled wages, a situation that created friction between unionized white workers and employers. As a result of worker pressure, Ordinance No. 17 of 1904 was promulgated and this was a discriminatory legislative action against non-South Africans or, for that matter, non-white workers. This act was directed mainly at Chinese workers.

The friction between trade unionists and employers, a total of seven strikes by both black and white workers took place between 1904 and 1908. The maltreatment of black fellow workers by whites was among the issues that resulted in strikes by the black workers. A major strike by the white workers at the Knights Deep Mine in 1907 spread across the Witwatersrand area after a proposal by employers that skilled work should officially be extended to blacks. The strike was also the result of complaints by white workers about unsatisfactory economic and social conditions. The strike was broken when employers partially replaced skilled immigrant

mine workers with unemployed Afrikaners. The monopoly held by immigrant workers was thus broken, since locals started doing skilled work.

In 1911 the Black Labour Regulations Act No. 15 was promulgated as one of the first items of legislation designed to regulate black labour matters in the changed labour environment. This Act placed the recruitment and employment of blacks on a more satisfactory basis, although not yet formalized. It proved to be a comprehensive measure which, while recognizing the rights and obligations of the employers, also afforded impaired protection of blacks engaged in employment on the mines. However, this Act made no provision for collective bargaining and negotiation between employers and black workers or for the redressing of grievances since none of the processes had been formalized.

However, employment relations in South Africa became more formalized after the Great Witwatersrand strikes of 1922, subsequent to which the first Industrial Conciliation Act was promulgated in 1924 and this Act repealed the Industrial Disputes Prevention Act 20 of 1909. This Act provided the necessary machinery for settling disputes in the industry by establishing a system of industrial councils, and the registration of white trade unions and employers' organizations. The underlying principle of the Act was self-government in industrial and public utility enterprises, industries, trades and occupations. In terms of section 24 of the Act, the term 'employee' was defined as excluding a person whose contract of service or labour was regulated by any black pass laws and regulators, or by the Black Labour Regulations Act 15 of 1911, or by any regulation or amendment of the latter. This shows that the majority of black male workers were thus excluded from this definition, which meant that blacks were virtually excluded. In 1925 the Wage Act No. 27 was promulgated. This Act was primarily aimed at establishing machinery for the formulation of conditions of service and minimum wage levels for workers in cases where the employers and workers concerned were unorganized. It also provided for the establishment of a wage board to investigate and recommend minimum wage levels in any industry or trade (Nel et al., 2005).

From 1931 to 1935, many South Africans started to question the validity of many of the clauses in the ``Industrial Conciliation Act 11 of 1924''. It was very clear at this juncture that the above Act needed updating. This was partly due to the fact that there was large-scale movement of labour as a result of the Great Depression, and the fact that white and black trade unionism was on the increase. In 1934 a commission of inquiry known as the *Van*

Reenen Commission was appointed to review the 1924 Act. The recommendation of this commission gave birth to the Industrial Conciliation Act 36 of 1937, which repealed the Industrial Conciliation Act 11 of 1924. The Act was aimed at creating industrial peace between employers and white workers on the basis of self-government, and through the mechanisms of negotiation between employers and white workers on the basis of self-government and through the mechanisms of negotiation between employers and workers, that is, arbitration, conciliation and mediation. Also in 1937, the Wage Act No. 44 was passed which regulated the affairs of blacks who were not included under the definition of an employee and whites who were not unionized.

According to Nel et al. (2005:74), after World War II, black trade unionism increased steadily and presented challenges to the government as far as worker representation was concerned. The government decided to formalize the position of the black trade unions by introducing the Industrial Conciliation Act for blacks. Du Toit (1976:33), referring to the proposed legislation of 1947, highlights the problems that confronted the government:

> "The Industrial Conciliation (Natives) Bill published in 1947 aimed at providing machinery for mediation and arbitration in the case of black workers in certain areas and classes to be specified by the Minister of Labour. That would have excluded black workers from the 1937 Industrial Conciliation Act. It would also have made it illegal for black workers to be members of registered unions, as well as to have any connection with members of other racial groups in unregistered unions. Registration of black unions would be compulsory. Black domestic, agricultural and mine-workers were to be excluded from the intended Act, which meant that some of the most important groups of black workers could not qualify for union membership".

This proposed Bill did not become law and the National Party government shelved it as soon as it came to power in 1948 mainly because it was opposed to any form of registered trade unionism for blacks.

When the National Party government came to power in 1948, it immediately set up the Industrial Legislation Commission of Inquiry which was known as the *Botha Commission*. The main task of this commission was to investigate and report on existing employment legislation which comprised the Industrial Conciliation Act 36 of 1937, the Factories,

Machinery and Building Works Act 22 of 1941, the Wage Act 44 of 1937, and Shops and Office Act 41 of 1939. The Botha Commission pointed out serious problems in South African industrial legislation and in view of this the commission recommended new legislation for blacks and non-blacks. Such legislation had to be subject to the Nationalist government's ideology and policy, which meant that separate legislation for blacks and non-blacks would have to be promulgated. The main reason behind this dualism was the traditional labour patterns of South Africa, as well as the fact that cultural heterogeneity was an inherent aspect of South African history. The South Africa government at the time had a policy of ethnic identification, which necessitated the establishment of separate institutions for the different races (Nel et al., 2005:75). The Botha Commission recommended the promulgation of the following legislation, namely the Black Labour Relations Regulation Act 48 of 1953, the Industrialised Conciliation Act 28 of 1956 and the Wage Act 5 of 1957. These three statutes laid the foundation for what became known as South Africa's *dualistic system of employment relations*.

In summary, the Black Labour Relations Regulation Act 48 of 1953 applied to blacks (at the time referred to as *Bantus*) employed in every trade or section of a trade, with the following exceptions: those employed in farming operations, domestic workers in private households, those employed by the government (including railways administration), provincial administrations, charitable institutions where no remuneration was received, and any university, school, college or other educational institutions maintained wholly or partly from public funds. The Industrial Conciliation Act 28 of 1956, which repealed the Industrial Conciliation Act 36 of 1937, constituted the core of South Africa's labour legislation and, of course, went further than the 1924 and 1937 Acts in that it introduced far-reaching discrimination into labour affairs. For example, apart from the total exclusion of black workers from registered trade unions, the Act also included a prohibition on the registration of new, mixed-trade unions, while placing very severe restrictions on the operation of existing mixed trade union. The Act also recognized sex discrimination in the workplace and the reservation of jobs.

During the late 1960s and 1970s dramatic changes in the relationship between the peoples of South Africa took place, resulting in an ongoing deterioration in employment relations. In the light of these deteriorating employment relations, the South African government decided in 1977 to appoint the Wiehahn Commission to investigate and advise on existing labour

legislation. This was the first commission of inquiry into labour legislation since the Botha Commission of 1948. The terms of reference of the Wiehahn Commission were to inquire into, report on, and make recommendations in connection with existing labour legislation, with specific reference to the following:

- The adjustment of the existing system for the regulation of labour relations in South Africa with the object of making it provide more effectively for the needs of the country's changing times.
- The adjustment, if necessary, of the existing machinery for the prevention and settlement of disputes changing needs may have required.
- The elimination of bottlenecks and other problems that were being experienced within the entire sphere of labour at the time
- The methods and means by which a foundation for the creation and expansion of sound labour relations could be laid for the future of South Africa.

This Wiehahn Commission's investigation helped the government to formulate an alternative policy and to promulgate amended labour legislation in 1980. This eventually paved the way forward for experimenting with a non-racial system in South Africa.

The new labour policy of the Wiehahn Commission set a dramatic scene for employment relations practice and this culminated in the coming into power of the ANC-led government in 1994. After the first democratic election in 1994, the Labour Relations Act 66 of 1995 (LRA) was promulgated. This was followed by the Basic Conditions of Employment Act 75 of 1997 (BCEA) and then by the Employment Equity Act 55 of 1998 (EEA). These three Acts are examined in this thesis with special reference to the management, governance and growth of small enterprises (also 'SEs') in the Gauteng Province of South Africa.

From the above discussions, it can be argued that the historical evolution of South Africa's employment relations system was shaped by the country's historical development and, similarly, the employment relations system influenced the country's historical development.

The new LRA, like the old Labour Relations Act, aims to encourage collective bargaining and the settlement of disputes, but does so by enhancing the powers of the forums designed to

facilitate those objectives. The new established commission for conciliation, mediation and arbitration(CCMA) now replaced the old industrial court and conciliation board in the settlement of disputes .The CCMA is charged with both mediatory and arbitration functions, and all disputes must be processed through it, unless the parties are bound by a collective agreement that provides for private mediation and arbitration. Disputes that are not settled by mediation are referred either to arbitration by a Commissioner or to the Labour Court, depending on the classification of the dispute.

The LRA does not make any distinction between small enterprises and large businesses in the implementation of sections 185 and 186(1) to 188 of the LRA. In terms of section 185, every employee has the right not to be unfairly dismissed. Section 186(1) defines a *dismissal* and section 188 sets out the requirements for a fair dismissal, which are difficult for small enterprises to implement. The requirements for a fair dismissal (s 188) are as follows:

> "An employer must prove that a dismissal (other than an automatically unfair dismissal) relates to an employees' conduct or capacity or is based on the employer's operational requirements and that a fair procedure was adopted during the dismissal".

The various categories of dismissal are:

- Dismissal for misconduct;
- Dismissal for incapacity/poor work performance; and
- Dismissal for the employer's operational requirements.

Two requirements must be complied with in all of the above circumstances in order to ensure the fairness of a dismissal: (i) substantive fairness and (ii) procedural fairness. Where an employee alleges an unfair dismissal, the onus is on the employer to prove, on a balance of probabilities, that the dismissal was fair. If, however, the employee claims that he or she was dismissed and the employer contends that he or she was not dismissed, the onus is on the employee to prove the existence of a dismissal (s 192). In the case of misconduct which includes any of the following: theft; insubordination; assault and fighting; insolence; sexual harassment; intoxicated on duty; abusive language; high degree of absenteeism and so on, the

requirements (both substantive and procedural) for a fair dismissal must be considered by both small enterprises and small business enterprises. The process and the substantive issues involved appear to be too mechanistic for small enterprises. The case of *Sadulla v Jules, Katz* and the case of *Pretorius v Britz*, show that small enterprises and large business cannot be guided by the same rules when dealing with misconduct in the workplace. The LRA also made provision for the organizational rights of the employees and the process of dispute resolution system that can be easily implemented in large businesses and not in small enterprises.

In view of the size and resources available to small business enterprises, they find it necessary to comply with the rules and procedures of the LRA. For example, on the issue of organizational rights of employees, some case law is examined to assess how fruitfully its implementation has been carried out in larger businesses and not in small enterprises.

In the case of *Bader Bop (Pty) Ltd v National Union of Metal and Allied Workers of SA and others* the case shows how difficult it is for small enterprises to comply with labour legislation.

In the case of *Bader Bop (Pty) Ltd v National Union of Metal and Allied Workers of SA and others*, the ratio-decedendi of the case was whether a union in the work place which had no majority of the worker representative can be granted organisational rights. The two unions that were involved with this request or battle was the National Union of Metal Workers of South Africa (NUMAWSA) – a minority union and the General Workers Union of South Africa (GWUSA) which was the majority union.

In terms of Section 14 of the LRA, the company had granted GWUSA as the majority union organisational rights which include right to elections of trade union representative. NUMAWSA was granted organisational rights in terms of Section 12 and 13 of the LRA and this does not include the right to elections of trade union representative since it is a minority union.

Unfortunately NUMAWSA was not happy with this and it went to CCMA for conciliation. At CCMA there was a deadlock and it then referred the case for arbitration with a strike notice in terms of Section 64(1)(c) of the LRA. The company applied to the Labour Court for

an order interdicting the intended strike. The application was not successful. The company then appealed against the decision of the Labour Court and went to the Labour Appeal Court (LAC).

In the Labour Appeal Court, Mr Justice J P Zondo and Mr Justice A J A du Plessis were of the opinion that only a majority representative union should be granted organisational right in terms of Section 14(1) of the LRA.

The appeal went to the Constitutional Court where Justice J O'Regan pointed out that the LAC failed to take sufficient account of the International Labour Organisation (ILO) conventions and did not avoid the limitation of the constitutional right.

The reason for the discussion of the above case is to show that the issue of organizational rights between employees and employers in terms of the 1995 Labour Relations Act as amended in 2002 is only possible through a trade union. In most small enterprises where trade unions do not exist the negotiation of organizational rights between employers and employees is difficult to implement and this can best be described as '*impossibillium nulla obligato est'* (you cannot do the impossible); in other words, there is no obligation on the part of employers in small enterprises where there are no trade unions to negotiate organizational rights issues with their employees. This is so because there is no legal frame of reference for the employees in small enterprises to rely upon. In view of this problem, this research will investigate what other mechanism or forum could be used by employees in small enterprises to exercise their organizational rights.

The second problem this research intends to investigate is the LRA dispute resolution systems. The provisions of the LRA relating to the relief to be provided in cases of unfair dismissal is clearly stated in section 194 (1) (2) and (3) of the LRA. In the case where an employee is found to be unfairly dismissed and reinstatement is not ordered, the commissioner is allowed to order compensation for up to twelve months' remuneration calculated at employee's rate of remuneration on the date of dismissal. Considering the fact that there is a more personal relationship between employer and employee in small enterprises it seems improbable that commissioners will order reinstatement if the relationship is no longer cordial and it has broken down. It is therefore very likely that compensation will more often be ordered. To compensate an employee with twelve months'

remuneration this will adversely affect employers in small enterprises in view of their limited resources when compared to large-scale business. In view of this problem, this research intends to explore other means of resolving disputes in small enterprises timeously.

1.1.2 The Basic Conditions of Employment Act 75 of 1997 (BCEA).

Section 41 of the Basic Conditions of Employment Act 75 of 1997 states as follows:

> "An employee must receive severance pay (in addition to other payments due) if his services are terminated because of the operational requirements of the employer or the insolvency of the employer in terms of section 38 of the Insolvency Act 24 of 1936. Severance pay is of at least one week's remuneration for each completed year of continuous service with the employer. An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to any severance pay. The payment of severance pay does not affect an employee's right to any other amount payable according to law".

The bone of contention here is whether small enterprises with the limited finance at their disposal can comply with section 41 of the BCEA. Experience has shown that many small enterprises do not get to their maturity stage before they die. After two to three years, the majority of small enterprises fold for one reason or another. In case a small enterprise is unable to carry on with its business as a result of operational reasons or as a result of insolvency, the business is expected to pay all its employees severance pay. The payment of this severance pay by the owners of small enterprises, especially in the case of micro-businesses, will be most unpleasant and difficult for them to comply with mainly because of the small capital or little finance at their disposal. It is for this reason that there is an urgent need to exempt small enterprises from some of the clauses of the BCEA.

Another area where small enterprises need to be exempted is in sections 16 and 18 of the BCEA. Section 16 regulates Sunday work and section 18 regulates work on public holidays. In terms of working on Sundays, the following are the conditions:

- If an employee ordinarily works on Sunday, he or she must be paid one and a half times his or her hourly rate.

- If an employee does not ordinarily work on Sunday, he or she must be paid double his or her hourly rate.
- In both instances the employee must receive at least an ordinary day's wages or the rate referred to, whichever is the greater amount.
- The parties may agree on the ordinary rates plus time off, that is, the employee who works on a Sunday receives his or her ordinary hourly rate and is given paid time off equivalent to the difference in value between the ordinary wage received and the wage the employee is entitled to in terms of the above Sunday rates.
- In respect of public holiday work, the conditions are as follows:
  - An employee who works on a public holiday must be paid:
    - at least double the daily rate or
    - his or her normal daily rate plus the amount for actual time worked, whichever is the greater.

These payments are in respect of public holidays that fall on days that would otherwise have been working days.

The basic question at this juncture is whether small enterprises will be able to meet the above payment in respect of Sunday work and public holiday work. Small enterprises have very little capital and many of them die at their growth stage because of a lack of working capital. It will be very difficult for small enterprises to comply with the above payments because of the little capital at their disposal. Medium and small business enterprises can easily make the above payments because they are in a better financial position than small enterprises.

Sections 25 and 26 of the BCEA will also be difficult for small enterprises to implement. These sections deal with maternity leave.

The conditions for maternity leave are as follows:

- Four consecutive months' maternity leave;
- Leave commences at any time from four weeks before the expected date of confinement or on a date necessitated by the employee's health or that of her unborn child as certified by a medical practitioner or midwife;

- An employee may not work for six weeks after the birth of her child, unless a medical practitioner or a midwife certifies that she is fit to do so;
- An employee who has a miscarriage during the third trimester or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth.

For a small enterprise with only two to three women employees, it is difficult for the enterprise to implement the sections 25 and 26, especially in a situation where two of the employees fall pregnant at the same time.

For medium and small business enterprises, this may not be a serious problem because of the large number of employees and where the absence of three or four employees as a result of maternity leave may not affect the operational activities of the employees, mainly because of the large number of employees employed.

The other area that is difficult for small enterprises is in the termination of contract. It is assumed that every contract entered into between employer and employees, whether written or oral, is a valid contract. The case of *Ingwane v Med-Afrique* illustrates this point.

In the above case, the employee was advised by an employment agency that an interview was to be granted to him by a representative of the employer for the position of financial manager. The interview was duly held, and the discussion proceeded from details of the remuneration package to the duties and functions to be assigned to the employee, and jobs that he would undertake. The meeting ended positively and the employee was told to meet again at a social gathering in a few days' time where he would be handed a letter of appointment. The further meeting took place, from which the employee and the employer left for the latter's offices and various tasks to which the employee would be assigned were discussed. The employer then confirmed verbally that the employee would commence employment as financial manager a month hence. Although the employee was not satisfied that a written offer had not been made, he telephoned the employer later that day and accepted the verbal offer. The following day an employee of the employment agency telephoned the employee to advise him that his application to the company had been rejected. Having been informed of the above developments, the woman from the agency promised to telephone him back later,

which she did to confirm that the company could not afford the remuneration package that the employee had requested.

The sole issues for discussion were whether there was an employment contract between the parties and, if so, whether the employee had been dismissed. As to the first, a contract of employment was an agreement between two parties in terms of which one of them undertook to place his services at the disposal of the other for an indefinite period in return for a fixed or ascertainable wage, and which entitled the employer to define the employee's duties and (usually) to control the manner in which the employee discharged them. Although there was a discrepancy in the evidence regarding the amount of remuneration, the evidence showed that there was indeed such a contract. The employer could not plead that the person who had entered into the agreement on behalf of the company lacked the necessary authority to do so as it had not led evidence to prove the claim (and which, in any event, it would have been stopped from so doing) and had conceded that the employee concerned had been authorized to conduct the interview. The absence of a letter of appointment did not matter as there was no requirement that a contract of employment should be in writing. The inference had to be drawn that in informing the employee that the agreement had been cancelled the employment agency had acted on the mandate of the company. This amounted to a repudiation which constituted a dismissal. As it was agreed between the parties that in the event of a positive finding in this regard the dismissal must be found to be unfair, it was so declared. The employee was awarded compensation equivalent to two months' remuneration, which was determined at R20 000.

The bone of contention in this case is whether employers in small enterprises who often offer contracts to prospective employees informally (by mere verbal contracts) can also be considered to have dismissed the employee if they repudiate these verbal contracts.

Employers in small enterprises are flexible in the process of hiring the services of an employee, mainly because of the informal relationship that must exist between the parties. It will be difficult for employers in small enterprises to comply with both the substantive and procedural process adopted in the above case of *Ingwane v Med-Afrique* in establishing a contractual relationship between employer and employees. If the above principles in the above case are adopted, then whenever an employer in a small enterprise is unable to employ a prospective employee after a successful interview and the finalization of the remuneration

package, the employer is considered to have dismissed the employee, thus the employee is expected to be compensated. Large business enterprises can afford that compensation and not small enterprises which have very limited capital at their disposal.

1.1.3 The Employment Equity Act 55 of 1998

Some aspects of the LRA appear to be difficult to implement in small enterprises due to the nature of the business. For example, the implementation of affirmative action is difficult to achieve in small enterprises mainly because family members and close relatives are often employed in small enterprises. Affirmative action encompasses measures adopted by an employer which are designed to achieve equal employment opportunities by providing more opportunity to those employees that never had better conditions of service during the apartheid era.

Affirmative action, viewed positively, is designed to eliminate inequality, and address systemic and institutionalized discrimination, including racial and gender discrimination. It is a mechanism that is capable of eventually ensuring equal opportunities. It is primarily a means of ensuring that the previously disadvantaged are assisted in overcoming their disadvantages so that society can be normalized. Therefore, the focus must be on the historically disadvantaged. In view of this, the Labour Court is of the view that an employer who applies affirmative action, that is, by preferring, in the case of a transfer or promotion, a candidate who has personally been historically, unfairly discriminated against, does not commit an unfair labour practice as regards a person who has not suffered such deprivation.

To examine how South African courts have dealt with the issue of affirmative action, the case of *George v Liberty Life Association Africa Ltd,* will be analysed.

In this case, George, one of the white employees in the company applied for a vacant post as advertised by the company. The vacant post was advertised externally without being advertised internally first as required by the company internal policy.

A coloured candidate also applied for the post as advertised and this coloured candidate was not an employee of the company (outsider).

After the interview, the coloured candidate was offered the post and not Mr George who was an employee of the company.

With this appointment, Mr George felt he was unfairly discriminated against and took the case to Court. At the Labour Appeal Court (LAC) where the case was finally held, the Judges held the view that the company action of the coloured if it is based on addressing the past imbalances in the spirit of affirmative action, was not unfair discrimination against George being a male white employee, but the Court found the company's failure to follow the company policy on internal recruitment first before external advertisement as procedurally wrong and the company was found guilty on these premises and awarded the employer costs for not following its internal policy.

Apart from the implementation of affirmative action as discussed above, EEA also required both employers in small business enterprises and small enterprises to prepare and implement employment equity plans. An equity plan must contain specific affirmative action measures to achieve equitable representation at all occupational levels. Employers must further take measures to progressively reduce disproportionate income differentials and must report to the Department of Labour on their implementation and progress made with employment equity. Employers who fail to comply with the rules are punished accordingly by the government.

1.2 Problem statement

The research problem is to develop a framework on how to apply labour legislation to promote the growth, management and good governance of small enterprises in Gauteng Province of South Africa. This is the research gap and details of the current problems facing SEs in terms of labour legislations are fully discussed below.

In South Africa, the regulation of employment relationships has changed dramatically since 1994. Although the process of entry into the employment relationship remains the common law contract of employment, regulated mostly by principles derived from private law, it may well be argued that the conduct of the parties is regulated largely by statute law and rules created in terms of those statutes, such as the LRA, BCEA and EEA. It is for this reason that

some academics question the nature of the modern employment relationship: is it purely a contractual relationship or should it be viewed as one of statute? A contractual relationship is one in which the parties enjoy great freedom to reach agreement on the content of the rules that are to govern their respective rights and obligations in terms of the contract entered into (Du Plessis and Fouché, 2006).

Common law places the individual employee in a weak position vis-à-vis his or her employer and offers little or no protection to the employee. Common law, for example, does not provide for maximum working hours and paid leave. The common rule of 'no work, no pay' prevails. In terms of the common law, a job applicant, having the freedom to contract, has the choice to commit himself or herself contractually to work for, for example, seven days a week, 15 hours a day and with no provision for paid holiday or sick leave.

In contrast, the present labour legislation (e.g., LRA, BCEA and EEA) in South Africa treats both small enterprises and large business enterprises under the same legislative framework in which small enterprises find it difficult to operate. The asymmetrical relationship between small enterprises and small business enterprises is almost ignored in the implementation of the current labour legislative framework. The present labour legislation assumes one size fits all. This is a wrong assumption and its consequences on small enterprises will be examined.

The various areas where small enterprises encounter problems in the implementation of the current labour legislation will be highlighted below. In the first place, the influence of labour legislation on small enterprises revolves around many issues that include overtime payment; the definition of an employee; the extension of the registered scope of the bargaining council to workers in the informal sector and domestic worker; and the promotion of sound governance principles will be examined in this research.

This research examines the influence of specific labour legislation on small enterprises in the Gauteng Province of South Africa. For example, section 188 of the LRA spells out the requirements for a fair dismissal in terms of the substantive issues to be considered and the procedural process to be followed. This is a problematic area for small enterprises which needs to be investigated in terms of how it creates difficulty for the management, governance and growth of small enterprises.

In the same vein, as regards the issue of organizational rights of employees, section 20 of the LRA sets out the rights that can only be enjoyed by a majority registered union, and the implementation of section 20 has resulted in unforeseen consequences that have a negative effect on the management, governance and growth of small enterprises. This is also another problematic area that needs to be investigated.

Section 41 of the BCEA deals with severance pay. Every employee who is dismissed for operational reasons is entitled to severance pay. This payment is not an easy task for small enterprises, mainly because of the little capital at their disposal. Large business enterprises can easily afford this but not small enterprises.

Sections 25 and 26 of the BCEA deal with maternity leave. The number of months a pregnant employee should be granted leave is problematic to small enterprises. In a situation where there are only three women employees and two of the employees are granted maternity leave, it is difficult for such a business entity to carry out its operational activities efficiently with only one employee. This is a problematic area that needs to be investigated.

Similarly, sections 16 and 18 of the BCEA, which deal with the remuneration of employees who work on Sundays and public holidays, is also problematic for small enterprises to implement. Large firms may not find it difficult to implement sections 16 and 18, but small enterprises cannot afford such remuneration because of the little capital at their disposal.

The implementation of the EEA by small enterprises in respect of affirmative action and employment equity plan is difficult for those few small enterprises employing more than fifty employees to implement, mainly because of the informal structure of the business entity and partly because most of the employees in small enterprises are family members. Formal rules can work better in large firms because of the bureaucratic nature, whereas in small enterprises, informal rules and norms play a dominant role in controlling their activities. This is again another problem area that needs to be investigated in this research, especially in SMMEs that employ just over 50 employees since small businesses with less than 50 employees are now exempted from implementing affirmative action policies.

In this study, an attempt is made to highlight the difficulties experienced by small enterprises in the implementation of the three pieces of labour legislation, namely the LRA, BCEA and the EEA, which constitute the research problems to be investigated in this research.

In the case of the LRA, the implementation of organizational rights is problematic, mainly because before any organization or a business unit can implement the organizational rights of the employees, trade unions must exist that are officially recognised by the employer. The essential elements of organizational rights include the right of employees to join a union and the right to bargain with the employers.

Most small enterprises do not have trade unions mainly because of their small size and because of this, employees working in small enterprises cannot exercise their organizational rights. The purpose of entrenching organizational rights in the LRA was to enable employees to enjoy social justice and economic advancement in the work environment. However, this has produced unintended consequences that negatively impact on the management, growth and good governance of small enterprises and this will be investigated in this research.

The LRA stipulates the method to use in settling disputes between employers and their employees. Both parties are expected to consider both the substantive issues and the procedural process to be followed. In the case of misconduct where an employee is found to have stolen the property of the employer, the substantive issue to be considered in this case is that there must be a policy that defines the action of the employee as theft; the employer must have drawn the attention of the employee to that policy. Secondly, the property stolen must be seen in the hand of the employee. Thirdly, there must be an element of intention to steal the property. The employer must prove the above three elements. In terms of the procedural process, the employer must give the employee a fair hearing with the help of a legal representative if so desired. All these processes and procedures are time-consuming, and large firms can afford to accommodate the substantive issues and the procedural processes through their legal department. For small enterprises, this process is difficult to follow because of the small size of the business and the limited resources at their disposal. The purpose of entrenching the substantive issues and the procedural process in the LRA was to bring about fairness in settling the disputes between employers and their employees. However, this has produced an unintended negative consequence on the management, growth and good governance of small enterprises. The present dispute resolution structures

established by the LRA have seen inundated with an unanticipated number of disputes, delays in determining disputes are commonplace, the cost of dispute resolution in small enterprises is high and when disputes are not settled internally, proceeding before dispute resolution agencies and courts are overtly technical. All these factors have a severe impact on small enterprises.

The LRA does not recognise the fact that most small enterprises are family-owned business and because of this, any dispute arising from work is settled by family members who see such settlement as a family responsibility (see Okharedia 1993). The nature of interaction in small enterprise is informal, the process of bureaucracy and the strict application of rules, policy and formal procedures are de-emphasized. Although the rationale for enacting the LRA is to establish formal structure and processes for resolving disputes in the work environment, and to create a fair process of promoting peace and stability in the work environment, the application of these formal structures and processes has created unintended negative consequences in managing the employees in small enterprises. In view of the fact that most small enterprises are family owned, the employee would like any misunderstanding or dispute to be settled in family meetings or gathering, and not in a formal process that might require legal representation. The formal structures and processes also hinder the expansion or growth of small enterprises in the sense that the finance that would have been used to expand the business might be used in the litigation process in an attempt to comply with the LRA.

Furthermore, the spirit of collective wisdom, openness and togetherness through family ties is broken, thus preventing transparency and accountability, which are the essential elements of good governance. In a situation like this where formal structures and bureaucratic processes are followed, as required by the LRA, the element of trust among the employees is also broken. The result is secrecy, quasi-co-operation and unnecessary confidentiality within small enterprises, which hinders transparency and the implementation of good governance.

In addition to the above discussion, section 189 of the LRA prescribes in details the procedures generally applicable to dismissals for operational requirements and these requirements are very difficult for small enterprises to comply with due to the small size of their business and the limited resources at their disposal. These requirements are unnecessarily complex, and fail generally to consider the nature of small enterprises. However, greater flexibility can be achieved for small business more generally, by

amendments to section 189 and 189A, all of which can be effective to meet the demand of good governance; a better way of managing the relationship between employer and employees in small enterprises. In the same vein, the exclusion of small enterprises in section 189 will help South African labour law to accommodate small enterprises in meeting international standards and international practice in respect of unnecessary consultation obligation expected of an employer.

In South Africa, too, there is no protection against unfair dismissal. There is no qualifying period, that is, workers enjoy protection against dismissal from the time that they enter into contracts of employment, even if they have not started working (see *Wyeth SA (Pty) Ltd V Mangle and others [2005] 6 BRRL 523 (LAC)*). Probationary employees are not excluded from protection against unfair dismissal (the protection they are afforded is more limited).

Many jurisdictions exclude categories of employees from the application of unfair dismissal laws. It is not uncommon for unfair dismissal laws to be excluded from application to small enterprises. For example, in Germany, the Protection Against Unfair Dismissal Act does not normally apply to enterprises employing fewer than 6 workers. In Australia, recent amendments to labour legislation will have the effect that business with up to and including 150 staff members will be exempt from unfair dismissal laws.

In view of the above, it is suggested that small enterprises with fewer than 20 workers should be exempted from unfair dismissal procedures as it is in some advanced counties.

As regards the BCEA, the two major problematic areas for small enterprises revolve around the minimum wages and workings hours required of an employee. The minimum wage levels set by the Bargaining Council are probably the most difficult aspect of the bargaining council system of small business. Differentiation of wages between different councils is a common phenomenon. In view of the fact that most small enterprises are family-owned, members of the family do not fix wages as it is in the formal sector of the economy and because of this, small enterprises should be exempted from minimum wage regulation. The exclusion of small enterprises from minimum wage regulation is likely to promote good management of the business, since the employees are made to consider the business as their own enterprise and look forward to a better share of the profit made. In a situation like this, there will be little or no dispute on wage issues as it is in large firms. The absence of dispute will help in

the growth of the business, since the money spent on wage demands and increases can be used to expand the business. The presence of good management relationship between the employer and the employees will contribute to good governance where there is trust, accountability, and sincerity of purpose and transparency in the work environment.

The number of working hours per day, and working on Sundays and public holidays as required by the BCEA are difficult to implement in small enterprises, mainly because of their size and partly because of family members who work in small enterprises. Since the majority of the employees are family members who are not strictly paid monthly wages and other benefits, it makes no difference to them if they work on Sundays and public holidays because they are not strictly wage earners. Excluding small enterprises from wage regulation will improve the informal relationship between employers and their employees. In the same perspective, this creates an opportunity for employers to think positively on how to expand their business and also bring in more elements of good governance that will create a cordial and friendly atmosphere in the work environment.

Lastly, the EEA stands on two pillars, namely; (i) affirmative and (ii) unfair discrimination. The argument here is that the application of affirmative action in small enterprises will be difficult to achieve, mainly because of their size and considering the fact that most of the businesses are family-owned.

A family business of six members consisting of a husband, wife and four children cannot implement affirmative action because of the limited number of employees required and the little capital available to the business. Implementing affirmative action will not only distort the cordial relationship between the employees, it will also limit the growth of the business since there is no capital for expansion. Similarly, it will not promote good governance since this is a business that is solely tied to family members where dealings are based on trust, and not on rules and regulations as in the formal sector. In the same vein, it will be unfair not to consider family members for employment opportunities and give preference to an outsider so as to meet up with affirmative action requirements.

In the same view, the issue of unfair discrimination does not really exist in small enterprises simply because of its small size and the family ownership of the business. It does not make sense for family members to discriminate against themselves. There is a high level of

collective activities in small enterprises. The employees see themselves as one entity and any differences among them are resolved amicably using their collective wisdom. Non-family are hardly employed in small enterprises, this therefore eliminates the propensity to employ different races or colours in small enterprises. In view of this, it is often argued that small enterprises should be exempted from the implementation of affirmative action and unfair discrimination. This exemption is likely to improve the management of small enterprises and promote their expansion. All the issues raised above are part of the research problems that will be investigated in this research.

Table 1. 1 Summary of the research problem

The three pieces of labour legislation	Problem areas in small enterprises	The likely unintended consequences for small enterprises
1. Labour Relations Act 56 of 1995 (LRA)	• Implementation of organizational rights • Difficulties in fair dismissal process • Dispute resolution process • Difficulties in collective bargaining processes through unions	• Some employees in small enterprises will not be able to enjoy their organizational rights because of the absence of trade unions in some of these small enterprises • Both the substantive and procedural process to be considered for a fair dismissal and collective bargaining is an extra financial burden for small enterprises and this directly or indirectly affects the growth and expansion of small enterprises
2. Basic Conditions of Employment Act 75 of 1997 (BCEA)	• Difficulties in the payment of severance pay to employees • The duration of maternity leave for pregnant women • The remuneration of employees who work on	• Most small enterprises have little capital and for them to pay severance pay to employees is not an easy task. Compliance with the above payment is likely to reduce the accumulated capital which the business would have used for its expansion (growth). • In a situation where a small enterprise has three employees and two are women and both happen to apply for maternity leave at the same time, only one male employee will have to do all the work.

The three pieces of labour legislation	Problem areas in small enterprises	The likely unintended consequences for small enterprises
	Sundays and public holidays	This is likely to affect the management of the small enterprise because of the long duration of the maternity leave • Most of the employees in small enterprises are family members who are willing to work on Sundays and public holidays without asking for special remunerations.
3. Employment Equity Act 55 of 1998 (EEA)	• The implementation of affirmative action in the work environment • Difficulties in complying with the employment equity plan • Yearly report to Director-General of the Department of Labour on the implementation of the plan • Internal dispute resolution procedures	• Most small enterprise employees are family members and they are given employment opportunity before any outsiders. If members of the family who own the business are not given this opportunity, this may hinder good governance where trust, transparency and accountability are being encouraged.

1.3 Schematisation of the research problem

- Organizational rights
- Fair dismissal process
- Dispute resolution process
- Collective bargaining process

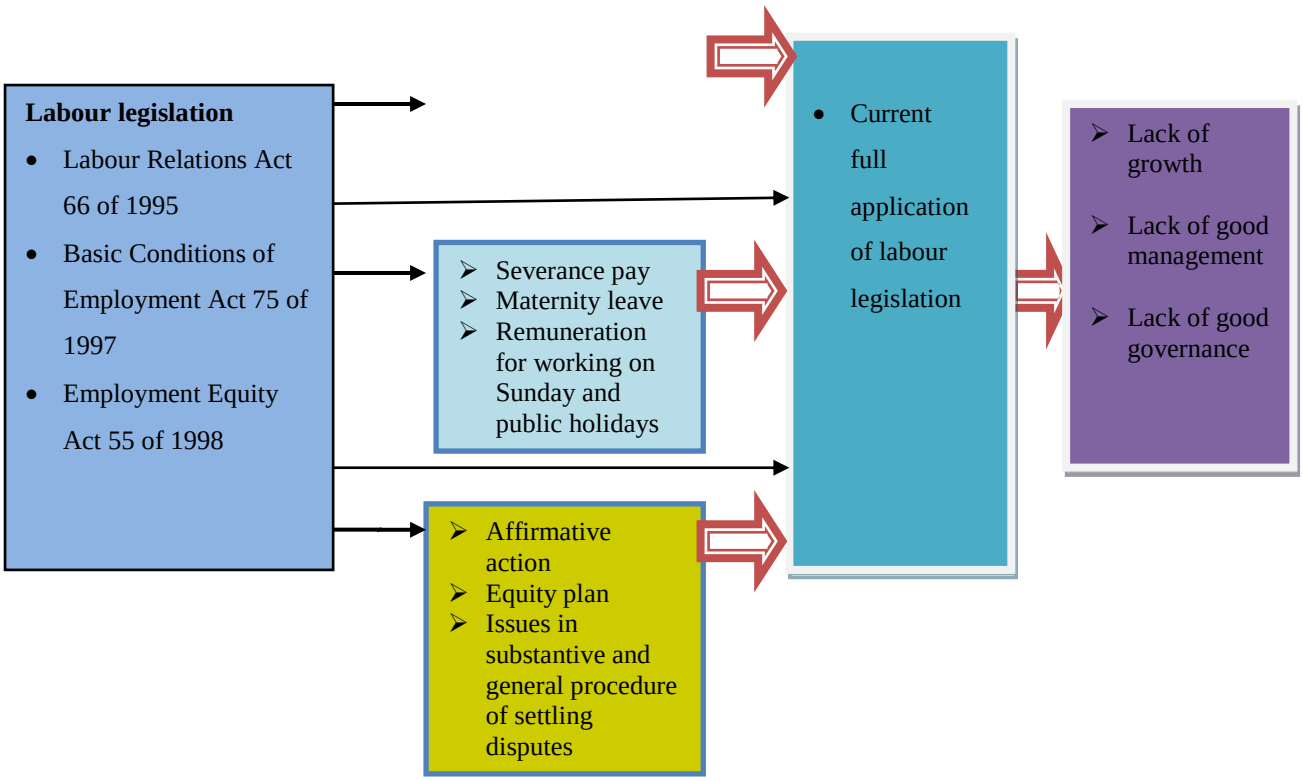


Figure 1. 1: Schematization of the research problem

1.4 The Purpose of the research

The principal aim of this research is to find out the influence of labour legislation on small enterprises in Gauteng Province of South Africa.

This research attempts to examine if the exclusion of small enterprises from labour legislation is likely to result in better management and development of small enterprises. The bone of contention is to find out if labour legislation is a mere catalyst or real driver of the development and management of small enterprises. In addition to this, an attempt is made to find out how the current rigid application of the LRA, as amended, the BCEA and the EEA have influenced the development and management of small enterprises in South Africa. The need for the Government of South Africa to create an enabling legal framework that embraces the elements of sound governance for the development and management of small enterprises will also be examined in this thesis.

This research attempts also to find out if small enterprises can really follow LRA rules in settling disputes through both substantive and procedural process. The rationale for investigating this issue is that past studies in the United Kingdom (UK) illustrate that it is very difficult for small enterprises to comply with formal methods in resolving disputes. For example, a recent study of the Tribunal in the UK conducted by J. Earnshaw and others (1980) found that many decisions against small enterprises occurred because they could not use the formal approach. Owners of small enterprises found it difficult, because of the little resources at their disposal to utilise the formal procedure set out by the Industrial Tribunal.

Employers in the Earnshaw study felt that the Industrial Tribunal system was inappropriate for small enterprises. In other countries, it is uncommon for small enterprises and large business firms to be bound by the same procedures when resolving disputes. For example, in Germany, the Dismissal Procedure Act of 1951 does not apply to employers of fewer than five employees. In France, the French legislation on dispute resolution in the termination of employment does not apply to any business that employs fewer than ten employees. In Italy, any business with fewer than 15 employees is exempted from compulsory labour dispute resolution requirements.

In the light of this discussion, this research will examine what alternatives are open to small enterprises from the current labour legislative framework. The extent to which owners of small enterprises in South Africa are not likely to meet both the substantive and the procedural requirements within the various labour Acts as reflected in the workplace will be examined.

Other issues revolving around governance issues and their implication on how it influences the development and management of small enterprises will also be examined where the issues add value to this research.

1.5 The value of the research

From the research findings will develop a framework on how to apply labour legislations on the growth, management and governance of small enterprises in South Africa. This research sheds more light in the academic literature on small enterprises, thus answering some of the current academic questions on small enterprises and labour legislation issues.

Secondly, this research provides more information to policymakers on small enterprises, thus helping them to know how to formulate labour legislation that will not impact negatively on small enterprises.

Thirdly, this research guides both employers and employees working in small enterprises on how to implement labour legislation to the advantage of all the role players in small enterprises.

In addition to this, the research increases knowledge on the dynamics of labour legislation on small enterprises and at the same time provide better protection of all employees in small enterprises so as to nullify any asymmetrical relationship between employers and employees. In fact, labour legislation creates, *inter alia*, minimum conditions of employment that the parties cannot ignore.

1.6 Outline of the thesis

Chapter 1: deals with the introduction; this includes problem statement, purpose of the research and the value of the research
Chapter 2: deals with small enterprises and the South African economy
Chapter 3: deals with the literature review and this includes the theoretical framework and the past empirical studies of the research.
Chapter 4: This deals with research design and methodology
Chapter 5: This deals with data analysis and the research findings
Chapter 6: Conclusion and recommendations.

CHAPTER TWO: SMALL ENTERPRISES AND THE SOUTH AFRICAN ECONOMY

2.1 Definition of Small Enterprises in South Africa

In South Africa, a *small enterprise* is defined in the National Business Amendment Act 29 of 2004 as a "separate and distinct business entity, together with its branches or subsidiaries, if any, including enterprises managed by one owner or more', predominantly carried on in any sector or subsector of the economy mentioned in column 1 of the schedule and classified as 'a micro, a very small, or a medium enterprise' by satisfying the criteria mentioned in columns 3, 4 and 5 of the schedule which is shown in Table 2.1".

Although the above definition includes medium enterprises, the focus of this research is on very small and micro enterprises which employ fewer than 20 employees. Experience has shown that very small and micro enterprises find it extremely difficult to implement the current labour legislation in South Africa.

[1]Note that the above definition is taken directly from the National Small Business Amendment Act 29 of 2004.

Table 2. 1 **Definition of small enterprises**

Sector or subsector (Standard Industrial Classification)	Size of class	Total full-time equivalent of paid employees	Total turnover (R million)	Total gross asset value (excluding fixed property)
Agriculture	Medium	100	5	5
	Small	50	3	3
	Very small	10	0.50	0.50
	Micro	5	0.20	0.10
Mining and Quarrying	Medium	200	39	23
	Small	50	10	6
	Very small	20	4	2
	Micro	5	0.20	0.10
Manufacturing	Medium	200	51	19
	Small	50	13	5
	Very small	20	5	2
	Micro	5	0.20	0.10
Electricity, Gas and Water	Medium	200	51	19
	Small	50	13	5
	Very small	20	5.10	1.90
	Micro	5	0.20	0.10
Construction	Medium	200	26	5
	Small	50	6	1
	Very small	20	3	0.50
	Micro	5	0.20	0.10
Retail and Motor Trade and Repair Services	Medium	200	39	6
	Small	50	19	3
	Very small	20	4	0.60
	Micro	5	0.20	0.10
Wholesale Trade, Commercial Agents and Allied Services	Medium	200	64	10
	Small	50	32	5
	Very small	20	6	0.60
	Micro	5	0.20	0.10
Catering, Accommodation and Other Trade	Medium	200	13	3
	Small	50	6	1
	Very small	20	5.10	1.90
	Micro	5	0.20	0.10
Transport, Storage and Communications	Medium	200	26	6
	Small	50	13	3
	Very small	20	3	0.60
	Micro	5	0.20	0.10
Finance and Business Services	Medium	200	26	5
	Small	50	13	3
	Very small	20	3	0.60
	Micro	5	0.20	0.10
Community, Social and Personal Services	Medium	200	13	6
	Small	50	6	3
	Very small	20	1	0.60
	Micro	5	0.20	0.10

Source: National Small Business Amendment Act 29

2.2 The Taxonomy of Small Enterprises in South Africa

In South Africa, 99% of Small business enterprises fall within the small enterprises category. The classification of small enterprises falls within three (3) groups, namely; micro, very small and small.

This group falls within the sectors of retail business, small scale manufacturing, fishing and subsistence farming. The other element that is used to further classify this group includes the number of employees, annual turnover and assets as illustrated in Table 2.2 below.

Table 2. 2 National Small Business Amendment Act Classification in respect of number of employees, annual turnover and asset value

Type	Number of employees (max.)	Annual turnover (R m) (max.)
Micro-survivalist	0	Varying
Micro-non survivalist	5	0.2
Very small	20	6
Small	50	32
Medium	200	64

Source: National Small Business Amendment Act (NSBAA) 2004

2.2.1 Micro-survivalist

Most of this business in this category is not registered and the class of people found in this business are those who just want to be engaged with something. They are still looking for job and as soon as they secure one, they will immediately fold up their present business. They do not have savings mainly because the profit made is very minute. The commonest group of people are those farmers practising subsistence agriculture and petty sellers in the street.

2.2.2 Micro: Non-survivalist

This group of people belong to the informal sector and the number of employees are very few with a yearly profit which is more than two hundred thousand Rands (R200 000.00) and a gross asset of about one hundred thousand Rands as shown in Table 2.2 above.

2.2.3 Very small

As shown in Table 2.2, people employed here are not more than 20. The technology used here is more advanced than the one used in micro-Non-Survivalist. The turnover in this sector is between R1 million to R6 million with a gross asset of about R2 million.

2.2.4 Small

This entity has an established structure and processes which enables it to grow and perform its functions. In its books of accounting, it complies with tax principles with a turnover of three million (R3 million) to thirty-two (R32 million).

2.2.5 Medium

In this group of business, they experience more bureaucratic process than the ones discussed above with annual turnover of about sixty-four million Rand (R64 million). Most service industry like catering and hotel services fall within this industry. The process of running the business is not centralised like other businesses.

Having discussed briefly the above classification of small enterprises, it might also be of interest to know the number of such businesses and their employees in South Africa. Table 2.3 illustrates the number of firms and the number of employees in each category.

Table 2. 3:Type of Enterprise and Employment in South Africa

Type	Number of small business enterprises	%	Number of smployees	%
Micro-survivalist	184 400	20	184 400	3
Micro–non-survivalist	466 100	51	848 549	11
Very small	180 000	20	1 068 431	14
Small	58,851	7	1 225 972	17
Medium	11 322	1	909 880	12
Large	6 017	1	3 159 931	43
TOTAL	906 690	100	7 397 163	100

Source: Ntsika, 1997 in Karungu et al.

The above Table 2.3 shows the total number of small business enterprises which is about nine hundred thousand (900 000). The table shows that over 70 per cent of the total small business enterprises fall under micro businesses category. The table also shows that over 50 per cent of the employees are absorbed by both medium and large business entities.

The significance of Table 2.3 is that it shows at a glance that most small enterprises are found in micro-survivalist, micro-non survivalist and very small enterprises.

Unfortunately, past studies on small enterprises in South Africa do not consider this information and in view of this, there is a tendency to treat all small enterprises as a homogenous entity. This has resulted in not getting proper information on the management and development of small enterprises.

Among the public, there is a general belief that a micro-enterprise may develop to a small or medium enterprise depending on how it is influenced by many factors including the labour legislation framework which this thesis attempts to explore.

2.3 National and Provincial Support Policies for the Growth of Small Enterprises in South Africa

It could still be recalled that the South African Government White Paper of 1995 was the first document to outline Government initiative to have a valid policy on small enterprises. The purpose of this policy document was to find a way in which to help in the development of small enterprises in the nine provinces of South Africa.

In 2005, the Department of Trade and Industry (DTI) also came on board with its strategic policy document which was aimed to deal with local economic development and to move the black economic empowerment agenda forward.

The DTI, having considered the positive and negative impact of the Government white paper on small enterprises in 1995, came out clearly with its own main strategic objective on how to promote small enterprises with special reference on the supply of finance and non-financial services, to create market for the demand of the product and services of SMEs and to check on how the regulatory barriers affect SMEs.

Objective one (supply of support services) consists of streamlining resources from the public sector and encouraging resources from the private sector. The second (i.e., demand for small enterprise products and services) is to be driven by new policy initiatives, particularly procurement policy and black economic empowerment (BEE) codes of good practice as levers for increased demand. The third pillar (i.e., reducing the regulatory burden) is to be achieved through a regulatory impact assessment and business environment monitoring mechanism (dti, 2005:4).

2.4 Small Enterprise Development Institutions

The DTI's Integrated Small Business Development Strategy identifies a number of institutions that have important roles in the implementation of the strategy. These agencies (which include both dedicated small enterprise support agencies and institutions with broader and related functions) are as follows: (Source: DTI document, 2005).

- "Small Enterprise Development Agency (SEDA)
- South African Micro-Finance Apex Fund (SAMAF)
- Khula Enterprise Finance Limited
- Manufacturing Advice Centres
- Ntsika Enterprise Promotion Agency (Ntsika)
- Umsobomvu Youth Fund (UYF)
- Small Enterprise Foundation (SEF)
- National Empowerment Fund (NEF)
- Land Bank
- MAFISA."

For the above agencies to fulfil their expected functions, DTI has emphasised the need for the Government to work very closely with them and that the Government should help to coordinate their activities.

2.4.1 The Small Enterprise Development Agency (SEDA)

The purpose of its establishment in 2004 is to support SMEs and help SMEs to design and implement development support programmes. Its focus area includes co-operatives in rural areas. The Agency is also expected to provide useful information to SMEs through its Business Referral and Information Network.

2.4.2 The South African Micro-Finance Apex Fund (SAMAF)

The focus of this Agency is to help in capacity building and skills development with special reference to financial services co-operatives and micro finance institutions. This Agency is expected to give direction on funding models and provide capital for SMEs that are seriously having financial difficulties to survive.

2.4.3 Khula Enterprises Finance Limited

The principal role of this Agency is to provide finance to SMEs through financial institutions and intermediaries. It also has the task of creating opportunities of increasing bank lending to SMEs at reasonable rates. It also has the responsibility to ensure that the number of SMEs listed on JSE are on the increase and not decrease.

2.4.4 Ntsika Enterprise Promotion Agency (Ntsika)

This Agency has the responsibility to give useful and meaningful information to policy makers on SMEs development and to advice on how to improve and increase entrepreneurial skills in South Africa.

2.4.5 The Umsobomvu Youth Fund (UYF)

The main objective of UYF is to increase the involvement of young South Africans in economic activities and to be proactive in venturing into businesses. It also creates job opportunities to the youth with the necessary skills.

2.4.6 The Small Enterprise Foundation (SEF)

The main objective of this Agency is to provide minute loans to the poor and unemployed people of Limpopo Province through micro credit programmes and other credit facilities.

2.4.7 The National Empowerment Fund (NEF)

The purpose of the NEF is to promote and support business ventures pioneered and run by historically disadvantaged persons. It helps such people to acquire shares or interest, directly or indirectly, in state-owned commercial enterprises that are being restructured or in private enterprises. NEF finances new projects and expansions for a minimum of R250 000.00.

2.4.8 The Land Bank

This is one of the major agencies established by Government to support the agricultural sector and co-operative entities. The focus is to meet the needs of farmers fully engaged in agricultural activities.

2.4.9 MAFISA

This agency assists small landholders and young farmers to locate their bearings in developing their small farms and holdings. The agency also helps to facilitate financial services that enable these farmers to meet their needs and improve their agricultural activities.

2.5 Skills Development for Small Enterprises

In this chapter, it might also be of great interest for us to know some of the measures that have been considered by the Government to provide necessary skills that can help in the development and management of small enterprises. Some of the measures and development initiatives will be discussed below.

2.5.1 The Policy Document

The Skills Development Act of 1998 is one of the major legal instruments that is used by the Government to address the problems surrounding the development of the required skills in

the country. The Government has realised the importance of skills development and it is for this reason the above Act was enacted in 1998. The Act has entrenched various units like the National Skills Authority and others to deal with skills problems in all sectors of the economy including SMEs.

2.5.2 Joint Initiative on Priority Skills Acquisition (JIPSA) initiatives for small enterprises

The Joint Initiative on Priority Skills Acquisition (JIPSA) was an attempt to provide relevant skills for both the public and private sector. The relevant skills include skills in ICT which were observed as quite critical. JIPSA made it clear that skills development must also benefit small enterprises and help the sector to meet some of its challenges. However, the question that is often asked today is, has this objective been achieved? Unfortunately this question will not be answered in this thesis because it is not the focus of this research.

2.5.3 Sector development strategies

The following three sectors, namely: (a) Tourism, (b) Business process outsourcing and off-shoring and (c) Creative, have been identified as sectors that need to be developed for their potentials and economic benefit to the Government and the society at large.

The Accelerated and Shared Growth Initiative South Africa (ASGISA) has also pointed out that small enterprises across the above three sectors need to be examined and developed since they have been neglected in the past.

2.5.4 Business Development Services (BDS) and private sector small enterprise support

In view of the important role small enterprises can play in terms of export and the promotion of competitive spirit, the need to improve small enterprises is also an area of interest in the private sector. Considering the fact that most SMEs make up a larger proportion of the private sector, much attention is now given to this sector of the economy.

According to Rogerson (2006):-

> "International experience shows that the BDS is essential for small enterprise development after experimenting for decades with small-scale subsidised programme having only a modest impact, the international experience in the field of BDS shows that there is occurring paradigm shift with the emergencies of new high impact strategies that can reach large numbers of businesses in a sustainable manner".

It is interesting to note that in South Africa small enterprise development has tended to be anchored in the paradigm of state delivery of subsidized support services, with little debate about the market development approach (Rogerson, 2006:68). A number of international donor agencies have tried to erode this neglect of the market development approach for BDS in South Africa, notably the German Technical Co-operation (GTZ) and USAID. GTZ has, for example, funded two large research investigations in Nelspruit and Queenstown, designed to collect the first empirical information on the state of local markets for commercial BDS provision in the country. The best-documented BDS initiative to date in South Africa has been the project of the Triple Trust Organisation (TTO) in support of *spaza* shops (Rogerson, 2006:70).

2.5.5 The banking institutions

The banking institutions have not shown much interest in giving financial assistance to small enterprises mainly because of the high risk nature of the business and partly because there are no mechanisms to continuously monitor their activity so as to know exactly at what point in time they critically need advice. These are some of the barriers why the banking institutions have failed to render sound financial assistance to SMEs.

However, Sizwe (2011), who is the Chief Executive Officer (CEO) of First Rand Bank, argues that the banks receive large amounts of deposits from small-scale businesses and yet the banks are only willing to lend very few loans to small-scale businesses. He is of the view that this must change if small and medium enterprises are to develop in South Africa. This confirms that the banks make more money from small and medium enterprises through deposits than what the banks give to them in the form of loans.

2.6 The Regulatory Environment: Labour Legislation

How labour legislation affects the growth and development of SMEs has been of great concern to South African Government and members of the public.
However, some academics have also warned us not to lose the focus of other possible factors like market demands and the durability of SMEs products as factors that could also affect the development and growth of SMEs and not just the labour legislations alone. Conclusively, these academics are of the view that the nature of regulation generally including labour legislation will undoubtedly have effects on the development and growth of SMEs more than the market forces.

In South Africa, the regulation of employment relationships has changed dramatically since South Africa became democratic in 1994. Although the process of entry into the employment relationship remains the common law contract of employment, regulated mostly by principles derived from private law, it may well be argued that the conduct of the parties is regulated largely by statute law and rules created in terms of those statutes, such as the BCEA. It is for this reason that some academics question the nature of the modern employment relationship: is it a purely contractual relationship or should it be viewed as one of status? A contractual relationship is one in which the parties enjoy great freedom to reach agreement on the content of the rules that are to govern their respective rights and obligations in terms of the contract entered into (Du Plessis and Fouché, 2006).

Common law places individual employees in a weak position *vis-à-vis* their employer and offers little or no protection to the employee. Common law, for example, does not provide for maximum working hours and paid leave. The common law rule of 'no work, no pay' prevails. In terms of the common law job applicants, having the freedom to contract, have the choice to commit themselves contractually to work for, for example, seven days a week, 15 hours a day and with no provision for paid holiday or sick leave.

In view of this, labour legislation is necessary to provide better protection to all employees in small enterprises and large companies so as to nullify this kind of asymmetrical relationship between employers and their employees. Labour legislation creates, *inter alia*, minimum conditions of employment that the parties cannot ignore.

2.7 Small Enterprises' Sectoral Contribution to the Gross Domestic Product of South Africa

Table 2. 4: Estimated % sectoral contribution to GDP by size class, 2015

Industry Turnover	Large >Rm	Medium >Rm	Small >Rm	Very Small > Rm
SIC2 Mining and Quarrying	370.5	95.0	38.0	2.0
SIC3 Manufacturing	456.3	123.5	47.5	2.0
SIC4 Electicity, gas and water	456.3	123.5	48.5	2.0
SIC5 Construction	247.0	57.0	28.5	2.0
SIC61 Wholesale Trade	608.0	304.0	57.0	2.0
SIC62 Retail Trade	370.5	180.5	42.5	2.0
SIC63 Motor Trade	370.5	180.5	42.5	2.0
SIC64 Catering and Accommodation	123.5	57.0	48.5	2.0
SIC7 Transport	247.0	123.5	28.5	2.0
SIC8 Real estate & business services	247.0	123.5	28.5	2.0
SIC9 Community, Social and personal	123.5	57.0	8.5	2.0

Source: Small Enterprise Development Agency Report 2015

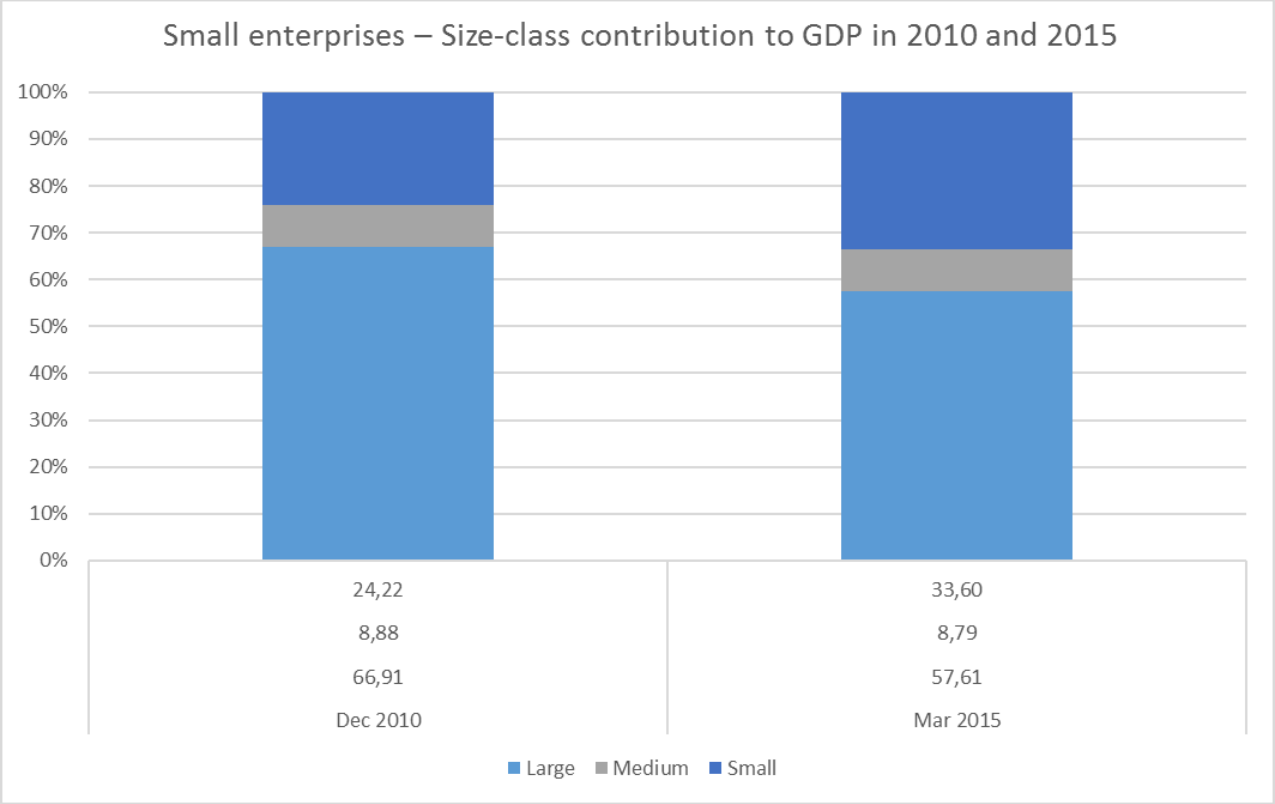
The above table shows the various contribution in rands value to the GDP. The wholesale trade sector contributed the highest amount and this is followed by both the manufacturing, electricity, gas and water. The lowest sectors are the accommodation and catering, the community, social and personal. The purpose of showing these statistics is to illustrate the importance of small interprises in contributing to the South African GDP.

Table 2. 5: Small enterprises – Size-class contribution to GDP in 2010 and 2015

Output: R million	Dec 2010	Mar 2015	% change
Large	469 238	531 624	13%
Medium	62 250	81 128	30%
Small	169 846	310 032	83%
Total	701 334	922 784	32%
GDP	717 741	965 016	34%
% SMEs	33%	42%	

Source: Small Enterprise Development Agency Report 2015

From this naggregate we can derive that SMEs contributed 33% to the GDP in 2010-Q4, and their contribution increased to 42% by 2015-Q1



Source: Small Enterprise Development Agency Report 2015

Table 2. 6: Distribution of private sector employment by size-class, 2002

SMMEs	Formal sector	Informal sector	Agriculture	Private households	Total
An employer	462 815	304 303	41 971	740	809 829
Own account worker	204 618	1 193 557	14 803	29 014	1 441 992
Total	**667 433**	**1 497 860**	**56 774**	**29 754**	**2 252 821**

Source: Small Enterprise Development Agency Report 2015

In the above table 2.6, more than half of employers operate in the formal sector (69%), while the vast majority (80%) of own account workers operate informally. In respect of the agricultural sector to be specific, 74% employ other workers besides the owner. Some own account wokers provide a service to private househpls (2%) – these could include domestic workers who work part-time at different househopld every day.

2.8 Provincial Small Enterprise Profiles

Table 2.7: Provincial distribution of SMMEs in the formal and informa sector (2008)

Province	Formal sector	Informal sector
Eastern Cape	5.3%	13.4%
Free State	3.2%	6.6%
Gauteng	48.3%	24.6%
KwaZulu Natal	13.0%	18.8%
Limpopo	2.9%	14.3%
Mpumalanga	4.1%	7.7%
North West Province	3.2%	8.0%
Northen Cape	1.2%	0.7%
Western Cape	19.0%	5.9%
Total	**100%**	**100%**

Source: Small Enterprise Development Agency Report 2015

The above table 2.7, shows that the provincial distribution differs significantly with respect to formal and informal businesses. According to the 2008 Department of Trade and Industry Report (DTI, 2008), The SMME sector grew by 27% between 22004 and 2007, with the most significant growth associated with medium-sized enterprises. The smallest growth occurred among micro enteprises (-5.6%). Gauteng and the Western Cape and Northen Cape are the only provinces where the percentage of formal businesses is greater than the percentage of formal businesses. The Northern Caape, on the other hand, contributes an extremely small number of businesses to the country's total and the difference between formal and informal sector is approximately twice as large as the formal sector. Unfortunately, the above data

does not provide any breakdown that exists as to the spread of micro, small and medium enterprises and little is known about the sectors in which they operate

Various pieces of labour legislation have been enacted to create a harmonious environment for both employers and employees in the work environment. Most of this labour legislation does not cover small enterprises. Even where small enterprises are covered, the legislation is incompatible with the structure, composition and functioning of small enterprises. In addition to this, the legislation does not promote the spirit of good governance in small enterprises. For example, Chapter 2 of the Unemployment Insurance Contribution Act 4 of 2002 requires every employer and representative employer to contribute to the Unemployment Insurance Fund (UIF) on a monthly basis. The amount of the contribution payable by an employee is one per cent of the remuneration paid or payable by that employer to that employee during any month. The duty to deduct or withhold the amount of the employee's contribution from the remuneration paid or payable to that employee during that month rests with the employer. This is an added administrative burden on small enterprises that takes much time and paper work on small enterprises. However, the benefit of this deduction is that it provides employees working in small enterprises with unemployment benefits upon dismissal.

2.9 Support for Women-owned Small Enterprises

To create women entrepreneurs, and in the same vein to encourage women to participate in small enterprises has been a great concern to the South African Government. To achieve this, the Government has established a forum known as South African Women Entrepreneurs Network (SAWEN). The purpose of this forum is to educate women on how to go into various business ventures particularly SMEs.

For these women to be competitive in terms of the use of technology, the Department of Trade and Industry (DTI) has established a forum known as Technology for Women in Business which will give technological support to women in their various business ventures.

2.10 Sector-focused Support Measures

To help small enterprises to train their manpower in respect of capacity building, the National Productivity Institute (NPI) has formulated a strategic plan to support small enterprises in partnership with Gauteng Enterprise Propeller (GEP) and Red Door located in Western Cape.

The Department of Environmental Affairs and Tourism (DEAT) has also developed a strategic document to promote small enterprises especially in the tourism industry. The Department of Public Works has publicly declared its intention to promote small enterprises in capacity building for emerging contractors who have never had opportunity to be involved in public work contracts.

In the same vein, the Department of Minerals and Energy has established the Small Scale Mining Board through its Mining Directorate. The purpose of this Board is to promote small scale miners and encourage them to participate in mining activity which are legal and also help in capacity building for the miners.

2.11 Skills Development Measures

The Skills Development Act of 1998 is aimed in promoting small enterprises through its various learnership programmes. This learnership programmes enable learners to develop interest in starting their own small scale businesses. This learnership programmes are implemented through the Sector Education and Training Authorities (SETA) in terms of Chapter 3 sub-section 9-15 of the Act.

2.12 Recent National Government Policies

The South African Government has drafted and implemented many strategic policies which include the following:

2.12.1 The micro-economic reform strategy

The micro-economic reform strategy places small enterprise development, the need to ensure equity (through broad-based black economic empowerment (B-BBEE) and gender initiatives), prioritization of growth sectors, special geographical focus (particularly in areas

of high poverty and unemployment), and the need for strong co-ordination of support measures at the heart of micro-economic reform.

As far as small enterprise development is concerned, the strategy calls for the following measures:

- Specific sectoral initiatives to promote small entrepreneur development
- The introduction of new products to support small enterprises
- Greater co-ordination across government
- The consolidation of all mentorship programmes
- Improved access to finance
- Increased access to markets through competition policy and export promotion
- The promotion of entrepreneurship.

The expansion of business support infrastructure and the provision of localized support infrastructure.

2.12.2 Accelerated and Shared Growth Initiative South Africa (AsgiSA)

The purpose of this initiative is to support relevant policies and strategies that will promote and advance the development and growth of small enterprises and other sectors of the economy that would address the past imbalances and move South Africa forward.

2.12.3 Broad-based black economic empowerment strategy and small enterprises

The purpose of the broad-based Black Economic Empowerment Act 53 of 2003 is to implement the integration of historically disadvantaged blacks into the economy by way of management control, ownership, corporate progress and involvement at small, medium and micro perspectives.

2.13 Provincial and National Support for Small Enterprises

At the provincial levels, the following structures and processes have been established to accelerate the development of small enterprises.

In Gauteng Province, the GEP helps in financing and developing businesses including SMEs.

In Mpumalanga Province, a special unit is set up in the enterprise development unit to assist in the growth and development of SMEs.

In Kwazulu-Natal Province the Ithala Financial Unit is responsible for giving financial assistance to small enterprise owners and for those who also wish to set-up a small enterprise business. It gives financial assistance in a variety of enterprises which includes loans to acquire land for agriculture.

In Eastern Cape, the Eastern Cape Development Corporation (ECDC) and the Business Finance Promotion Agency (BFPA) have helped in the development of small enterprises. For example, the BFPA provides loans to viable small enterprises ranging from R6 000.00 to R30, 000.00 for equipment, working capital etc.

In the Free State the establishment of Free State Development Corporation (FDC) is assisting small enterprises with finance and other services that would promote the growth of SEs in the state. The Corporation gives a good number of financial assistance ranging from micro loans to equity.

In Limpopo Province, the establishment of Small Enterprise Foundation (SEF) has helped to provide finance to micro businesses.

In Western Cape Province, the establishment of Real Enterprise Development Initiative (RED) has played a great role in assisting SMEs to expand and give the necessary information in terms of business plan, improving business skills to small enterprises in Western Cape.

Table 2. 5: Provincial distribution of small enterprises in the formal and informal sectors

Province	Formal sector (%)	Informal sector (%)
Eastern Cape	5.3	13.4
Free State	3.2	6.6
Gauteng	48.3	24.6
KwaZulu-Natal	13.0	18.8
Limpopo	2.9	14.3
Mpumalanga	4.1	7.7
North West	3.2	8.0
Northern Cape	1.2	0.7
Western Cape	19.0	5.9
Total	100 (512 518)	100 (1 747 578)

Source: Stats SA (2007)

In the above Table 2.8, it shows clearly that Gauteng Province has the highest percentage for both informal and formal enterprises. It scored 48 per cent of the formal enterprises and 24 per cent of the informal enterprises. Since it accommodates almost half of the small enterprises in the nine provinces, this influenced the idea to investigate only the Gauteng Province out of the nine provinces in South Africa in this research. This large number of small enterprises in Gauteng justified the rationale to only investigate Gauteng Province out of the nine provinces.

In contrast, the Western Cape Province is the second biggest province where formal enterprises score 19 per cent after Gauteng. It accommodates 6 per cent of the informal enterprises among the nine provinces. Next to the Western Cape is KwaZulu-Natal which accommodates 13 per cent of the formal enterprises among the nine provinces and 18 per cent of the informal enterprises.

The next chapter (3) deals with the literature review.

CHAPTER THREE: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

3.1 Introduction

The purpose of this chapter is to critically discuss the relevant theoretical framework and the empirical studies on small enterprises that have direct bearing with this research. The International Labour Organisation (ILO) and many academics have conducted research on the development and management of small enterprises and those studies that are relevant to this research will be critically examined and reviewed in this chapter.

The World Bank's report on doing business in Indonesia in 2005 and the ILO research on employment regulation in micro and small enterprises (MSEs) in Central and Eastern Europe have highlighted theories of development that can help micro and small enterprises to survive and, at the same time provide decent work in MSEs, while at the same time promoting formalisation. The theories are discussed below.

The nine theories to be discussed are as follows:

- Sen's human capability theory
- Gereffi theory on job quality and higher productivity
- The growth cycle theory
- New Institutional Economic theory
- The Green theory
- The configuration theory
- The Marxian theory of SEs
- The Principal Agent theory
- The Stewardship theory

3.2.1 Sen's Human Capability Theory

Policy makers in both public and private sectors have used the framework of this theory in drafting their policies in their strategic documents on development issues.

One of the central arguments of this theory is that human capability has both direct and indirect bearing on people's well-being, people's freedom, social change and in economic production activities.

The above elements of people's well-being, people's freedom and economic production are rooted in the labour law concept of freedom of association, the issue of labour standard and fair labour practices and all these have influences on business development.

Sen is also of the view that we should also consider the nature of the labour market, the skills, knowledge and attitude of workers and how all these can influence the growth and management of small enterprises. Sen's bone of contention is that the low productivity in SMEs can be attributed to both the nature of skills, and poor knowledge of the workers in SMEs which means human capability in SMEs are underdeveloped.

Taking a critique of the above argument by Sen, the present researcher finds it difficult to accept that human capability of workers is underdeveloped, because of lack of skills and productivity level. He would accept the argument that the capability of the workers is underdeveloped and not underdeveloped mainly because there was no time the skills were previously developed in terms of modern technology. The central argument here is that the relevant skills and knowledge to develop a society already exist, but the skills and indigenous knowledge of the people have not been developed to meet their needs.

It should also be noted that the research work of Deraniyagala in 1995 in his statistical analysis of the clothing and engineering industries in Sri Lanka shows that the issues of skills and education levels of workers and entrepreneurship were related to the progress and technical changes that occurred in small business enterprise. This finding supports Sen's argument of the role of human capability and the development of small enterprises.

3.2.2 Gereffi Theory

This theory is quite popular in Development Economics and the emphasis here is that the low income in the informal sector is a hindrance to economic development and that there is an urgent need for high capital investment to improve the position for small business enterprises and this can be achieved by promoting economically sound policies that would help with

formal and informal sectors to work together. Gereffi buttressed the fact that apart from the popular access to capital and finance that have been identified as a problem to the development of small enterprises, there are other problems which remain under-explored. The problems include lack of information on skills development, the problem of child labour which deprives many children from proper education especially in the informal rural areas, and the problem of industrial upgrading of small enterprises. Resolving the above problems will enable small enterprises to survive and be competitive.

3.2.3 New Institutional Economics Theory

This theory focuses on the role of the State in development process. The State and the market are seen as complementary to one another mainly because it is the State that regulates the market and it is the State institutions that control the market to a very large extent.

This theory believes that the institutional regulations such as labour legislation influence business environment and the economic activities which are determined by the State.

Bardhan (2005: 499,512) is of the view that:-

> "...in developed countries there are complex institutional structures that constrain participants' behaviour, reduce the uncertainty of social interaction, and prevent transaction from being too costly. These economic institutions are necessary to capture the productivity gains and improved technology".

Unfortunately, in South Africa and other developing countries these complex institutions are not available and where they are available they are not functional.

The inference we can draw from this discussion is that the State must develop and design its own process and institutions that would promote a sound environment for the growth and development of economic activities.

In the case of small enterprises, the State must develop labour legislation that suits them in terms of the challenges small enterprises face in respect of their daily transactions and economic activities. Labour legislation as an institution must develop its laws to meet the flexibility and the informal nature of most small enterprises.

The establishment of such laws will not only help small enterprises to survive until they get to the stage of maturity, it will also help them in terms of sustainability. The research work of Djankor, la Porta, Lopez-de-Silanes and Sheeifer (2002) on the role of regulation on starting businesses and business creation pointed to considerable variations between countries in both the time and cost of business creation. For example, as at the time of the research, it took 82 days to start a business in Spain compared with fewer than three days in countries such as Canada, the US and New Zealand. They argued that although these regulations, may have been justified on the grounds of providing protection for customers and creditors, they had a direct effect on lowering business start-up rates. Second, it was argued that employment protection legislation and regulation in the product market served to raise the operation costs of small enterprise and so make entrepreneurship relatively less attractive. It was also argued in these research findings that high regulation tilted the balance away from small enterprises and towards small business enterprises since large firms to respond to the demands of the regulations easily and even manipulate it in their favour by using the human resources (experts' knowledge) at their disposal.

Furthermore, the research work of Hartog, van Stel and Storye (2010) on the role of the rule of law on institutions and entrepreneurship confirms that employment protection legislation is negatively associated with entrepreneurial activity. They found also that countries with a 'better' rule of law have less entrepreneurship. In the present researcher's opinion, it is likely that a country with less entrepreneurs may not be able to create more small enterprises because of lack of creativity and innovations among its citizens.

3.3 The Growth Cycle Theory of Small Enterprises

The focus of this theory is to highlight how inadequate finance has hindered the growth and development of small firms.

The work of Terpstra and Olson (1993); Coleman (2000); van Anken and Neeley, (1996); Welsch and White (1981); Jones (1979), have all discussed the importance of financial resources in the development of small firms. These scholars believe that small enterprises are not the same as large enterprises in respect of capital structure decision. They strongly hold on to the view that small enterprises are financed through different sources before they get to maturity and these sources are not adequate for their growth and development.

3.4 Small Business: The Green Theory

The green approach is a recent model of scholarly ideas that has come to see small-scale business as a means to the solution of a moral and environmental crisis within advanced industrial societies. The key assumption in this model is the proposition that industrialization (in both the communist and capitalist world) has created a state of mind indifferent, even hostile, to any goal other than short-term material gain.

This amoral materialism has sustained the indiscriminate use of large-scale production techniques to violate both finite natural resources and the freedom, creativity of individuals and societies. Small-scale enterprise, in itself, is humane, non-violent and benign, and captures in the slogan 'small is beautiful'.

According to Gross (1991), the origin of this view are not easy to trace, although it seems to have found an early expression of sorts in the work of Cole and the guild socialists where, in the decades around the turn of the twentieth century, much attention was focused on the antimony between the alienating consequences of industrial production and the need for democratic control of the workplace. Guild socialism, as expounded by Cole (1970), provided an opposition to the deterministic character of Marxism and to the collectivism and statism of Fabian socialism, both of which placed the state in one form or another, in a position of social primacy. Guild socialism, favoured, among other things, the decentralization of social institutions and their subjection to popular democratic control. For this popular democracy to be effective, scale was an important issue:

> Make a man a voter among voters in a democratic community, it is at least half-truth that the measure of control he will have will vary inversely to the total number of votes. So, in the workshop, the control of the individual will be real in most cases only if the workshop is small, unless, as in a coal mine, only the simplest and most uniform questions have, as a rule, to be decided. (Cole 1970)

Thus, for the productive unit, smallness appeared a precondition for effective industrial democracy. This was the view held in the past, but with time, this view has been dropped as a result of mass production, collectivism, bureaucratization and the centralization process. As a matter of fact, in the years following World War I the guild socialist notions of smallness,

decentralization and individual accountability held little appeal. By the 1920s guild socialism as a coherent political movement had effectively disappeared, and it was not until the 1950s that some of its central ideas, particularly those relating to the liberating effect of small-scale organization and decentralized government, were reformulated by the Fritz Schumachar (who coined the phrase 'small is beautiful'). These ideas have since gained in influence and popularity within the ecological and environmental movements of developed and developing societies.

Schumacher, E.F. (1974) ideas and thoughts are based and rooted firmly in the realm of culture and ideas (a similar concern among the guild socialists led more orthodox socialists to brand them 'romantics'). Culture concerns the 'quality of life', whereas the realm of economics involves only the 'standard of living'. For Schumacher (1974), while a given standard of living can be achieved by capitalist economics, an acceptable quality of life was, ultimately, only obtainable through the rejection of capitalism. The purpose of socialism, therefore, should be to evolve a more humane employment of technology, and a more intelligent utilization of the fruits of human ingenuity and effort. Schumacher argues that the prospects for realizing such an idea lie in the question of scale, not only as it relates to the size of an enterprise, but also to patterns of ownership and control. Schumacher (1974) makes the following distinction:

> As regards private property, the first and most basic distinction is between (a) property that is an aid to creative work and (b) property that is an alternative to it. There is something natural and healthy about the former; and there is something unnatural and unhealthy about the latter – the private property of the passive owner who lives parasitically on the work of others.

The bone of contention for Schumacher is not private property but rather its scale – it is not divorced from work, and clearly, such a divorce can only be protected against by small-scale organization. In a nutshell, Schumacher's (1974) project rests upon the assumption that in small-scale enterprise, private ownership is 'natural, fruitful and just', but that these qualities disappear as size increases to the extent that 'in large scale enterprise, private ownership is a fiction for the purpose of enabling functionless owners to live parasitically on the labour of others'. Not only is this unjust, it also introduces an irrational element that distorts all relationships within the enterprise.

In view of the above discussion, Schumacher holds strongly to the fact that the establishment of small-scale businesses is inescapable. However, what is not very clear is the form that the business component should take, and nature of the relationship between small businesses and large economic or political organizations.

He appears to recommend a form of co-operative ownership and control (ultimately enforceable by the state), but this raises the question of the inevitable hostility which 'shared ownership' would arouse among those for whom small business represents an avenue of personal mobility and independence, or who prize the 'right' of ownership above other benefits. Schumacher suggested that such anti-social individualism would be overcome by long-term socialization and education, but such a prospect immediately isolates this approach from small business as it is known to exist at present.

Gross (1991) argues that this perspective of small-scale business and its role in the construction of an alternative social order is not derived from conventional scientific or quasi-scientific presumptions and evidence, but is founded upon an undisguised moral essentialism which takes as its starting point the assumption that small is beautiful.

In this respect, Schumacher made it clear in his book that many of the basic assumptions are seriously open to question, in particular those that see an inevitable association between smallness and a natural and healthy environment. The view that, for example, 'even autocratic control is no serious problem in small-scale enterprise, led by a working proprietor, has almost a family. Character appears naively romantic when assessed in the light of historical and contemporary evidence about small sweatshops, particularly those dependent upon unpaid family labour.

In concluding this Green Approach, it is submitted that although it offers another facet of the potential within small business, it remains limited by the narrow assumptions upon which it is founded. Like the free-market and Marxist traditions, it is concerned with more prescription on what small business ought to be than with analysing what it actually is.

3.5 Configuration Theory and Small-Small Business Enterprise Performance

It is widely held in academic circles that in small business enterprises where selection of strategy is critical for survival given the disadvantages they face, an investigation of these operational strategies seems relevant and unavoidable. Configuration theorists have long held that operational strategy is central to organizational outcome (Chandler, 1962) and that congruence among strategy, technology, organizational structure and operating processes is key in the overall effectiveness of a small business enterprise (Fry and Smith, 1987; White 1986). Different strategies are expected to require different structures (Miller, Droge and Toulouse, 1988; Filley and Aldag, 1980), which must respond to the particular control and coordinative problems created by the strategies that are ultimately selected (Miller et al., 1988: 545). Empirical studies regarding configuration have consistently found evidence that fit among organizational characteristics is an important predictor of small business enterprise performance (e.g., Slater and Olson, 2000; Ketchen et al., 1997; Priem, 1994; White, 1986).

The debate on whether small enterprises should pursue efficiency or flexibility or a hybrid of the two has been discussed in many business literature. Some individuals are of the view that pursuing the hybrid model will not be easy for small enterprises to achieve both flexibility and efficiency at a very high degree and because of this they would prefer that small enterprises adopt flexibility at the expense of efficiency if they are to survive and remain relevant.

Another school of thought is of the view that efficiency is more relevant than flexibility if small enterprises are to be competitive in their operations.

On the other hand, to meet customer needs and standard required from time to time, flexibility in operation is important.

Table 3.1 below shows the characteristics of efficiency and flexibility in small enterprises>

Table 3. 1: Characteristics of efficiency and flexibility of small business enterprises

Operational Aspect	Efficiency firms	Flexibility Firms	Citation
Technology	Specialised equipment, heavy fixed assets	General-purpose equipment	Lowson (2007) Thompson (1967) Thompson and Bates (1957)
Production processes	Long product runs	Unit or small batch production	Zipkin (2001); Filley and Aldag (1980); Woodward (1965)
Organization design	Mechanistic	Organic	Filley and Aldag (1980); Thompson and Bates (1957)
Direct labour	Unskilled	Skilled decision-makers	Lowson (2001); Filley and Aldag (1980); Thompson and Bates (1957)
Control systems	Feedfoward	Feedback	Morgan (1992); Filley and Aldag (1980); Thompson (1967)

Source: Ebben and Johnson (2005: 26, 1249–1259)

It is also argued in business literature that one of the important elements that might influence the performance of small enterprises is the size of the enterprise in the configuration process. A small enterprise that is small in size will be more flexible than a small enterprise whose size is not very small. However, as to which may be more efficient needs further investigation.

However, the research work of Ebben and Johnson (2005) investigates the issue of efficiency and flexibility in the performance of small enterprises in the US. He developed two hypotheses in this research.

The first hypothesis states that small business enterprises that adopt efficiency strategy and small enterprises that adopt flexibility will perform better than the one that used the hybrid model.

The second hypothesis is that efficiency strategy is much better than small enterprises that have adopted flexibility strategy.

The research shows that small enterprises do better with efficiency strategy since it is difficult to meet individual customer needs coupled with the unstable demand. This uncertainty in demand and the cost of an individual project or demand is a difficult task for small enterprises with little financial resources to rely on. In addition to this is the poor management personnel in small enterprises who may not be able to meet these frequent

changes in demand that small enterprises have to adopt if the enterprise has chosen the route of flexibility. Thus managing both internal and external environment might not be easy for small enterprises.

It may also be argued here that part of the internal environment that small and medium enterprises may not be able to manage effectively is the labour legislation because of the less sophisticated management and labour relations experts that are not found or common in small enterprises.

The research methodology used in testing the above two hypotheses will not be discussed in this literature review, mainly because it is not the focus of this study. However, an attempt will be made to summarise the findings of this research.

The findings in this study are significant for the small enterprise strategy literature as they indicate that efficiency and flexibility may be appropriate classification of small enterprise strategy and provide a new area of focus for entrepreneurship education.

Conclusively, the researcher believes that this study provides a significant step forward in entrepreneurial strategy research. Although classifying small enterprises as efficiency, flexibility and mix is relatively simple, it appears promising given the performance and organisational differences found in this study.

3.6 Marxian Theory

Poulantzas and Chittenden (1986) are of the view that a small-scale industrialist can be defined in terms of ownership of productive property and as both owner and possessor of the means of production and as well as direct producer. In contrast, Wright (1990) considers this too narrow a definition and suggests that in addition to a class of small business owners defined by Poulantzas's criteria, there is also a contradictory class location to which belong those proprietors who employ small numbers of wage workers but do not live solely by the exploitation of their labour (the latter being the qualification for membership of the bourgeoisie proper). This interstitial group (between the petty bourgeoisie and the bourgeoisie) he calls 'small employers'. However, the usefulness of this distinction as a tool of small business analysis has been exploited outside the Marxist framework, primarily

because Wright's interest is not with small business per se, but with specification of class boundaries, the prediction of class alliances and the prospects for the class struggle in advanced capitalist societies. In concluding this Marxian perspective, it must be pointed out clearly here that there is a marked similarity between the free-market and Marxist approaches in the way in which small business is considered in various circles. In both cases it appears in a role which has been written, in advance, to support theoretical presuppositions, rather than as an object of study in its own right. The result in both cases is a 'closed' and formal mode of analysis which elevates to the status of certainty many aspects of small business which are, in fact, contingent, and invokes a convenient myopia when faced with data which does not 'fit' its *a priori*stic structures.

Usually in classical Marxian perspective, small-scale business units are seen as a mirror 'image' of that offered by free-market theory. Small business enterprises are allocated a subsidiary role, either as an irrelevant remnant of an outmoded state of capitalist development or a residual sector dependent for its existence on its continued usefulness to big business.

Gross (1991) argues that the usefulness of the framework is limited by its simplistic and over-generalized treatment of the negative aspects of small business enterprise and their environment. Similarly misleading is the supposedly clear-cut and strictly functional division between small, dependent 'secondary' enterprises and large, monopolistic 'core' small business enterprises – a division which, in practice, is likely to characterize only a small number of enterprises in relation to the total stock of small business units, and these primarily in the manufacturing sector. Thus little attention is given to those small businesses where relations of dependence with monopoly enterprises are of minor or variable importance (e.g., in the professions, small jobbing small business enterprises dealing directly with the public, and small businesses with a wide spread of customers from small business enterprises or who provide a highly specialized, non-competitive service). Some attempt to remedy these deficiencies has been made by Rainnie (1989) who, while emphasizing that small business must be located within the general structural framework of capitalist relations of production, also points to the diversity of large-small business relations. Drawing on the theory of 'combined and uneven development', and the empirical work of Schutt and Whittington (1984), Rainnie offers a four-fold classification of small business enterprises.

These complement and service the activities of small business enterprises (e.g., through sub-contracting). Their viability depends on the level of activity and the 'make or buy' decisions of these large 'patrons. Such a situation places effective control in the hands of the large enterprise, a control that extends not only over financial matters, but also over the organization of the labour process, for example, by forcing the minimization of wage costs and the implementation of flexible working hours.

These compete with small business enterprises by intense exploitation of labour and equipment. Even here, however, the rules of existence are laid down, if possibly unwittingly and unintentionally by the small business enterprise. In terms of industrial relations, the result is, more often than not, hyper-exploitation of labour.

These operate in niches of demand unlikely ever to be touched by large capital. This will often entail a hand-to-mouth existence, scraping around for a living. It is among this and the latter type of small business that sweetshops are most likely to be found.

A careful understanding of the above classification of small-scale business shows that it revolves around the elements of dependence and exploitation. The classification also contributes to the Marxist tendency to overstate the inevitability of small business units as providers of 'secondary' employment conditions. It can be argued here that there is no reason why secondary economic status (i.e., being dependent upon large business units for business) should lead to secondary employment conditions (or vice versa). For example, according to Gross (1991), some small business enterprises, particularly in craft or high-technology areas may depend upon specialist workers whom they have to treat as 'central', regardless of the enterprise's economic relation with small business enterprises. He argued further, that, to depict small business employment conditions as characterized solely by poor wages and working conditions and autocratic control may not only hide a great deal of empirical variation but also obscure the possibility of workers gaining psychological satisfactions from aspects of employment in small-scale enterprises.

In the same vein, a similar charge of one-dimensionality can be made against the tendency to analyse the class position of small business owners rather than the actions through which they produce and reproduce their enterprises. Such an 'anti-humanist' structural formulation leads

to a caricature of the small business proprietor as a reactionary and non-progressive force within capitalism and a ruthless exploiter of labour.

Sase, et.al (1980) is of the view that much attention should be paid to the empirical processes through which small business owners construct and give meaning to their actions, to help understand how 'proprietorship is 'carried' out of a process of capital accumulation. In this perspective, the Marxist offers a healthy counter to the idealized optimism of free-market theory; it too suffers from deficiencies, induced by reliance upon a deterministic theoretical framework with resulting over-simplification and a failure to connect with the complex and 'messy' reality of small business in advanced capitalist societies. The above views and perspectives highlight the needs for this research to examine how corporate governance and flexible labour legislation can help in the development and management of small enterprises.

3.8 Theory of Governance

To understand good governance, different theories have been propounded by different scholars. However, for the purpose of this thesis, the following theories will be considered: (i) the principal–agency theory, (ii) the stewardship theory, (iii) the resources dependency theory and (iv) the stakeholder theory.

3.8.1 The Principal–Agency Theory

The main issue of this theory is that managers as agents of shareholders can exhibit behaviour and take decisions that may not necessarily maximize shareholder wealth. The work of Shleifer and Vishny (1997) has illustrated opportunities for managers to use. Shareholders found ways that were not in the interests of the principal or used funds on non-wealth maximizing activities. This theory argues that adequate monitoring or control mechanisms need to be established to protect shareholders from conflict of interest (Kiel and Nichotson, 2003) An effectively structured board, performance-related compensation contracts, and concentrated ownership holdings exemplify internal mechanisms that encourage active monitoring of managerial decision-making processes (Kiel and Nichotson, 2003). The benefits of a sound and effective governance mechanism are expected to outweigh and not necessarily to eliminate but to mitigate its costs.

The principal–agent theory has been criticized mainly because the theory focused on investors as the principal. Shankman (1999) challenges this traditional view and calls for a new paradigm in which corporate interest are seen as an extension of the interests of a larger community and contends that stakeholder theory is logical conclusion of agency theory where different stakeholder groups are recognized and considered. In the same vein, Heath and Nordberg (2004) warn against a multi-principal problem if managers are held accountable to the interests of all different interest groups and take the view that, with the growing interests in corporate social responsibility and the increasing recognition of a range of stakeholder groups, there is a need for reforms in governance mechanisms whereby stakeholder groups are represented in governance mechanisms, and the regulatory codes and requirements (corporate law) formally consider the interests of non-shareholding stakeholders. The other problematic issues associated with the agency theory are (a) the frequent disputes between firm owners and the managers who are involved in operational matters; (b) the disputes between the company as a legal persona and other stakeholders like the employees, creditors and customers; (c) the dispute that often arises between the principal – the owner and the agents in terms of control. It is important that the span of control mechanisms are well spelt out to avoid unnecessary control from the side of the principal.

3.8.2 The Stewardship Theory

This theory attempts to explain the motive behind how management behaved in organisations and the rationale of their behaviour. Management aim to increase the performance of the firms since the good performance of organisations reflect on the good performance of the management. The manager's main desire is to increase the general performance and assets of the organisation. To do a good job as expected is the driving force of management.

Stewardship theory argues further against the assumption imbedded in the agency theory. The stewardship theory holds that there is no conflict of interest between owners (shareholders) and agents (managers) if there is an appropriate structure that allows coordination to be achieved most effectively. (Dulwicz and Herbert, 2004).

The resource dependence approach supports the view that non-executive directors have a crucial role to play in protecting the firm from the external environment. The non-executive directors help to minimise uncertainty by giving useful information that will help the firm to raise funds for its operation and survival. In addition to this, the board is also seen as an asset

to the firm since the board facilitates access to resources it also needs for its development and survival.

According to Pfeffer (1973) the board is expected to provide the following services to the firm:

(1) "Advice, counsel and know-how
(2) Legitimacy and reputation
(3) Channels for communication, information between external organisations and the firm, and
(4) External support and professional network".

In the case of the stakeholder theory, the focus here is on how to use members of the board of directors to achieve the goals and objectives of the firm. The realisation of having a board with diversity of knowledge and acumen is fully recommended as a good step in achieving the firm's objectives. In addition to this, the board of directors is seen as a very useful forum where conflicting interests are not only controlled but resolved.

This theory also recommends that other important stakeholders like employees, suppliers, local community and shareholders must be respected and recognised as members that contribute to the well-being of the firm. The theory supports the idea that mere recognition of the above stakeholders is not only important, but where opportunity arises they should be represented in the board where this is possible.

According to Chilton and Wiedenbaum (1977), there is excessive government regulation of small and medium business in the US and this has created a large burden for small enterprises. They are of the view that two interrelated burdens are facing small enterprises as a result of 'excessive' government regulation and these are the productivity burden and a financial burden.

Generally speaking, small enterprises' responsibility for dealing with regulation typically rests with the proprietor, whereas large business can retain accountants and attorneys to facilitate regulatory compliance. This means that the time, effort and energy expended on paperwork and other regulatory details detract from that which the proprietor might otherwise

allocate to planning, marketing or other productive activities. Duncan (1980) argues further on this issue by buttressing the fact that regulation makes small enterprises less competitive.

3.10 Empirical Studies

The empirical study of the application of labour legislation on small enterprises was widely conducted in 2007 as ILO project under the supervision of Colin Fenwick, John Howe, Shelley Marshall and Ingrid Landau at the University of Melbourne in Australia.

The purpose of this research was to investigate how various countries applied the labour legislation in their work place. The researchers identified four possible applications of labour legislation, namely; (a) full application of labour legislation to all work place irrespective of the size and nature of the small enterprise; (b) the selective exclusion of labour legislation; (c) the parallel application and lastly, (d) the complete application of labour legislation.

The findings of this research are as follows:

3.11 Occupational Health and Safety Laws

Table 3. 2: Formal application of occupational health and safety laws and regulations to small enterprises

Country	Applies to small enterprises	Country	Applies to small enterprises
Brazil	√	Namibia	*
Chile	*	Nepal	√
China	√	Peru	√
Denmark	*	Philippines	*
Hungary	√	South Africa	*
Indonesia	√	Thailand	*
Kenya	*	Vietnam	*

*Obligations vary, according to size of enterprise

Source: ILO (2007)

The above Table 3.2 shows that among the 14 countries investigated, 6 of the countries namely, Brazil, China, Hungary, Indonesia, Nepal and Peru apply the legislation to all small enterprises without an exemption. The reason advanced by the researcher for this application is that –

"...it is a deliberate policy of helping small enterprises to comply by lightening the regulatory load upon them; it is an acknowledgment by the State of the operational

costs that would be imposed by having to comply with these regulatory requirements. A second is the recognition that it is unlikely to be possible for the State to ensure the application in practice of all labour legislation to small enterprises".

In 8 of the countries, obligation to comply varies according to the size of the enterprise and these countries are Chile, Denmark, Kenya, Namibia, Philippines, South Africa, Thailand and Vietnam.

The reason advanced by the research for this selective application of the labour law is the operational cost for small enterprise with very few number of employees to comply with the legislation. This makes sense when we already know that most small enterprises have very little capital to implement all the requirements to comply with the legislation.

3.12 **Freedom of Association and Collective Bargaining Law**

Table 3. 3: Formal application of freedom of association and collective bargaining law in small enterprises

Country	Applies to small enterprises	Country	Applies to small enterprises
Brazil	√	Namibia	√
Chile	*	Nepal	*
China	√	Peru	*
Denmark	√	Philippines	√
Hungary	√	South Africa	√
Indonesia	*	Thailand	*
Kenya	*	Vietnam	*

*Obligations vary according to size of enterprise

Source: Fenwick et al. (2007)

The above Table 3.3 shows that out of the 14 countries investigated, 7 countries apply the legislation to all small enterprises and these countries are Brazil, China, Denmark, Hungary, Namibia, Philippines and South Africa.

The reason advanced by the researcher for this full application of the legislation to all small enterprises is that it is a deliberate Government policy which will help small enterprise employees to form unions and have a common front to demand for their benefits and entitlements. The full application to all small enterprises will also help the employees to

participate fully in collective bargaining process, thus, bringing democracy to work environment irrespective of the size of the enterprise.

There are 7 countries in the above table where the obligation to comply varies according to the size of the enterprise and these countries are Chile, Indonesia, Kenya, Nepal, Peru, Thailand and Vietnam. The rationale for varying the application according to size is simply because not every enterprise will be able to comply with the requirements.

3.13 Employee Consultation Laws and Regulations

Table 3. 4: Formal application of employee consultation laws and regulations in small enterprises

Country	Applies to small enterprises	Country	Applies to small enterprises
Brazil	*	Namibia	*
Chile	*	Nepal	710
China	√	Peru	*
Denmark	*	Philippines	√
Hungary	715	South Africa	7100
Indonesia	750	Thailand	*
Kenya	-	Viet Nam	√

* Obligations vary according to size of enterprise

- Information not available

Source: ILO (2007)

The above Table 3.4 shows that out of 14 countries investigated only 3, namely China, Philippines and Vietnam allow for full application of the consultation law to all small enterprises without considering the size of the enterprise. Majority of the countries have the obligation to apply the law according to the size of the enterprise.

Considering the informal nature of small enterprises, it seems much reasonable not to apply the legislation to all enterprises. Most of the structure and processes in small enterprises are not so formalised like large business entity and from the perspective it seems more logical not to apply the legislation to all small enterprises.

3.14 Collective Dismissal Law

Table 3. 5: Formal application of laws relating to collective (larger-scale) dismissals to small enterprises

Country	Applies to small enterprises	Country	Applies to small enterprises
Brazil	√	Namibia	-
Chile	√	Nepal	*
China	√	Peru	*
Denmark	√	Philippines	√
Hungary	*	South Africa	*
Indonesia	√	Thailand	√
Kenya	-	Vietnam	√

* Obligations vary according to size of enterprise

- Information not available

Source: ILO (2007)

Table 3.5 indicates the countries who apply the full application of collective dismissal legislation and those countries that have selective application of the legislation to small enterprises. Out of the 14 countries investigated, 8 of the countries namely: Brazil, Chile, China, Denmark, Indonesia, Philippines, Thailand and Vietnam have full application while 4 have the obligation to vary its application according to the size of the enterprise.

The researchers are of the view that the exclusion of workers in small enterprises from these sorts of law on collective dismissal is likely to have a negative effect. This is based on the fact that giving notice and allowing some space for consultation will enable both parties (employer and his employees) an opportunity to find an alternative solution to termination of employment. Both parties can come up with a better solution that will benefit both parties than termination.

3.15 Minimum Wage Law

Table 3. 6: Formal application of minimum wage laws and regulations to small enterprises

Country	Applies to small enterprises	Country	Applies to small enterprises
Brazil	√	Namibia	*
Chile	√	Nepal	√
China	√	Peru	√
Denmark	*	Philippines	#
Hungary	√	South Africa	*
Indonesia	√	Thailand	√
Kenya	√	Vietnam	√

*Obligations vary according to size of enterprise

Micro enterprises are exempt from the minimum wages provided they comply with other labour standards

Source: ILO (2007)

The above Table 3.6 shows that out of the 14 countries investigated, 10 fully apply the minimum wage legislation to all small enterprises and these countries are: Brazil, Chile, China, Hungary, Indonesia, Kenya, Nepal, Peru, Thailand and Vietnam. The advantage of this full application is that it minimises the possibility of exploitation of employees by their employer. The minimum wage legislation ensures that workers receive the wages they expected from their employers. In this table, we have only 3 countries which do not implement the minimum wage legislation in small enterprises and these countries are South Africa, Denmark and Namibia. In Philippines, micro enterprises are exempt from minimum wages provided they comply with other labour standards.

3.16 Other Specific Exemptions for Small Enterprises from Labour Legislation

In the Philippines, business entities especially those businesses in retail and services which employ less than 10 employees are excluded from paid leave requirement, while in Nepal small businesses with less than 10 employees are excluded from paying annual or sick leave benefits.

In the case of maternity leave, business entities employing less than 10 employees are excluded from extending maternity leave entitlement to its employees in India.

Furthermore, in Chile small enterprises with less than 21 females are exempted from providing child care services for their female employees.

3.17 Parallel Labour Legislation for Small Enterprises

Brazil and Nepal are two classical examples of countries that have established parallel labour legislation for small enterprises. Both countries also exempt small enterprises from the legislation that requires business enterprises to share part of their profits with their workers.

The Nepal Labour Act 2048 spelt it clearly that only enterprises employing 10 or more workers that the Act is applicable to. Other small enterprises employing less than 10 workers have a separate and specific regulatory framework.

In the case of Brazil, there is a specific and distinct labour law for small enterprises and this law is supported by the Constitution of the country. The laws dealing with the administration, taxation and business development of small enterprises are different from other laws.

The main advantage of this parallel labour legislation for small enterprises is that it may give rise to the development of a comprehensive and valid legislation that will actually address the needs of small enterprises.

3.18 Complete Exemption of Small Enterprises from All Labour Laws

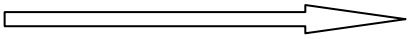
The ILO Labour Report of 2005 indicates that very few countries have complete exemption of small enterprises from labour legislation. One of the few countries is Kuwait. Article 3 (f) of Law 38 of 1964 excludes – "owners of non-mechanical minor business concerns employing fewer than five workers from the above Act". In the same vein, in Costa Rica and Honduras, the labour law completely exempts agricultural or livestock farms with no more than 5 employees. However, the Executives in those businesses may decide which rules of the code they will continuously apply.

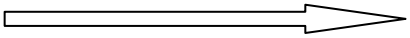
It is also interesting to note that both Tanzania and Pakistan do exempt small enterprises with less than 10 workers from national labour laws of their countries.

3.19 Berger and Udell's Financial Structure Growth Cycle Model

This model attempt to explain how the firm size, the age of the firm and information availability can increase the financial growth of the firm.

The Table 3.7 below illustrates the determinants of the financial growth path.

Firm size 

Firm age 

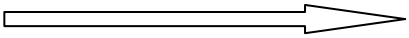
Information available 

Table 3. 7: Financial growth cycle

Very small firms, possibly with no collateral and no track record	Medium-sized firms, some track record and sollateral available if necessary	Large firms of known risk and track record
Initial insider finance	Venture capital	Public equity
Angel finance	Medium-term financial institutions	Long-term financial institutions

Source: Model Adapted from Berger and Udell, (1998)

3.20 Model Adapted from Berger and Udell (1998)

Berger and Udell (1998:622) further suggest that firms lie on a size/age/information continuum where the smaller/younger/more opaque firms lie near the left end of the continuum indicating that they must rely on initial insider finance trade credit and/or angel finance. Their growth cycle predicts that as the firm grows, it will gain access to venture capital (VC) as a source of intermediate equity and mid-term loans as a source of intermediate debt (Berger and Udell, 1998).

3.21 Capital Structure Decisions

The work of Modigliani and Miller had shed some light on the driving forces behind capital structure decisions. They are of the opinion that:-

> "in situation of a market with perfect information, without tax and with a little or no cost in transaction, a firm capital cannot impact the value of the firm but can only redirect the flow of the firm's earnings to different sets of stakeholders".

On the other hand, the work of Jeven and Meeklings (1976) on Agency theory focused on the financial management of capital structures. The emphasis here is that it is important for a firm to have a good control and management of relationships between the firm owner and the manager or agents that help the business owners to run the business.

In the same vein, the pecking Order Theory by Meyers also contributes to the debate on Capital Structure Decision. Meyer is of the view that firms consider first to use internal resources of capital and only use external resources of capital when internal sources are not sufficient. This theory is relevant to small enterprises where majority of them depend mostly on internal resources and do not have access to external resources and do not have access to external resources like the big firms. Small enterprises rely more in private capital market and this limits their capital growth.

The analysis here attempts to explain the reasons for the limited capital growth for small enterprises and this limits their growth and development.

3.22 Governance Problems in Small Enterprises

Fahed–Sreih (2009) conducted an exploratory study on a new governance mechanism based on small family firms. The rationale for this study was to explore the relationships between different governance configurations and firm survival. The objective was to describe the alternative mechanisms through which the owning family takes a stake in the governance of the firm. In terms of the research methodology, the governance sytems of 116 family enterprises is Lebanon were examined. The study integrates family, ownership, leadership and the business itself – constituting the four structured elements of a family firm's governance system. This research tested four hypotheses: whether the family, the ownership,

the leadership and the business dimensions influence positively firm survival/longevity. The other hypotheses tested concern the advisory services and the legal form of the board, and how that might affect the survival/longevity of the family firms. The research findings show that the integrative view allows observation of interactions among the different structures and the establishment of a coordinating governing structure. The results of the hypotheses tested show that family, leadership and business dimensions have an impact on the performance/survival of the firm, whereas the ownership dimension has no effect. The implication of this study is that the proposed framework allows the establishment of a governance structure, for control and co-ordination. Ownership should be integrally separated from the other dimensions in the governance of a family firm to be able to achieve fairly good performance and ensure the survival and longevity of the firm. Since some SEs are owned by family members these findings need to be considered when improving the element of good governance in SEs.

Raja and Kumar (2007) conducted research on small enterprise entrepreneurship, firm performance and corporate governance practices in Indian service firms. The purpose of this research is to show the relationship between Indian private service firms' corporate governance practices and firm performance for sample firms from the Bombay Stock Exchange (BSE) Small CAP Index. The underlying assumption is unlike affiliate and foreign service firms, Indian private service firms' corporate governance implementation is unaffected by any other external forces. So, the final sample consists only of Indian private service firms and these firms have been classified as small enterprises based on market capitalization. The research hypothesis has been constructed to prove that corporate governance practices in Indian service firms have positive influence on firm performance. In this regard, factor analysis is used to reduce the corporate governance data into meaningful factors. In the same vein, factor analysis results are submitted for OLS regression analysis. It was evident from the analysis that corporate governance data are grouped under four different factors: (i) ownership component, (ii) board component, (iii) committee component and (iv) board procedure component. OLS regression analysis proved that the committee component had a statistically significant relationship with firm performance conclusively; this research shows that corporate governance practices in the Indian service firms have positively influenced the firm performance. Other studies that have confirmed that corporate governance practices influence firm performance include the following: Berle and Means (1932) found a relationship between ownership and management towards firm performance.

In short, they argued that firm performance was improved when management was separated from ownership. Jensen and Meckling (1976) used principal agent conflict to explain divergence of thinking in firm related issues between owners and the management of firm. Fama (1980), and Fama and Jensen (1983) suggested that these agency problems could be solved through ownership structure. Ownership concentrations can influence the firm performance (Shleifer, and Vishny, 1997). Werner (1988) illustrated that there is a relationship between ownership structure and operating performance. He also indicated that a company with a highly concentrated structure has superior performance.

The work of Rachagan and Satkunasingam (2009) has shed light on how we can improve corporate governance of small enterprises in Malaysia. This research is based on the fact that small enterprises play an important role in the growth of Malaysian economy.

The above two researchers focused on the relationship between the owners of the business as a majority shareholder and the rights of the minority shareholder. The researchers also analysed the problems encountered by small enterprises in an attempt to enforce good corporate governance practices which is mainly caused by majority shareholders. The findings of this research indicate:-

> "..that there are no adequate laws to protect minority shareholders in small enterprises. The researchers therefore recommend that a self-enforcing model is quite appropriate to ensure that minority shareholders rights in small enterprises are protected from majority party"

The research further recommends that the current prohibitive models of laws in Malaysia are not desirable and it must be discouraged. In addition to this, the research shows that certain cultural values in Malaysia such as power distance and lack of assertiveness contribute to the problems faced by minority shareholders.

Clarke and Klettner, both of the University of Technology Sydney in Australia, published their research on governance issues for small enterprises in 2009. The purpose of this research was to explore not only small enterprise corporate governance structures and processes, but how small enterprises had chosen to implement the principles and the reasons for their choices. The research addresses the issue of whether the Australian Stock Exchange (ASX) Corporate Governance principles and recommendations were appropriate for small

enterprises. The research further describes the small enterprise responses to the requirements, how these differ from those of larger companies, and how these differences impact on small companies with regards to the research methodology used. The researchers conducted interviews with directors and / or company secretaries of 67 listed companies, exploring not only the corporate governance structures and processes that they had chosen to implement but the reasons for their choices. They asked about the costs and benefits of complying with ASX principles and explored participant's views on the 'comply or explain' mechanism. The findings of this research include the policy conclusions by the researchers which are highlighted below:

- The need for corporate governance guidelines to include flexibility, particularly for companies early in their life cycle
- The need to reinforce the robustness of the 'if not, why not' approach, and educated the market that disclosure, not uniformity, is important
- The fact that corporate governance demands upon companies develop as they increase in scale and complexity with more diffuse shareholders.
- The existence of a critical period in corporate governance when private companies become listed entities with wider accountability and corresponding need for a more independent board
- The importance of legal and regulatory guidance and director education for companies preparing to list.
- The fact that companies may carry with them their problems of inadequate governance and dysfunctional boards if these are not resolved early in the company life cycle.

In Taiwan, Chou and Wang (2009), investigated the issue of innovation and learning systems for small and medium enterprises from a corporate governance perspective. The purpose of this research was to find out how to form an efficient and effective innovation and learning system for small enterprises through a governance approach. This research shows that, considering the variety of regional contexts, the diversity of small enterprises abilities and the driving forces and barriers towards innovation, there is no 'one size-fits-all' policy portfolio to forming the innovation and learning system for small enterprises. This research is of the view that taking the approach of the governance to build up the small enterprises innovation

and learning system can help the government to make and implement policies more efficiently and effectively. The above researchers are of the view that it is not a single responsibility for government, small enterprises, or innovation and education institutions to set up an efficient and effective innovation and learning system. It must proceed under the situation of co-operation and interaction. An efficient and effective small enterprises innovation and learning system can enable the small enterprises to create higher innovation and learning outcomes at lower costs; the entire system is not merely the one-way linear relationship from the government to small enterprises, but a two-way interactive and dynamic balanced relationship. In the process of adopting the governance approach to develop the small enterprises innovation and learning system, there will be three stages to go through: (i) pre-governance stage, (ii) governance developing stage and (iii) governance stage. Within the three stages, the key roles in the systems are played individually and differently, each executing its own missions. The researcher proposes that if the governance approach is taken, the following new concepts must be built up in founding small enterprises: innovation and learning systems, government, small enterprises and innovation and education institutions.

Dorrofrio (1980) estimates that as much as one quarter of small enterprises' proprietors' time can be spent on regulatory paperwork. He argues that such non-productive time is a serious problem, both for the individual small enterprises and for the economy. According to Cole and Tegeler (1978), the fact that many small enterprises owners/managers must become intimately involved in government reputing record-keeping and information-gathering appears to create certain competitive disadvantages for small enterprises. With respect to the economy, small businesses contribute an increasingly small percentage to GNP: small businesses contributed 44 per cent of the GNP in 1956, but only 39 per cent by 1976. According to the Small Business Administration (SBA) (SBA, 1982), 'A major contribution factor to the decrease in GNP contribution is the overall regulatory burden imposed on small businesses.

Peterson et al. (1984) also argued that in addition to the reduced productivity that results from dealing with government regulations, small businesses bear another burden that is just as serious: the financial costs of complying with government regulations. The SBA summarized a 1979 study revealing that paperwork alone costs small businesses several billion of US dollars each year. In addition, small businesses apparently pay relatively more per unit of sales to comply with government regulations than do large businesses. Sommers and Cole

(1981), for example, found that smaller firms faced higher costs per dollar of revenue in complying with government regulations than do medium-sized firms. Similarly, it is also argued in academic circles that the direct costs to small firms are larger per dollar of sales than they are for the larger firms.

It can be argued that the cost of small enterprises to comply with labour legislation in South Africa is likely to be higher than the cost of larger firms to comply with the labour legislation. The rationale for thinking in this perspective revolves around the fact that large firms enjoy economies of scale better than small enterprises.

In conclusion, the research findings of Peterson et al. reveal that small businesses should have less government regulation than large enterprises. They submitted that the federal government of the US should be encouraged to continue and even expand its efforts to reduce the regulatory and related reporting burden of small businesses relative to large businesses.

In Belgium, van den Heuvel, Van Gils and Voordeckers (2006) conducted an empirical research on the role of the board in small and medium-sized family businesses in respect of performance and its importance. The findings of this research show that boards in Belgian small and medium-sized family business perform two aggregated board roles: control and service. The control role is mainly based on agency theory, whereas the service role embraces several theoretical perspectives. These findings seem to confirm earlier research executed for the population of small enterprises and/or family businesses studies (Deakins et al., 2000; Johannisson and Huse, 2000, Markman et al., 2001; Mustakallio et al., 2002) which acknowledge the board control or monitoring role, others have indicated the board is involvement in several service related tasks (Deakins et al., 2000; Gabrielsson and Winlund, 2000).CEOs of small and medium-sized family firms perceived the service role as more important than the control one. As stipulated by Jain and Gumpert (1980), board members might have to provide expertise to compensate for small companies' managerial deficiencies. The research further shows that the control role was perceive as less important by the CEOs. However, family firm succession (Neubaner and Lank, 1998) demand a focus on both roles from all the board members. According to the family firm CEOs, board performance can be improved for both the control and service role. More specifically, directing succession, evaluating management buildings, organizational reputation and providing strategic advice are board tasks that need improvement. The importance of this research is that it has drawn

attention to the two aggregated board roles of control and service and its implication on the performance of small and medium businesses in Belgium.

In the US, Peterson, Kozmetsky and Ridgeway (1984) conducted research on government regulation of small business. The purpose of this research was to find out if small businesses should have less government regulation than large businesses. The research methods used included two independent telephone surveys. All interviews were conducted from a single, supervised telephone room, using professional interviewers, and a minimum of two call-backs, were made for each telephone number included (three attempts in total). Both a listen-in technique and a re-call technique were used to validate interviews.

The questionnaires contained a mixture of open-ended and closed questions. All questions were pre-tested prior to being included in the questionnaires. Survey participants in both samples were asked two identical questions regarding their general opinions of government regulation of business. In addition, survey participants in small business sample were asked about their knowledge of the Economic Recovery Tax Act (ERTA) and its potential impact on their businesses, along with a general, open-ended question about the single most burdensome federal regulation their businesses faced. The sample representing the general public was a nationwide one of 522 adult male and woman heads of households interviewed in April 1982. Of the individuals interviewed 56 per cent were women, and 70 per cent were married, 6 to 10 per cent were under the age of 50 years, and 49 per cent possessed more than a high school education. The median household income was approximately US$19 000.00. The small business sample itself consisted of 1 002 owners and managers of small businesses interviewed. Since each survey participant represented a different small business; 1 002 small businesses were represented in the study. Businesses included in the study were randomly selected from a national sample representative of businesses having 10 or fewer employees and possessing a net worth of US$2 000.00 or less. While no precise count of firms having these characteristics exists, a reasonable estimate based upon data from the Small Business Administration annual report shows that at least 8.4 million businesses fit into this category. Approximately two-thirds of the small business survey participants were small business owners; one-third consisted of small business managers. Of the business owners 71 per cent stated that they had started their businesses themselves; the remainder reported purchasing an ongoing concern. Of the businesses sampled 46 per cent were sole proprietorship, 41 per cent were corporations and 13 per cent were partnerships.

Nearly 46 per cent of the small business survey participants said that their businesses were primarily 'product-oriented,' while 37 per cent said that their businesses were 'service-oriented' and 17 per cent that theirs were both product- and service-oriented.

Table 3.8 illustrates some of the research findings. For example, when the respondents were asked if small businesses should have less government regulation than large businesses, the response is as follows:

Table 3. 8: Small businesses should have less government regulation than large businesses

Response	Percentage response (%)	
	General public sample	**Small business sample**
Strongly agree	39.9	47.7
Somewhat agree	26.8	27.1
Uncertain	6.7	5.8
Somewhat disagree	12.1	12.9
Strongly disagree	14.5	6.5
Total number of responses	**522**	**1 002**

Table 3.8 illustrates that the majority of both samples agreed with the statement that small businesses should have less government regulation than large businesses. Two-thirds of the general public sample and three-quarters of the small business sample either strongly or somewhat agreed with the statement. The most frequent response from both samples was 'strongly agree'. Within a general public sample, and absolute majority of all the demographic subgroups investigated (i.e., sex, marital status, education, and income) favoured small businesses having less government regulation than large businesses. Although the extent of agreement varied from one subgroup to another, in all cases the majority agreed with the statement. Thus, men were found to be relatively more likely to agree with the statement (71 per cent) than were women (63 per cent), and non-married survey participants more likely to agree (72 per cent) than were married respondents (65 per cent). Furthermore, the more highly educated participants were, the more likely they were to agree than those with less education, for example, 76 per cent of the college graduates agreed that small businesses should be regulated than large businesses, while only 58 per cent of those with less than a high school degree hold that opinion.

Other findings in this research show that, in general, the relationship between government and business is better now than it was five years ago. In response to the question on whether ERTA would have any impact on the way they will run their businesses in the next two to three years, slightly more than one-third of the survey participants stated that ERTA would have no impact on the manner in which they would run their businesses in the next two three years. Slightly more than one quarter believed that ERTA would have a positive impact on their businesses in the next two to three years, while the remainder were uncertain as to its impact over this long period. Respondents who had been aware of the existence of ERTA differed from others in that a higher percentage (35 per cent versus 18 per cent) tended to take a positive view of the impact of ERTA over the next two to three years.

Conclusively, this research reveals that both groups believe small businesses should have less government regulation than large businesses. While this finding is not unexpected for the small business sample, it is somewhat surprising that a two-thirds majority of the general public held this opinion. Given this level of support, it would seem reasonable that the federal government of the US should be encouraged to continue and even expand its efforts to reduce the regulatory, and related reporting burdens of small businesses relative to large businesses.

According to Chilton and Wiedenbaum (1977), there is excessive government regulation of small and medium businesses in the US and this has created a burden for small enterprises. The authors are of the view that two interrelated burdens are facing small enterprises as a result of 'excessive' government regulation and these are productivity burden and a financial burden.

Small enterprises' responsibility for dealing with regulation typically rests with the proprietor, whereas large businesses can retain accountants and attorneys to facilitate regulatory compliance. This means that the time, effort and energy expended on paperwork and other regulatory details detract from that which the proprietor might otherwise allocate to planning, marketing or other productive activities. Duncan (1980) argues further on this issue by buttressing the fact that regulation makes small enterprises less competitive.

In Canada, Zinger *et al* (1996) conducted a research work entitled "Small business support work: The Entrepreneur's Perspective". The purpose of this research was to examine those barriers or obstacles to small business development in respect of enterprises support network.

The network of services includes all those support services from Government ranging from retraining opportunities to counselling and educational programmes. Despite all these services, the development of small enterprises was still slow and this was of great concern to the public.

To address the problem, the Canadian Federal Government in 1994 published a paper on growing small business enterprises where it clearly suggested that a better and friendly business environment would help for the growth and development of small enterprises in Canada. Although the Canadian Government had taken steps to improve the environment, much progress was not seen.

However, when Zinger *et al* conducted this research in 1996, they interviewed about 40 representations of various sectors and the responses of the respondents is shown in Table 3.9 below – Summary of the Focus Group Comments

Table 3. 9: Summary of focus group comments

Topic	Sample comments
Government services	• Small business is hard hit by social programmes • Too much overlap in capital assistance • Required paperwork is 'staggering' • Executive delays • Agencies seem to focus on the number of jobs created, the location of the business or the level of political correctness rather than the business concept. • One only gets the run around from government employees • Government bureaucracy dulls the ambition of small business people
Banks	• The banks are not out there to help the entrepreneur and back an idea there is no risk money available to entrepreneurs • To make a loan the bank requires a great deal of personal capital and/or collateral • Loans are made only to the 'haves' • Emphasis is placed on 'accounting know-how'
Professional advisers	• Legal and accounting fees can be costly • Professional competence is not always up to par
Business plans	• Business plans scare people • Pro-formas are part of the selling job to the bank • Time consuming and expensive • Basically an academic exercise

Source: Zinger, J; Terence, Blanco; Hugnette *et al* (1996); Canadian Journal of Administrative Sciences; Vol. 13 No. 4 pp 347-357.

Zinger *et al* investigated further two propositions below:

P_1: "Those small enterprises that have sought help from the government sources tend to be more critical about the fit between small business assistance programmes and needs of the enterprise".

P_2: "Small businesses tend to view government compliance requirements in terms of legislation as obstacles".

The above propositions formulated reflect on the fact that interest in this research is on government activities and regulations as they affect and influence the management and

growth of small enterprises and in view of this, only the research findings that highlight or explain government impediment will be briefly discussed in this thesis.

The findings of this research show that bureaucratic process of filling numerous documents for the registration process is one of the obstacles that hinder the growth and development of small enterprise. Secondly, the discriminatory government policies were also identified as problems affecting small enterprises.

Thirdly, the Government regulations in respect of unemployment insurance, the Canadian pension plan and employee health tax payment are burden on small enterprises and this hinders their growth and development.

Conclusively, this study provided an insight into how the Canadian Government policies affect small enterprises and this needs to be addressed to promote the growth and development of small enterprises in Canada.

The research work of Biekpe and Abor (2007) on corporate governance, ownership structure and performance of small enterprises in Ghana has also helped us to understand the importance of applying corporate governance principles for the survival of small enterprises. This research work illustrates the importance of gaining financial assistance mainly because good corporate governance principles for the survival of small enterprises. This research work illustrates the importance of gaining financial assistance mainly because good corporate governance principles have been adopted by small enterprises. The two researchers used regression analysis to estimate the relationship between corporate governance and ownership structure and performance.

The results of this study show that:-

> "..board size, board composition, management skill, CEO duality, inside ownership, family ownership and foreign ownership have significant positive impacts on profitability, this result suggests that the adoption of corporate governance structures has some important implications for Ghana small enterprises".

Conclusively, the importance of this research is that it has contributed greatly to our understanding of the role of corporate governance on the performance of small enterprises.

In Ghana, Abor and Adjasi (2007) attempt to identify the extent to which the corporate governance framework can be applied to small and medium enterprises (small enterprises). In the introductory part of the research, they point out clearly that small enterprise development in Ghana is hampered by a number of factors, notable among which are finance, equipment and technology, access to international market and so forth (Thomi and Yankson, 1985; Anheier and Seibel, 1978; Steel and Webster, 1992; Baah-Nnakoh and Teal, 1993; Aryectey, 1994). According to Abor and Adjasi (2007), one other issue that has hampered the development of small enterprises is lack of managerial competencies which in some cases have been noted to swamp efforts at attracting finance and are the main barriers to small enterprise development. This view is also supported by the work of Grockel Akoena (2002).

The research findings of Abor and Adjasi (2007) show that the relevance of corporate governance cannot be over-emphasized, since it constitutes the organizational climate for the internal activities of a company. They also argue that in Ghana corporate governance can greatly assist the small enterprise sector by infusing better management practices, stronger internal auditing and greater opportunities for growth. This research also revealed that corporate governance brings new strategic outlook through external independent directors; it enhances firms' corporate entrepreneurship and competitiveness. They point out that it is not a threat to rehire in entrepreneurial firms if the guidelines on corporate governance are properly applied. Hence it is important to hire explicit obligations by firms on value creation. They buttressed the fact that good governance mechanisms among small enterprises are likely to result in boards exerting much-needed pressure for improved performance by ensuring that the interests of the firms are served. In the case of a small enterprise, board members bring into the firm expert knowledge on financing options available and strategies to source such finances, thus dealing with the credit constraint problem of small enterprises as well. The research confirmed that application of governance principles will help in the growth and development of small enterprises.

The governance principles must be applied at its own level of microcosm, by establishing a small board of members with expert knowledge in finance management, leadership and human resources matters, strategic thinkers that will advise owners of small enterprises. With

the establishment of such small member of the board who are likely not to exceed 4-5 members, the financial institutions (banks) will have much confidence to give much loans to small enterprises since the presence of the board members will minimise the risk of the business not achieving its goals and missions. The composition of the board members will not be as larger as the corporate business entity.

These small board members will greatly assist the small enterprises sector by infusing better management practices, stronger internal auditing and greater opportunities for growth.

To achieve this goal, it is suggested here that the South African government must make it compulsory for small enterprises to have a small board of members and this can be achieved through labour legislation that will make it compulsory.

Although small enterprises are family owned, establishment of small board members will bring in the element of checks and balances which will caution the nonprofessional activities of both the owner of the business and his family members. This external control of small enterprises is very important of the survival, growth and management of small enterprises.

From the literature review analysed above, the following propositions are derived,which will be investigated in this research:

Proposition 1

The complete exclusion of small enterprises from the present LRA will help in the management, growth and governance of small enterprises.

Proposition 2

The selective exclusion of small enterprises from the present BCEA will aid in the management, growth and governance of small enterprises.

Proposition 3

The exclusion of small enterprises from the present EEA will aid in the management, growth and governance of small enterprises.

Proposition 4

The implementation of parallel labour legislation for small enterprises will aid greatly in the management, growth and governance of small enterprises.

Proposition 5

There is no relationship between small enterprises and the implementation of organizational rights in respect of the LRA.

Proposition 6

There is no relationship between complete exemption of small enterprises and the implementation of dispute resolution process in respect of the LRA,

CHAPTER FOUR: RESEARCH DESIGN AND METHODOLOGY

4.1 Introduction

In this section, the research design and methodology that will be used to answer the main research question and sub-questions of the study data are discussed in detail. The section outlines the research process including the research design, methods, procedures, techniques and protocol that will be followed. Furthermore, the section discusses how the issues of reliability and validity issues and ethical issues will be addressed.

4.2 Research design

4.2.1 Case study

The selection of an appropriate research design and method is critical to the success of any research project, and is informed by the research problem or question and the state of knowledge in the area being studied (Okharedia, 1997). A mixture of survey design and multiple case study design was applied in the present research. Surveys can be used to obtain research data quickly on objective factual information on organizations or respondents and respondents' opinions, behaviours and attitudes within a specified period of time. The size and representativeness of the sample are crucial, and time and cost factors were considered. A case study design was used since it has a distinct advantage in situations when 'how' or 'why' questions are asked about a contemporary set of events over which the investigator has little or no control (Yin, 2003). Through case study methods, the researcher is able to go beyond the quantitative statistical results and understand the behavioral conditions through the actor's perspective.

The multiple-case design helps the researcher to replicate the case through pattern matching, a technique linking several pieces of information from the same case to some theoretical proposition (Campbell, 1975), which helps to raise the level of confidence in the robustness of the method.

With the case study design a proposition is developed and tested in a sequential, step-by-step, manner, that is, the researcher compares the results of the case study with the proposition. A

small business enterprise is regarded as a common case, and so the multiple case study was more appropriate, where cases were selected not on the sampling logic, but replication logic. The researcher selected similar cases for replication and predicted that the processes and outcomes discovered in each case were also similar.

Richness of evidence was achieved by using triangulation with in-depth interviews, observation, documents and archives. Interviews with key informants helped to collect detailed information for evidence and were unstructured. These were supplemented with a semi-structured survey with both closed and open-ended questions and focused interviews. The researcher collected informants' perceptions on the study issues to find out whether they could confirm the insights and information he already held. This called for a knowledgeable and socially competent interviewer who could dig deep (Blumberg et al. 2008) without offending the respondents.

Documents and archives corroborate information. However, the researcher must be aware of their shortcomings. Written documents may appear objective and truthful when this is not true. The researcher will therefore also consider their purpose and explore their usefulness for the study. If archival records were available in digital form, for example, as survey data, these were also used as secondary data. They may contain reliable information, and can they can then be an extremely valuable information source.

Observation can be direct or participant observation. In this case, the researcher determined whether there was lack of fit between what the key informants or archives were saying and what he observed. By observing, the researcher is able to tell whether the image portrayed by them is reflected in what he is observing. Observation may give access to information which might not be accessed by direct observation. The researcher, however took care not to lose a neutral, objective view.

4.3 Sample size

A number of factors can affect sample size in qualitative research. However, the guiding principle for this study was the concept of saturation as qualitative research is concerned with meaning and not making generalised statements. Because people in different positions and in different industries can have diverse opinions due to not only facing different challenges but

also facing them differently, the sample was large enough to assure that most or all of the perceptions that might be important were uncovered, yet, at the same time, not too large for data to become repetitive and, eventually, superfluous.

Saturation is concerned with reaching the point where it becomes counter-productive and that the new information discovered does not necessarily add anything valuable to the overall answer to the research question or solution to the research problem. At this point of saturation, all the dimensions of the phenomenon being investigated was saturated, and the sample was a good representative of the population.

4.4 Target Population and Sampling Techniques

In this research, the following categories of respondents were interviewed:

- Labour experts
- Owners of small enterprises
- Employees working in small enterprise
- Government officials working in the Ministry of Trade and Industry and specifically dealing with small enterprises development.

Geographically, there are 12 municipalities in Gauteng Province. Out of these 12 municipalities, 6 were selected through a systematic sampling technique. The 6 selected are the following:

- City of Johannesburg Metropolitan Municipality
- Ekurhuleni Metropolitan Municipality
- Lesedi Local Municipality
- Midvaal Local Municipality
- Randfontein Local Municipality
- West Rand District Municipality.

The target population for this research covered both products and services small enterprises. The registration list of the various small enterprise in the above municipality was used to

select they business entity to be interviewed. A total number of 130 respondents were selected in all six municipalities. In each municipality 18 respondents were selected and this excluded the labour experts and the government official. For 6 municipalities, we had 108 respondents exchanging labour experts and government officials which makes up 22. The total respondents therefore is onefifty

The reasons for the distribution of the 18 respondents were given the questionnaire and also interviewed in each of the municipalities as follows:

Distribution of respondents in each municipalities

Labour experts	11
Owners of small enterprises	18
Employees working in small enterprises	90
Government officials of DTI	11
Total	130

The participants were selected purposively and the sample was therefore a non-probability sample for the case study. Constraints, including time, money and availability of participants were considered. Since the participants were easily identified and known, the purposive or convenient sumpling was the best method to be used in selecting the participants (respondents).

Normally, for a phenomenological study, a sample size of 5 to 25 would reach a saturation point. So, the sample size was set at 18 in each municipality, excluding the labour expert and government official.

4.6 Survey Design

A sample survey was done in the selected municipalities – using a semi-structured questionnaire to collect data. A sample of at least three small business enterprises was randomly selected from three municipalities to be studied.

4.7 Key Variables

The key variables on which data was collected included the dependent variable measuring management, growth and governance of small enterprises, as well as independent variables, that is, all the variables that are considered, according to theory and the relevant literature, to affect management, growth and governance of small enterprises. They included, for example, the legal environment measured in terms of complete exclusion of small enterprises from the present LRA, selective exclusion of small enterprises from the present BCEA, exclusion of small enterprises from the present EEA, implementation of a parallel labour legislation for small enterprises, and all external and internal factors of management, growth and governance of small enterprises.

4.7.1 Measurement of Key Dependent Variables

4.7.2 Management

Management effectiveness was measured by using a questionnaire to ask employees to rate their senior managers on the following: quality of managerial work, job knowledge, initiative, dependability and adaptability, friendly interaction with managers, management commitment and competence, teamwork, problem solving, academic qualification, managerial knowledge and skills, communication, feedback, having realistic expectations of the top management.

4.7.3 Growth

Growth rate was measured as a percentage change in employment and sales since the beginning of the business. For example, if a business started in year 2005, the growth rate in employment would be calculated as:

[(No. of employees in 2013 - No. of employees in 2005)/No. of employees in 2005] x 100.

4.7.4 Good governance

A questionnaire was used to ask both the employees and the employer about good governance provisions. This included questions on the following:

- Employer responsibilities towards the employee
- The nature of accountability
- Ownership structure and concentration
- Transparency and disclosure.

It was not practically possible to sample from all the small business enterprises that are scattered all over the municipalities due to resource implications. The small business enterprises were sampled within the capital cities of the province since these are the major business municipalities, using cluster and (probability proportional to size (PPS)) stratified random sampling methods. Geographically, cluster sampling helps to cut on the costs and time, whereas stratified random sampling helps to increase the precision of estimation. Stratifying variables were small business enterprise size (e.g., in terms of number of employees) and industry.

To determine the actual sample size of the small business enterprises the following formula was used:

Sample size determination, *n* using the intermediate computational result n_0:

$n = \frac{n_0}{1+n_0/N}$ Where n_0 is given by: $n_0 = \frac{t^2 pq}{e^2}$ provided that *p* indicates the maximum variability or expected proportion (i.e., p = 0.5), t^2 representing the squared value of tabulated *t* value for a given amount of confidence level and 'e' indicating the tolerable error margin (precision level) amounting to 5 per cent (or 0.05).

OR

$$n = \frac{N}{1 - N(e)^2}$$

Where *n* = sample size, *N* = population size, and *e* = level of precision (Israel and Glenn, 1992).

Cochran (1991) recommends that the above formula for sample size computation generates an optimum sample size for most social research.

4.8 Research Approach

Mixed methodology was applied in this study because the study involved collection and analysis of both quantitative and qualitative data as the phenomenon being investigated was complex and some research questions needed to be answered quantitatively (by using the survey design) and others needed to be answered qualitatively (by using the case study design).

4.9 Qualitative Research

According to Denzin and Lincoln (1994:4), qualitative refers to the emphasis on processes and meanings that are not rigorously examined or measured (if measured at all) in terms of quantity, amount, intensity or frequency. Accordingly, the aim of qualitative research is to establish socially constructed nature of reality. Qualitative research is a much more subjective form of research which is an unstructured measurement technique that allows a wide range of possible responses. The qualitative method was used in a multiple case study.

The qualitative research has the following advantages:

- Using subjective information
- Exploring new areas of research
- In-depth examination of phenomena
- Dealing with value-laden questions
- Examining complex questions that can be impossible with quantitative methods
- Giving valuable insights that might be missed by a quantitative approach
- Building new theories or propositions.

Therefore, the qualitative method was used to investigate the phenomena in depth, while the quantitative method was used to test the study proposition, making the study more objective. Owing to the limitations of each method, a mixed method of using both quantitative and qualitative methodologies, where both methods triangulate to support each other in an integrated framework (Creswell, 2009), helped to produce a comprehensive research report.

4.10 Quantitative Research

The quantitative method involved gathering data that was absolute, such as numerical data, which was examined in an unbiased manner. This type of research was more structured than the qualitative research and was based on the measurement of quantity or quantifying certain variables such as organizational performance (Castellan, 2010:2; Creswell, 2009). The quantitative research method has the following advantages:

- The results could be statistically reliable
- Has a precision, is definitive and standardised
- Provides estimates of population at large
- Allows for statistical comparison between various groups
- Provides results that can be condensed to statistics
- Indicates the extensiveness of the attitudes held by people
- It is relatively cheaper to collect data using the quantitative approach compared to qualitative as responses are already coded
- Depending on the complexity of the questionnaire used, processing of the data is easier.

The chi- square analysis was used in testing the hypotheses.

However, there are disadvantages in using the quantitative approach. Among these are focusing on testing hypothesis at the expense of better understanding of the phenomena; and generalization of abstract knowledge which may be difficult to apply in a real-life situation.

4.11 Mixed Method

These two methodologies were used concurrently and the findings were integrated during the interpretation stage. The research questions of this study required the use of both quantitative and qualitative data as the research was explanatory in nature and the researcher made an assessment of the quantified results and explained the how and why questions of the results.

In this study, therefore, a sequential explanatory mixed method approach was used – where the collection and analysis of quantitative data (questionnaire) was followed by the collection and analysis of qualitative data through an interview guide, in-depth interviews and personal

observation. During the first phase of the research quantitative data collection and analysis was done. This was followed by qualitative data collection and analysis. Then the quantitative and qualitative data results were integrated during interpretation.

4.12 Sources of Information

The researcher used multiple data sources to collect data. The primary sources of data involved the use of a semi-structured questionnaire by administering it to the managers or owners of the businesses, employees, government officials and labour law experts. The first section of the questionnaire focused on the demographic characteristics of the respondents and the small business enterprise, while the second section asked questions on the phenomenon being investigated.

Some managers and owners, employees, labour law experts, government officials and so forth were purposively selected to be individually intensively interviewed or to form focus groups – using an interview schedule to obtain additional in-depth information from key informants on the specific areas that the questionnaire did not cover or give detailed explanation.

Direct personal observation of the small business enterprises was also done. A review of the literature from credible and internationally recognised journals and research books, and company documents.

4.13 Data collection methods

There are a number of stages involved in the production of a research document. One of them is a good methodological approach using appropriate data collection techniques. The specific methods and techniques of data collection that were used in this research are described in the next sub-section.

4.13.1 Qualitative data collection

The qualitative data for the study was collected by using, among other things, in-depth personal interviews, responses from an interview guide, direct observation and reviewing company documents, reports.

4.13.2 In-depth interviews

At each small business enterprise's head office, data from three key informants (i.e., manager or owner) were collected. With the permission of the respondent, interview sessions were tape recorded and transcribed immediately, and checked for the accuracy of the notes with the respondents. Respondents who have ample knowledge and experience in the area were intensively interviewed. These included managers or owners of small enterprises, labour law experts and government officials.

4.13.3 Observation

The other instrument for collecting qualitative data was personal observation by the researcher himself to the three selected small business enterprises. The researcher used a pre-prepared protocol or checklist.

4.13.4 Open-ended questions in the questionnaire

The experience and opinion of the respondents was captured using the semi-structured questionnaire. This instrument helped to get the respondents' perceptions on the phenomenon.

4.13.5 Focus groups

Focus groups were used as a supplemental technique. The selection of participants was based on theoretical sampling, that is, using saturation as the guiding principle. Purposive or judgemental sampling was used to select them. Participants were relatively homogeneous along some dimensions but heterogeneous across focus groups. The discussion was arranged within the focus group in order to capture and reflect the views and experiences of the respondents in terms of categories such as gender, age and so forth. For example, woman and male managers sometimes formed separate focus groups. Group structures required a pre-planned set of agenda topics, with a set of questions. Group size was between 6 and 12; not too few and not too many to avoid formation of subgroups. The number of groups was

determined by theoretical sampling such that if no more new information could be obtained, no new focus groups were interviewed.

4.13.6 Quantitative data collection

Quantitative data were collected by using the closed-ended questions in the semi-structured questionnaire as a questionnaire is considered to be one of the most appropriate data collection instruments for survey research. The semi-structured questionnaire consisting of both open- and closed-ended questions was used in this study. The survey instrument contained both questions, Likert scales were used to measure the perceptions of the respondents. In this study a five- or seven-point scale was used for the respondents to give their level of agreement for each statement in the scales.

Both the questionnaire and interview schedules were pilot-tested by distributing them to a few managers or owners of business in the target populations – who were then excluded from the main survey or interviews. Furthermore, experts in the field were asked for their opinions on the measuring instruments in order to validate them. Piloting helped the researcher to fine-tune the measurement instruments.

The instruments were edited by English language editors and were translated into the local languages where possible.

4.14 Data Collection Method

The survey used the face-to-face data collection method, in which case-trained interviewers were employed to do the job. Using the personal (or face-to-face) interview mode of data collection can increase co-operation rates because the presence of an interviewer makes it possible for respondents to get immediate clarification of the questions. The main requirement for a good interview is the ability of an interviewer to approach strangers in person and persuade them to participate in the survey. Once co-operation is obtained, the interviewer must maintain it while collecting the needed data according to the provided instructions. For high-quality data to be collected, interviewers must be carefully trained through classroom instructions, self-study or both. Interviewers are trained, for example, in how to make initial contact, how to conduct an interview in a professional manner and how to avoid influencing or biasing responses.

4.15 Data Analysis Strategies

4.15.1 Qualitative data analysis

This consists of examining, categorising, tabulating or otherwise recombining the evidence to address the initial proposition of the study (Yin, 1994). There are several key features of analysis that can be identified. In the case of multiple case study researches, the principles of stage analysis should be applied.

In respect of within case analysis, this involves the process of analysing each case study independently and using the information from each case to analyse the proposition under investigation.

In this research, oral interviews and discussions were held with the respondents and the questions were carefully explained to the respondents in the simplest language they understand. The information gathered from the respondents was carefully recorded with the help of a tape recorder and this information became very useful during the data analysis.

Key informants were also used and they provided very useful information concerning the labour legislation and the performance of small enterprises.

Having established a good rapport with the respondents, they were very useful in giving the important information needed for this research. This oral discussion and interviews were more informative than the response gathered with the help of the questionnaire where there was not much interaction with the respondents.

Data recordings from the interviews and open-ended questionnaire and observation results were transcribed systematically for each question and thematic analysis was used to analyse the qualitative data. The responses were grouped into mutually exclusive themes and a coding frame was devised. This coding frame was used to code all the qualitative data and to assess the themes that were both common and contrasting across the cases. The researcher compared and contrasted the results across the cases, and finally synthesised or integrated the results.

4.16 Quantitative data analysis

The data collected were put together as one data set. Care was taken to make sure that exactly the same methodology of data collection was the same in all the countries and that all the different factors of organizational performance were taken into consideration.

4.17 Descriptive analysis

Apart from descriptive analysis, a Chi-square test was used to analyse the quantitative data. The data was analysed by using simple percentage analysis and averages. Frequency tables and graphs were used to summarize and give a clear view of the distribution of the responses given by the respondents to each question in the questionnaire. Chi-square test were also used to investigate associations among the variables. SPSS version 20 was used to help in the computing of the quantitative data.

4.18 Chi-square test

The Chi-square test was used to test for associations. Pearson's Chi-square test is the best-known of several Chi-square tests – statistical procedures whose results are evaluated by reference to the Chi-square distribution. It tests a null hypothesis stating that the frequency distribution of certain events observed in a sample is consistent with a particular theoretical distribution. The events considered must be mutually exclusive and have total probability 1. A common case for this is where each of the events covers an outcome of a categorical variable. Pearson's Chi-square is used to assess two types of comparison: (i) tests of goodness of fit and (ii) tests of independence.

- A test of goodness of fit establishes whether or not an observed frequency distribution differs from a theoretical distribution.
- A test of independence assesses whether paired observations on two variables, expressed in a contingency table, are independent of each other, for example, whether people from different regions differ in the frequency with which they report that they support a political candidate.

The first step in the Chi-square test is to calculate the Chi-square statistic. The Chi-square statistic is calculated by finding the difference between each observed and theoretical frequency for each possible outcome, squaring them, dividing each by the theoretical frequency, and taking the sum of the results. A second important part of determining the test statistic is to define the degrees of freedom of the test, that is, the number of observed frequencies adjusted for the effect of using some of those observations to define the theoretical frequencies.

4.18.1 Calculating the test statistic

The value of the test statistic is

$$\mathrm{X}^2 = \sum_{i=1}^{n} \frac{(O_i - E_i)^2}{E_i}$$

where

X^2 = Pearson's cumulative test statistic, which asymptotically approaches a χ^2 distribution
O_i = an observed frequency
E_i = an expected (theoretical) frequency, asserted by the null hypothesis
n = the number of cells in the table

4.18.2 Validity and reliability

An attempt was made in this research to comply with certain established criteria, and to assess the propositions under investigation and the data logically and to ensure the quality of the research is accepted by the scientific community. Due care was taken with both validity and reliability issues of the data, the research processes and the output. As part of the validity and reliability of the research instrument (questionnaire), a pre-test or pilot study was conducted to find out if the respondents understood the contents of the questionnaire. In situations where respondents found it difficult to understand the questions asked, corrections were made to simplify the questions for the respondents to understand.

CHAPTER FIVE: DATA ANALYSIS AND INTERPRETATION

5.1 Introduction

The purpose of this chapter is to discuss the research findings. An attempt will be made to analyse and discuss the six propositions that were identified earlier in this research. The first part of this chapter deals with the demographic characteristics before analysing the propositions.

5.2 Demographic Characteristics of the Respondents

Table 5. 1: Marital status of the respondents

Status	Frequency	Per cent	Valid per cent
Married	32	24.4	24.6
Single	88	67.2	67.7
Divorces	10	7.6	7.7
Total	130	99.2	100.0
Missing	1	.8	
Total	**131**	**100.0**	

Table 5.1 shows that 67.7 per cent of the respondents are single. This is followed by those who are married (24.4%) and only 7.6 per cent of the respondents are divorced. The large number of those who are single can be attributed to the fact that they are likely to be young school leavers who have just started their career and many of them have just taken up a small business as a starting point in their life career. However, the main reasons for individuals who are single to be leading in small enterprises in the Gauteng Province needs further sociological investigation.

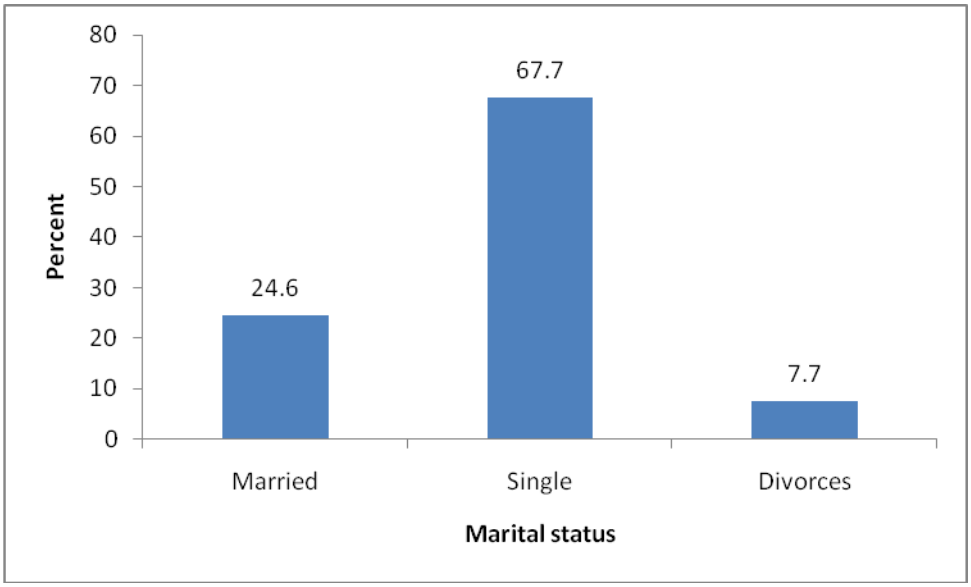


Figure 5. 1: Marital status of respondents

Figure 5.1 clearly shows the differences in statistical presentation of the marital status of respondents.

Table 5. 2: Level of education of the respondents

	Frequency	**Per cent**	**Valid per cent**	**Cumulative pcent**
Primary	6	4.6	4.7	4.7
High school	61	46.6	47.7	52.3
Diploma	19	14.5	14.8	67.2
University	39	29.8	30.5	97.7
No education	3	2.3	2.3	100.0
Total	128	97.7	100.0	
Missing	3	2.3		
Total	**131**	**100.0**		

Table 5.2 shows the level of education of the respondents. The majority of them (47.7%) are high school certificate holders, followed by university degree holders (30.5%), those with a diploma (14.8%) and those with primary school certificates (4.7%), followed by those without education (2.3%). Figure 5.2 illustrates the level of education of the respondents described above.

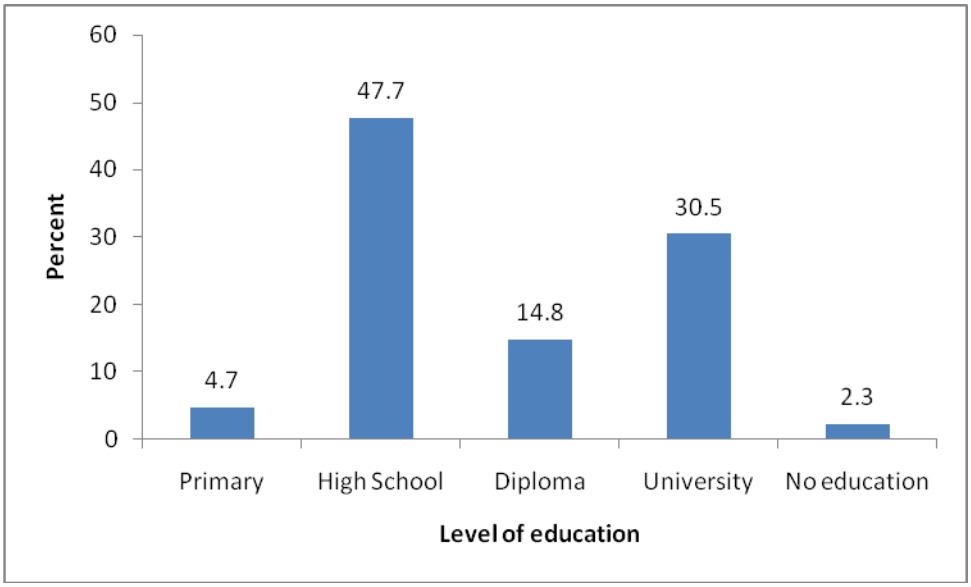


Figure 5. 2:Level of education of respondents

This statistics shows that majority of individuals working in the small enterprises can read and write. The significance of this is that majority of them could be taught new methods on how to run their businesses since majority are fairly educated.

Table 5. 3: The nature of respondents' businesses

Type of business	Frequency	Per cent	Valid per cent
Production	45	34.4	41.3
Service	64	48.9	58.7
Total	109	83.2	100.0
Missing	22	16.8	
Total	**131**	**100.0**	

Table 5.3 shows that the Service sector has the highest percentage (48.9%). This is followed by the Production Sector (34.4%).

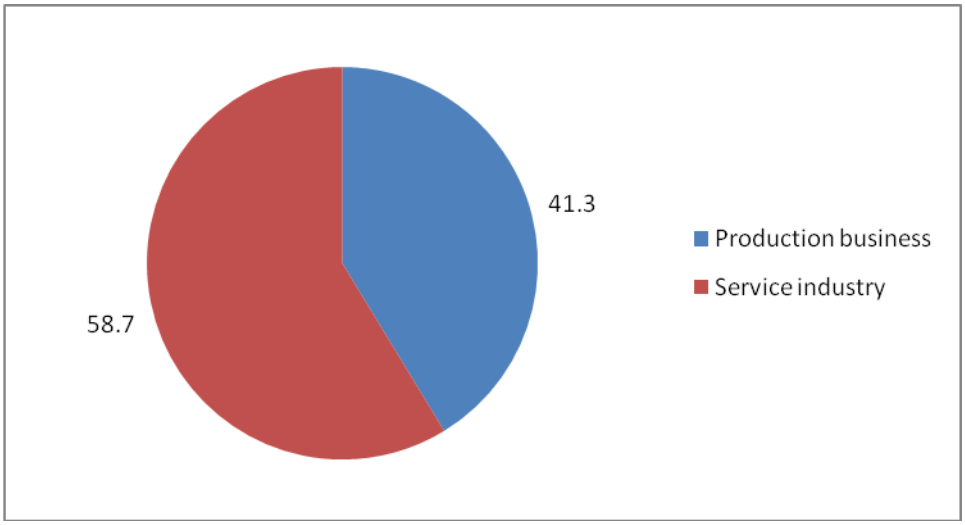


Figure 5. 3: The nature of respondents' businesses

The reason for this can be attributed to the fact that it is much easy to start with the service sector in terms of buying and selling services than manufacturing process which is capital intensive.

Table 5. 4: Respondents' employment status

Status	Frequency	Per cent	Valid per cent
An employer	66	50.4	55.9
An employee	52	39.7	44.1
Total	118	90.1	100.0
Missing	13	9.9	
Total	**131**	**100.0**	

Table 5.4 shows the employment status of the respondents. The purpose of the table is to find out if the majority of those involved with small enterprises are self-employed (employers) or they are employees. The table shows clearly that the majority of them (50.4%) are self-employed (employers) and only 39.7 per cent are employees in the small enterprise sector in Gauteng.

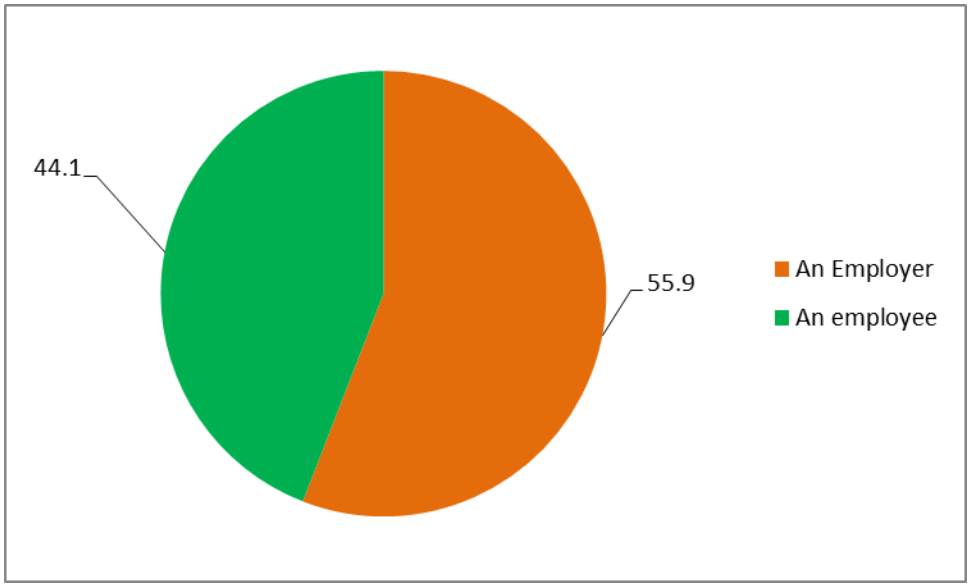


Figure 5. 4: Respondents' employment status

Table 5. 5: Length of employment

Years	Frequency	Per cent	Valid per cent	Cumulative per cent
Below one year	11	8.4	9.4	9.4
1–5 years	36	27.5	30.8	40.2
6–10 years	48	36.6	41.0	81.2
Above 10 years	22	16.8	18.8	100.0
Total	117	89.3	100.0	
Missing	14	10.7		
Total	**131**	**100.0**		

Table 5.5 illustrates that the majority of the respondents (36.6%) have spent 6 to 10 years working in small enterprises. This is followed by those who have spent 1 to 5 years (27.5%), followed by those who have spent over 10 years (16.8%) in small enterprises. The smallest category of individuals are those who have spent less than 1 year (8.4%) in small enterprises.

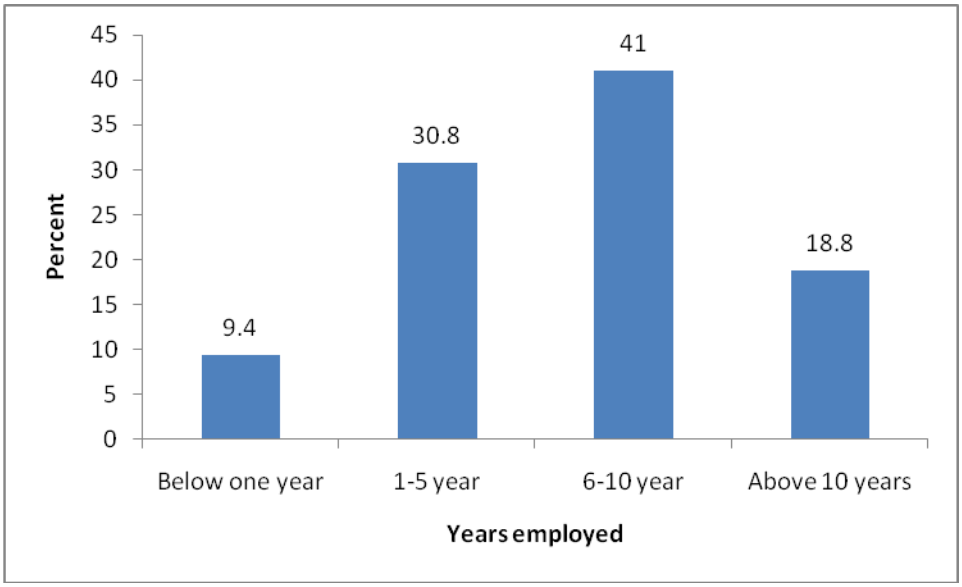


Figure 5. 5: Length of employment

5.3 The Implementation of Labour Legislation in Small Enterprises in Respect of Specific Issues

Table 5. 6:Respondents' view on the payment of severance pay to employees in small enterprises (small enterprises)

	Frequency	Per cent	Valid per cent
Yes	88	67.2	69.3
No	39	29.8	30.7
Total	127	96.9	100.0
Missing	4	3.1	
Total	**131**	**100.0**	

Table 5.6 shows that the majority of the respondents (67.2%) are of the view that employees in small enterprises must be given their severance pay when they exit from the enterprise as a result of operational requirements.

Table 5. 7: Respondents' view on maternity leave for employees in small enterprises

	Frequency	Per cent	Valid per cent
Yes	93	71.0	73.8
No	33	25.2	26.2
Total	126	96.2	100.0
Missing	5	3.8	
Total	**131**	**100.0**	

Table 5.7 reveals that 71 per cent agreed that maternity leave should be granted to small enterprise employees, while 25.2 per cent said that it was not necessary for the reasons known to them and this calls for further investigation. The implication of this finding is how small enterprises with one or two employees can cope with maternity leave for employees when compared with large organizations with many employees.

5.4 Respondents' View on the Implementation of Labour Legislation

An attempt will be made here to analyse fully how small enterprises implement labour legislation in small enterprises.

Respondents' view on the various pieces of labour legislation, namely the LRA, BCEA and EEA and small enterprises in respect of growth, good governance and good management will be discussed here. The bone of contention is to find out if the exemption of small enterprises from the above labour legislation will promote growth, good governance and good management of small enterprises by using the Likert scale. The scale indicator, which is as follows: (1 = strongly agree, 2 = agree, 3 = neutral, 4 = disagree, 5 = strongly disagree), was used together with the mean values and standard deviation.

Table 5. 8:Respondents' view: Mean values and standard deviation in respect of labour legislation and small enterprises

No.	Item	1	2	3	4	5	Mean	Std dev.
12.1 (d)	**Labour Relations Act (LRA)**							
A	Complete exemption of small enterprises from the LRA ...growth of small enterprises	37.1	22.6	17.7	11.3	11.3	2.37	1.376
B	Complete exemption of small enterprises from the LRA ...good governance of small enterprises	22.8	29.3	22.8	15.4	9.8	2.60	1.266
C	Complete exemption of small enterprises from the LRA ...good management of small enterprises	27.5	15.8	30.0	15.0	11.7	2.68	1.336
D	Selective exclusion of small enterprises from the LRA ...growth of small enterprises	19.7	37.7	14.8	13.9	13.9	2.65	1.323
E	Selective exclusion of small enterprises from the LRA ...good governance of small enterprises	21.3	37.7	18.0	10.7	12.3	2.55	1.280
F	Selective exclusion of small enterprises from the LRA ...good management of small enterprises	18.6	28.0	24.6	16.9	11.9	2.75	1.274
G	Exclusion of small enterprises from the LRA ...growth of small enterprises	23.7	22.9	20.3	19.5	13.6	2.76	1.369
H	Exclusion of small enterprises from the LRA ...good governance of small enterprises	22.6	27.0	28.7	11.3	10.4	2.60	1.248
I	Exclusion of small enterprises from the LRA ...good management of small enterprises	25.0	26.7	22.5	10.8	15.0	2.64	1.365
J	Parallel implementation and growth	35.3	31.0	22.4	4.3	6.9	2.16	1.164

No.	Item	1	2	3	4	5	Mean	Std dev.
K	Parallel implementation and good governance	25.9	30.2	27.6	8.6	7.8	2.42	1.188
L	Parallel implementation and good management	35.7	27.0	21.7	6.1	9.6	2.27	1.273
12.2(d)	**Basic Conditions of Employment Act (BCEA)**							
A	Complete exemption of small enterprises from the BCEA ...growth of small enterprises	36.0	27.2	14.0	10.5	12.3	2.36	1.383
B	Complete exemption of small enterprises from the BCEA ...good governance of small enterprises	26.3	23.7	23.7	18.4	7.9	2.58	1.275
C	Complete exemption of small enterprises from the BCEA ...good management of small enterprises	24.6	19.3	27.2	14.0	14.9	2.75	1.367
D	Exclusion of small enterprises from the BCEA ...growth of small enterprises	26.5	25.7	19.5	13.3	15.0	2.65	1.395
E	Exclusion of small enterprises from the BCEA ...good governance of small enterprises	19.1	33.0	18.3	16.5	13.0	2.71	1.310
F	Exclusion of small enterprises from the BCEA ...good management of small enterprises	23.2	23.2	18.8	19.6	15.2	2.80	1.394
G	Parallel implementation and growth	27.4	29.2	19.8	13.2	10.4	2.50	1.304
H	Parallel implementation and good governance	22.6	30.2	23.6	16.0	7.5	2.56	1.220
I	Parallel implementation and good management	27.4	28.3	20.4	13.3	10.6	2.51	1.310
12.3(d)	**Employment Equity Act (EEA)**							
A	Complete Exclusion of small enterprises from the EEA ...growth of small enterprises	37.4	26.2	15.0	10.3	11.2	2.32	1.364
B	Complete Exclusion of small	29.0	28.0	24.3	15.9	2.8	2.36	1.143

No.	Item	1	2	3	4	5	Mean	Std dev.
	enterprises from the EEA ...good governance of small enterprises							
C	Complete Exclusion of small enterprises from the EEA ...good management of small enterprises	29.0	25.2	20.6	15.0	10.3	2.52	1.327
D	Selective Exclusion of small enterprises from the EEA ...growth of small enterprises	23.4	27.1	19.6	14.0	15.9	2.72	1.386
E	Selective Exclusion of small enterprises from the EEA ...good governance of small enterprises	17.0	39.6	23.6	10.4	9.4	2.56	1.172
f	Selective exclusion of small enterprises from the EEA ...good management of small enterprises	8.6	39.0	28.6	14.3	9.5	2.77	1.103
G	Exclusion of small enterprises from the EEA ...good governance of small enterprises	17.0	31.0	16.0	23.0	13.0	2.84	1.316
H	Exclusion of small enterprises from the EEA ...good governance of small enterprises	13.6	31.1	25.2	17.5	12.6	2.84	1.235
I	Exclusion of small enterprises from the EEA ...good management of small enterprises	16.7	30.4	21.6	15.7	15.7	2.83	1.321
J	Parallel implementation and good governance	26.8	28.9	22.7	13.4	8.2	2.47	1.251
K	Parallel implementation and good governance	24.0	30.0	27.0	14.0	5.0	2.46	1.150
L	Parallel implementation and good governance	23.1	27.9	26.9	12.5	9.6	2.58	1.244

Scale indicator: (1 = strongly agree, 2 = agree, 3 = neutral, 4 = disagree, 5 = strongly disagree) together with the mean values and standard deviation.

Note: All the mean values of the scale are less than 3, which is the neutral position. This implies that the respondents agreed with the statements in general. A further analysis of one-sample *t*-test was done on the data to find out whether the mean values were significantly different from the '3' and the following results were obtained.

Table 5.8 shows that all the mean values of the scale are less than 3, which is the neutral position and this implies that the respondents agreed with the statements or propositions that: the exemption of small enterprises from labour legislation will promote growth, management and good governance of SEs.

A further one-sample *t*-test (Table 5.9) was done on the above data to find out whether the mean values were significantly different from the '3' and the following results were obtained.

Table 5. 9: Composite scores

One-Sample Statistics				
	N	**Mean**	**Std. deviation**	**Std. error mean**
Complete exemption	120	2.5583	1.04802	.09567
Selective	118	2.6271	.99778	.09185
Exclusion	110	2.6394	.94079	.08970
Parallel	113	2.2802	.98558	.09272
CompleteBCEA	114	2.5643	1.03063	.09653
ExclusionBCEA	110	2.7242	1.12506	.10727
ParallelImplSEs	89	2.6236	1.07324	.11376
CompleteExclusionSEs	106	2.3994	1.03833	.10085
SelectiveExclusionSEs	104	2.6955	.88022	.08631
ExclusionSEs	94	2.8511	1.04455	.10774
ParallelSEs	89	2.4981	.94565	.10024

One-Sample Test						
	Test Value = 3					
	t	df	*p*-value	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
ACompleteExemption	-4.617	119	.000	-.44167	-.6311	-.2522
ASelective	-4.060	117	.000	-.37288	-.5548	-.1910
AExclusion	-4.020	109	.000	-.36061	-.5384	-.1828
AParallel	-7.763	112	.000	-.71976	-.9035	-.5361
ACompleteBCEA	-4.513	113	.000	-.43567	-.6269	-.2444
AExclusionBCEA	-2.571	109	.011	-.27576	-.4884	-.0632
AParallelImplSEs	-3.309	88	.001	-.37640	-.6025	-.1503
ACompleteExclusionSEs	-5.956	105	.000	-.60063	-.8006	-.4007
ASelectiveExclusionSEs	-3.528	103	.001	-.30449	-.4757	-.1333
AExclusionSEs	-1.382	93	.170	-.14894	-.3629	.0650
AParallelSEs	-5.007	88	.000	-.50187	-.7011	-.3027

All composite scores are significantly below 3, the neutral score, this therefore confirms that the respondents agreed with all the propositions except that of exclusion of small enterprises from EEA (t = -1.382, p = .170>.1) which is not significant (.170) which is less than zero as shown above.

Table 5. 10: Respondents' view on the relationship between small enterprises and the implementation of organizational rights in respect of the LRA

Respondents	Yes small enterprises should be completely exempted from the LRA in respect of organizational rights	No small enterprises should not be completely exempted from the LRA in respect of organizational rights	Total
Labour experts	9 (8.9)	2 (2.0)	11
Owners of small enterprises	15 (14.7)	3 (3.3)	18
Employees in small enterprises	75 (73.5)	15 (16.5)	90
Government officials in dti	8 (9.8)	4 (2.3)	12
Total	**107**	**24**	**131**

H0: small enterprises should not be completely exempted from the LRA in respect of organizational rights.

H1: small enterprises should be completely exempted from the LRA in respect of organizational rights.

Observed x^2 = 1.43

Degree of freedom = 3

The critical value at level of significance of 0.05 is equal to 7.815. Since the critical value is larger than the observed Chi-square, H0 is accepted and H1 rejected.

From this Chi-square analysis, it is now clear that small enterprises should not be completely exempted from the LRA in respect of organizational rights.

5.5.2 Dispute resolution in small enterprises

Table 5. 11:Respondents' view on the relationship between small enterprises and the implementation of dispute resolution process in respect of the LRA

Respondents	Yes small enterprises should be completely exempted from the LRA in respect of dispute resolution process	No small enterprises should not be completely exempted from the LRA in respect of dispute resolution process	Total
Labour experts	8 (10)	3 (1.0)	**11**
Owners of small enterprises	16 (16.0)	2 (2.0)	**18**
Employees in small enterprises	85 (80.0)	5 (10.0)	**90**
Government officials in dti	8 (11.0)	4 (1.0)	**12**
Total	**117**	**14**	**131**

H_0: There is no relationship between the complete exemption of small enterprises and the current process of dispute resolution in respect of the growth management and governance of small enterprises.

H_1: There is relationship between the complete exemption of small enterprises and the current process of dispute resolution in respect of the growth management and governance of small enterprises

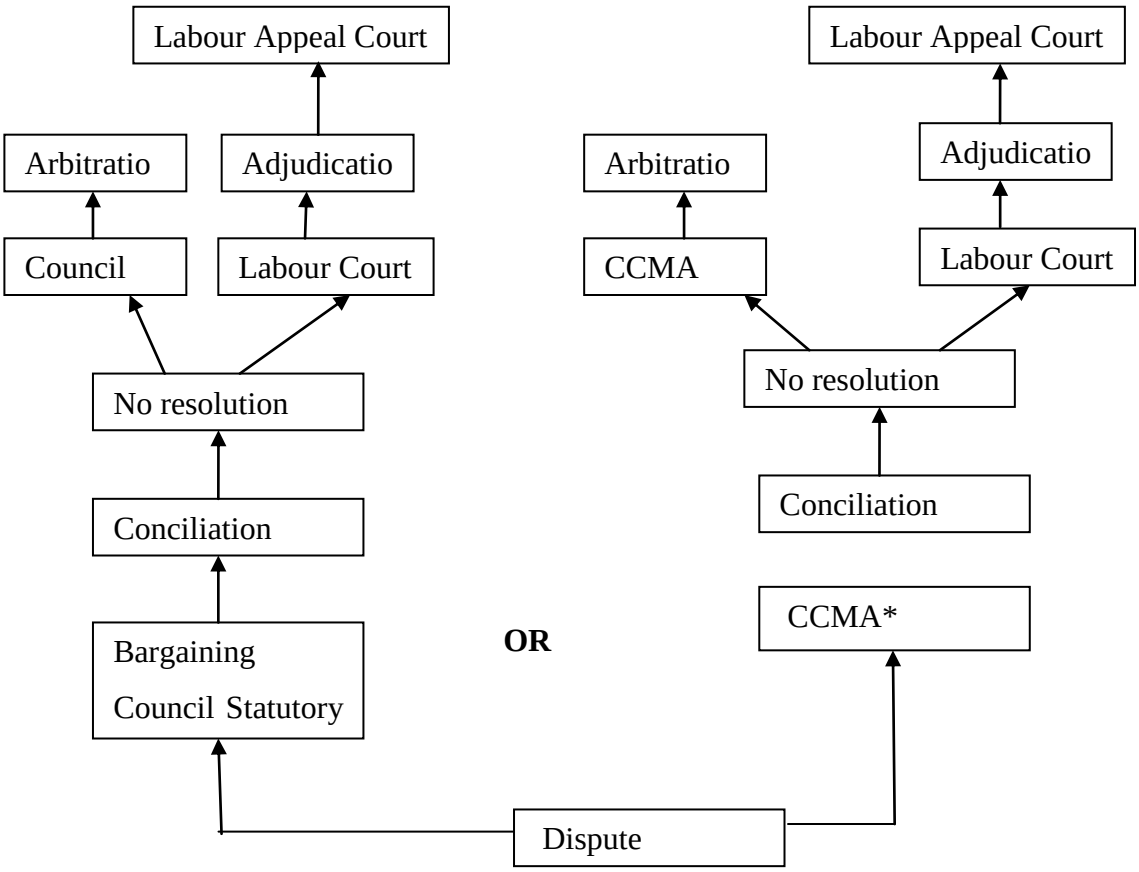
Observed x^2 = 17

Degree of freedom = 3

The critical value at level of significance of 0.05 is equal to 7.815.

Since the critical value is less than the observed Chi-square (x^2), H_1 is accepted and H_0 is rejected. This shows that there is a relationship between the small enterprises and the current process of dispute resolution, and therefore small enterprises should be completely exempted from the process.

Figure 5.6 illustrates the dispute resolution process as shown in the LRA:



Source: Du Plessis and Fouché (2006:320)

Figure 5. 6: Dispute resolution process in respect of the LRA

The structure in Figure 5.6 is quite complex and expensive for small enterprises and in the light of this, small enterprises need a simple process in which disputes can easily be resolved. In fact, since most small enterprises are owned and controlled by family members, it is strongly recommended that non-formalised processes can be used by small enterprises to resolve their own disputes.

CHAPTER SIX: DISCUSSION OF RESEARCH FINDINGS

This chapter discusses the research findings and the developed framework which is illustrated below in figure 6.1.

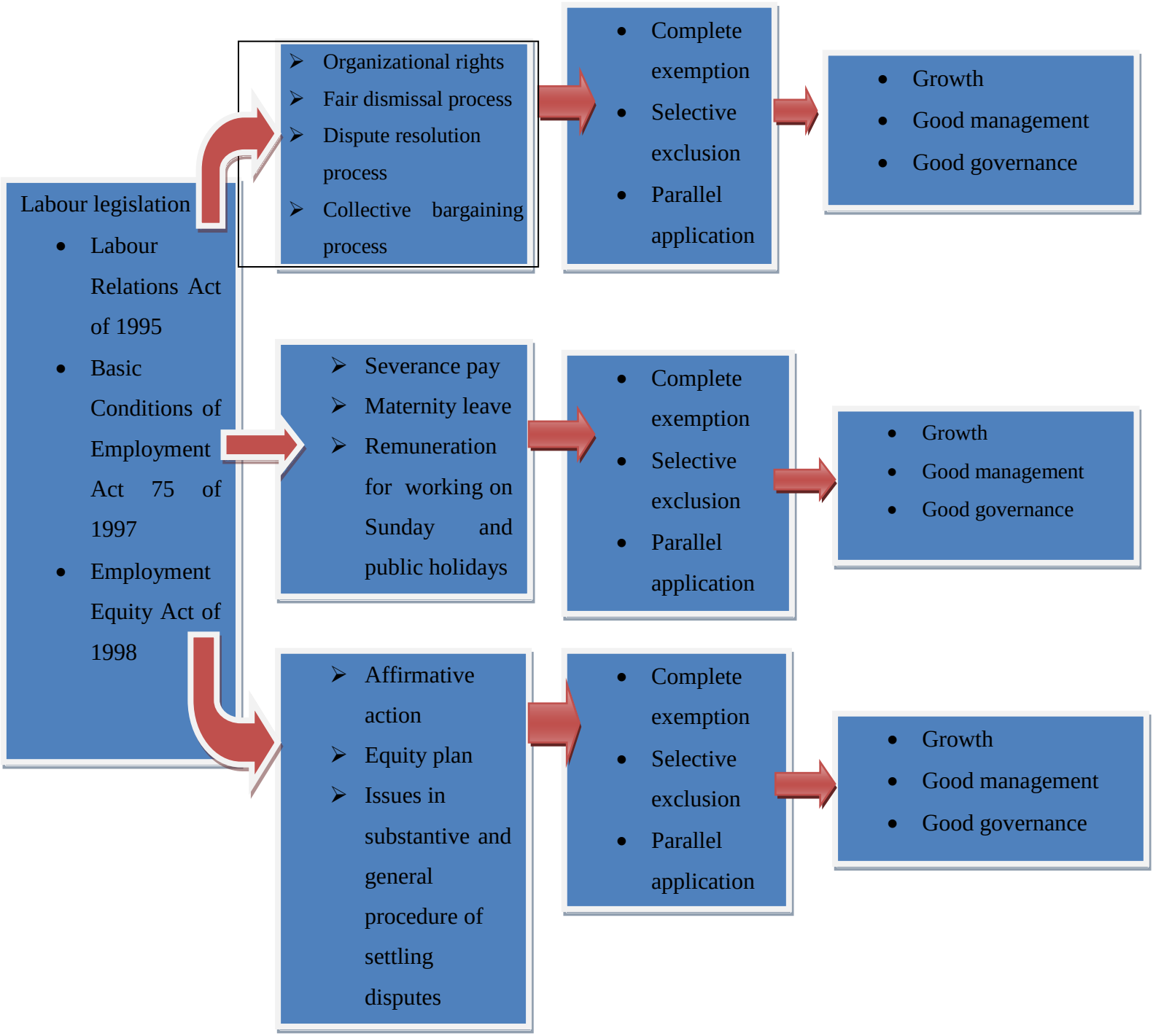


Figure 6.1: The Developed Framework

i In terms of the LRA:

- Complete exemption of small enterprises will promote growth, good governance and good management
- Selective exclusion of small enterprises will promote growth, good governance and good management
- Parallel implementation of specific legislation with the LRA will also promote growth, good governance and good management.

ii In terms of the BCEA:

- Complete exemption of small enterprises will promote growth, good governance and good management
- Selective exclusion of small enterprises will promote growth, good governance and good management
- Parallel implementation of specific legislation with LRA will also promote growth, good governance and good management.

iii In terms of the EEA:

- Complete exclusion or exemption of small enterprises will promote growth, good governance and good management
- Selective exclusion of small enterprises will promote growth, good governance and good management
- Parallel implementation of specific legislation with LRA will also promote growth, good governance and good management.

The severance pay that is included in the BCEA (section 41) requires an employer to pay an employee who is being retrenched one week's pay in respect of the number of years the employee has spent in the enterprise in addition to all other benefits and entitlements of the employee. The bone of contention on this issue is whether a small enterprise can afford to pay the severance pay where more than two or three employees wish to take their exit of retrenchment based on operational reasons. Considering the little capital at the disposal of the

small enterprises, it will be difficult for small enterprises to pay out severance pay since this will adversely affect their day-to-day running capital.

6.1 Organizational Rights and Dispute Resolution in Small Enterprises

The two other propositions, namely (i) organizational rights and (ii) dispute resolution were also investigated in this research and the findings are discussed below;

6.2 Organizational rights

The issue of organizational rights is one of the specific issues considered in this research in respect of small enterprises. This issue is of particular interest, mainly because the South African Labour Relations Amendment Act 12 of 2002 provides in Part A of Chapter 111 that some of these rights are accorded to a majority registered union which is sufficiently representative. It is also interesting to note that the Act also allows an employer and a union to conclude a collective agreement to regulate organizational rights.

In the same vein, the LRA confers various organizational rights on trade unions, depending on their membership, and the degree of support they enjoy among workers in the workplace, to a bargaining council. The rights below can be claimed by trade unions.

- Access to the workplace
- Seduction of the trade union subscription or leave for trade union activities
- Election of office bearers
- Election of the trade unions representative (shop stewards)
- Disclosure of information
- Right to establish thresholds or representativeness in respect of sufficient representative unions seeking organizational rights.

The role of trade unions is prominent in the above discussion and in view of this, the contention is that it will be very difficult, if not impossible, for the employees in small enterprises, the majority of whom do not have trade unions to pursue the implementation of their organizational rights in their respective work environments. This shows that the

majority of the employees in small enterprises are indirectly excluded from exercising their organizational rights.

Unfortunately, this aspect of organizational rights in relation to small enterprises has not been given the attention it deserves in labour jurisprudence in South Africa.

However, a few of the empirical studies that have been done in this area in South Africa are those of Okharedia (2007), which deal with a comparative study of the concept of organizational rights in South Africa and Botswana and that of du Toit and Bosch (1992), which deals with 'Workers in small businesses: A challenge for unions'. This study confirms the hostility of employers towards their employees in small-scale businesses in South Africa. The work of du Toit and Bosch shows that the most immediate obstacle to workers in small-scale business is undoubtedly the hostility of employers, resulting in widespread fear among workers to join a union. An employee in one of the small businesses studied by du Toit had this to say:

> "Bosses in small businesses are not scared of the workers. In big companies workers have the numbers behind them. Whereas small businesses employ few people who are open to victimization, and workers are scared to join a union. In the case of employees working in garages, it is a hell of a job. It is not big companies, and two or three workers are dismissed daily because there are no unions to protect them".

Quoted in the same work, one of the respondents who worked in another small enterprise had this to say:

> The owner of this enterprise is completely ruthless. His attitude to the union is 'go to hell', I own them [workers]. He hires and fires at will and people in the enterprise regard him as mad. Workers are scared of him since we do not have unions to protect our rights.

The above discussion supports the view that there is an urgent need for small enterprises to be exempted from the LRA in respect of the implementation of organizational rights for the employees in some specific areas. Employees in small enterprises need to be exempted in

some parts of the legislation that would enable them to exercise their organizational rights in the absence of any recognised trade union.

Experience and case law have shown that one of the important areas where small enterprises should be completely exempted from the LRA in terms of organizational rights revolves around the requirements of the establishment recognition of a majority trade union before the employees can implement their rights. This issue is clearly illustrated in the case of *Bader Bop (Pty) Ltd v National Union of Metal and Allied Workers of SA* and others. In this case, the majority of the employees belonged to the General Workers Union of South Africa (GWUSA) which is a registered trade union. The first respondent, the National Union of Metal and Allied Workers of South Africa (NUMAWSA), was a minority union in the workplace. Official records of the company show that the company had granted GWUSA, as the majority union, the organizational rights provided for in section 14 of the LRA of 1995. In the same vein NUMAWSA had been granted the organizational rights provided for in section 12 and 13 but not those provided for in section 14 (right to election of trade union representatives of a majority trade union in a workplace). These rights were demanded by NUMAWSA. Unfortunately, the company conspicuously refused to comply on the grounds that NUMAWSA was not a majority trade union; NUMAWSA referred the dispute to conciliation. Unfortunately, conciliation failed and NUMAWSA referred the dispute to the arbitration as provide for in section 21(7) of the LRA, but issued a strike notice in terms of section 64(1) of the LRA. In review of this, the company applied to the Labour Court for an order interdicting the intended strike. The application was dismissed. The company then (with leave of the court) appealed against the decision and went on to the LAC.

The submission on behalf of NUMAWSA was that the right sought was a right that fell outside Part A of Chapter 111 of the LRA.

The ruling judge, J P Zondo, rejected this contention saying –

> "..it was adopted in an attempt to meet the argument that section 14(1) only contemplated the organizational rights provided for therein being granted to a registered trade union that has the majority of employees in the workplace. He argued that because there were two or more trade unions acting jointly, they did indeed have the membership of the majority of the employees".

However, Mr Justice du Plessis noted that Chapter 111 of the LRA conferred organizational rights upon representative trade unions only. In the workplace environment only a majority trade union is regarded as representative for the purpose of section 14. According to the judge, a registered trade union that desires those rights must seek them in terms of the provision of section 21. This requires a dispute about organizational rights to be referred for conciliation and if not successful, then the case should be referred for arbitration. The judge noted that the LRA did not specifically preclude trade unions that were not representative as required by part A of Chapter 111, either from attaining organizational rights through collective bargaining or from taking strike action to attain them. Du Plessis investigated whether this was a *casus omissus* and whether it was competent for a non-representative union to strike to attain organizational rights. He was of the opinion that the concept of representativeness in Chapter 111 was aimed at avoiding disputes. The rights contained in sections 14 and 16 are more onerous for the employer than those in sections 12, 13 and 15. Considering this, the provision that only majority trade unions have these rights reduced the possibility of disputes to a minimum.

He buttressed the fact that a trade union, whether representative or not, could simply ignore the provisions of Part A, since this gave rise to certain difficulties. According to him, the legislature did not intend an absurd or an anomalous result, nor did it intend to make meaningless provisions.

Conclusively, he is of the view that strike action cannot legitimately be embarked upon by an unrepresentative union seeking organizational rights. A registered trade union must seek those rights in terms of the provision of section 21. If the union is not representative, it cannot proceed and embark on strike action. His submission was that the appeal should succeed.

Zondo agreed that the appeal should be upheld. He observed that the appeal raised the question of minority trade union can be given organisation rights in terms of Section 14 of the LRA.

However, the bone of contention is whether small enterprises can really implement the process considering the fact that the process is bureaucratic and too formalised, it will not be easy for both the employees and the employers in small enterprises to fully embrace the process.

In the light of this and also based on the researcher's detailed interviews with the respondents, the suggestion is that the South African government develop a simple process of labour dispute resolution that is less mechanistic and less expensive than the present system which is not easy to implement. The present situation where both large and small businesses use the same techniques in resolving labour disputes does not favour the growth and development of small enterprises.

Experience has shown that small enterprises are more economically vulnerable than their large counterparts in fulfilling all requirements on both substantive and procedural fairness in resolving a dispute. Past studies in the literature review shows that in the UK, for example, it is difficult for small enterprises to comply with formal procedures for resolving labour disputes. A recent study of the Industrial Tribunal (IT) cases conducted by Earnshaw and others found that many decisions against small enterprises occurred because they lacked formal procedures and policies. Indeed, tribunal hearings prompted the adoption of formal policies. It was also noted that even where small enterprises did have formal policies, some failed to utilise them, preferring the informal approach especially the family-owned business enterprises. In family-owned businesses, research has shown that disputes are often resolved by members of the family as buttressed by Okharedia (1993).

Employers in Earnshaw's study in the UK also indicated that the IT system was inappropriate for small enterprises since small enterprises cannot afford to meet up with the rapid changes that occur in IT industry. In other countries, it is uncommon for small enterprises and large businesses to be bound by the same procedures when resolving disputes.
In the literature review (Chapter Two of this thesis), some countries are highlighted that make special provisions for small enterprises. Example of such country is China.

In South Africa, especially in Gauteng Province where this research was conducted, the majority of the respondents agreed that small enterprises must be completely excluded from labour legislation (i.e., LRA, BCEA and EEA) if small enterprises are to grow, have good governance and good management. At present, there is a public outcry to exempt small enterprises from labour legislation. Unfortunately, the South African government has not paid much attention to this outcry.

However, with the recent establishment of the Ministry of Small and Medium Enterprises in 2014, the South African government is likely to revise the labour legislation and exempt small enterprises from labour legislation so as to promote growth, employment opportunity, good governance and good management of small enterprises as indicated in the present research findings.

In terms of selective exclusion, some countries like Vietnam and Peru operate on selective exclusion and this has helped in the growth and development of small enterprises in both countries.

The bone of contention here is should South Africa apply the selective exclusion clause as it is done in Peru and Vietnam? The findings of this research show that the selective exclusion is recommended by the respondents in this research since the mean value of the respondents is below 3 which falls between strongly agree and agreed in the Likert scale.

In view of this, this research supports the view that the application of selective exclusion of small enterprises from the LRA, the BCEA and the EEA will promote growth, good governance and good management of the small enterprises.

In this research, two specific issues, namely (i) organizational rights and (ii) dispute resolution were examined, and the findings proved that small enterprises should be exempted from the LRA. In the case of parallel labour law application to small enterprises, the findings of this research show a mean value that is below 3 confirms that the respondents agreed that parallel application of the LRA, BCEA and EEA in small enterprises is fully supported and the respondents believe that this parallel application will help in the growth, good governance and good management of the small enterprises. This should therefore be encouraged by the South African government.

In the literature review, the researcher indicated that in Nepal and Brazil there is a parallel application of legislation in small enterprises and large companies. Both countries also exempt small enterprises from legislation where SEs are expected to share a proportion of their profit with their employees.

In addition to this, labour laws that are relevant to a particular SE are brought together to address those SEs.

In some countries like Nepal, the labour law contains some provision made specially for some small enterprises to comply with.

The work of Fenwick *et al* (2007) shows clearly that promulgating a parallel labour law is quite beneficial to the development of SMEs. Parallel application also helps to develop comprehensive labour legislation that meets the needs of SEs.

This research also confirms that there is a need for complete exemption of small enterprises from labour legislation. The majority of the respondents are of the view that the exemption of small enterprises from labour legislation will promote growth, good governance and good management of small enterprises. In view of this, there is an urgent need for the South African government to work out policies and regulation that will promote this spirit of complete exemption.

It is also interesting to note that a 2005 ILO report shows that there are already member states that have labour legislation that excludes small enterprises. In Kuwait, for example, it excludes small enterprises from labour legislation and this has helped in the development and growth of SEs.

In Costa Rica, the labour legislation excludes small enterprises and the Executives are allowed to determine which rules of the code they have to comply with.

In the case of Nepal, the transport services employing fewer than 10 workers or employees have specific legal provisions in respect of the following:

(a) Issue of appointment letter
(b) Payment of minimum wages
(c) Working hours
(d) Holidays, and
(e) Health security

(Source: Nepal Labour Act 2045).

The lessons the South Africa government can learn from the Nepal experience above are enormous. In the first place, the Nepal Labour legislation has gone beyond complete exemption of small enterprise from labour legislation. The Nepal Majesty's Government under section 21 of the Labour Act 2048 allows for a specific sector of the economy to have specific labour legislation that can easily address specific issues or difficulties often experienced by the specific sector.

The Nepal experience is highly commendable and also recommended for the South African government and other African countries to emulate and implement. This will promote the growth, good management and good governance of small enterprises in different sectors of the economy.

To assume that all small enterprises in different sectors of the economy are the same and therefore can be treated as a homogeneous entity is a false assumption and the differences should be considered when enacting labour legislation. The differences in the different sectors need further investigation and it is currently beyond the scope of this research.

6.3 Possible pitfalls observed in this research in respect of exempting small enterprises from the application of certain fundamental labour rights

The oral interviews and discussions conducted with the respondents during this research revealed the following:

In the first place, some of the respondents are of the view that excluding small enterprises from the labour legislation may expose them as labour victims since they are not protected and in time of labour disputes they may not know what to do exactly and this might put them at higher risks.

The absence of trade unions in some SEs makes it difficult for employees to fight for their benefits. Thus excluding SEs from labour legislation makes employees to be helpless. On the other hand, some SEs find it difficult to have registered trade unions because of the requirements and the number of employees that must be available to members of the trade union before they can be registered. Excluding SEs from labour legislation and coupled with the absence of trade union puts employees in double jeopardy.

Secondly, in the course of the oral interviews with the respondents, it also became clear that some of the respondents in small enterprises are of the view that the exclusion of small enterprises from the general labour legislation, making them establish separate labour legislation, making them establish separate labour legislation may create voluminous and complex laws which is likely to increase the transaction costs of compliance for small enterprises directly or indirectly.

Thirdly, some of the respondents are of the view that the failure to communicate applicable laws to small enterprises may lower the standards for the small enterprises sector. This confirms the study of the Nepalese small enterprises sector by Shakya.

Lastly, some of the respondents stressed the fact that the limitation of number of employees that must not be exceeded for the SEs to be excluded from an unfavourable clause of the labour legislation indirectly discourages employers in SEs not to increase its staff members and expand his or her business. This is based on the premises that if a specific number of employees is exceeded they will not be exempted or excluded from the labour legislation. Latently, by restricting SEs to a specific number like 10 employees indirectly hinders the prosperity for SE to expand in terms of growth and this may make the business to remain low and not grow further.

It is suggested here that other elements could be used to identify which criteria must be used to cap which SE must be excluded from labour legislation and not necessarily the number of workers.

This research conclusively confirms that complete exclusion, selective exclusion and parallel implementation of labour legislation in small enterprises will promote growth, good management and good government

The findings of this research show that for small enterprises to survive and to experience growth coupled with good management and good governance, there is an urgent need to promulgate separate labour legislation for small enterprises. The present situation in South Africa where both large-scale businesses and small enterprises are regulated with the same labour legislation does not favour the growth and development of small enterprises.

This research confirms that small enterprises are currently finding it very difficult to implement the LRA, BCEA and EEA. In the case of the LRA, it does not make any distinction between small enterprise and large businesses in the implementation of sections 185 to 188 of the Act. In terms of section 185, every employee has the right not to be unfairly dismissed. Section 186(1) defines a dismissal and section 188 sets out the requirements for a fair dismissal which are difficult for small enterprises to implement. The requirements for a fair dismissal (s 188) are as follows:

> "An employee in both large-scale businesses and small enterprises must prove that a dismissal (other than an automatically unfair dismissal) relates to an employee's conduct or capacity or is based on the employer's operational requirements and that a fair procedure was adopted during the dismissal".

Two requirements must be complied with in order to ensure the fairness of a dismissal in respect of substantive and procedural fairness. In situations where an employee alleges an unfair dismissal, the onus is on the employer to prove, on a balance of probabilities, that the dismissal is fair. In the same vein, if the employee claims that he or she was dismissed and the employer contends that he or she was not dismissed, the onus is on the employee to prove the existence of a dismissal in terms of section 192 of the LRA.

The issue here is that both the process and the substantive issues involved appear to be too mechanistic for small enterprises and for this reason there is an urgent need for separate legislation regulating small enterprises in terms of fair and unfair dismissal of an employee.

In the case of dispute resolution, the LRA also spells out clearly both the process and the substantive issues to be considered.

Considering the fact that there is a more personal relationship between employer and employees since most of the small enterprises businesses are family-owned, the bureaucratic process stated in the LRA does not favour small enterprises. In reality, small enterprises need separate legislation which allows for more informal processes than the bureaucratic processes in the LRA. Family institutions, especially in developing countries, have been found to be useful in resolving disputes in small enterprises (Todaro, 1990). This research also recommended that small enterprise must be exempted from complying with the LRA in respect of dispute resolution.

Unfortunately, the LRA does not recognise that small enterprises are family-owned business and because of this, any dispute arising from work is settled by the family who sees such settlement as family responsibilities. In the course of the oral discussion with the respondents, they made it clear that they were not comfortable with the application of the LRA in settling disputes between employer and employees in small enterprises. The respondents emphasized the fact that, as owners of small businesses, they did not have the resources and it was time-consuming for them to settle disputes at the CCMA and Bargaining Council. They preferred to settle their disputes using an informal approach. The nature of interaction in small enterprise is informal, the process of bureaucracy and the strict application of rules, policy and formal procedures are de-emphasized. The formal process of resolving disputes hinders the expansion of small enterprises in the sense that the finance that would have been used to expand the business might be used in litigation process in an attempt to comply with the LRA.

The majority of the respondents interviewed believed that the spirit of collective wisdom, openness and togetherness through family ties was being broken, thus, preventing transparency and accountability which is the essential element of good governance. This formal structure creates a social distance between employer and the employees, thus breaking the element of trust among them and this results in secrecy, quasi-co-operation and unnecessary confidentiality, and hinders transparency and the implementation of good governance in small enterprises. Again, it is for this reason, that small enterprises need separate labour legislation.

In the course of the oral interview with the respondents, they indicated that in respect of the implementation of the BCEA, small enterprises found it very difficult to comply with the minimum wages and the working hours required of an employee. The minimum wage levels set by bargaining councils are difficult for small enterprises to implement. In view of the fact that small enterprises are family-owned, members of the family do not fix wages as it is in the formal sector of the economy and because of this small enterprises should be exempted from minimum wage regulation. The exclusion of small enterprises from minimum wage regulation is likely to promote good management, good governance and growth of small enterprises, since the employees are made to consider the business as their own enterprise and look forward for a better share of profit which is shared equally among themselves. It is very likely that in a situation like this, disputes around wages are minimised.

It was also observed that the number of working hours per day and working on Sunday and public holidays as required by the BCEA are difficult to implement in small enterprises mainly because of their size and partly because of family members who work in small enterprises. Considering the fact that majority of the employees are family member who are not strictly paid monthly wages and other benefits, it makes no difference to them if they work on Sundays and public holidays because they are not strictly wage earners. Excluding small enterprises from wage and working hours regulation will improve the informal relationship between employers and their employees. In the same vein, this creates an opportunity for employers to think positively on how to expand the growth of their business coupled with good governance.

The implementation of the EEA was also observed to be difficult for the small enterprises. The two pillars of EEA, namely (i) affirmative action and (iii) unfair discrimination, were difficult for small enterprises to achieve mainly because of their size and the nature of the business which is family-owned in the most cases. The implementation of affirmative action will not only distort the cordial relationship between the employees, it will also limit the growth of the business which is tied to the family member where dealings are based on trust and not on rules and regulations as in the formal sector. It will also be unfair not to consider family members for employment opportunity and give preference to an outsider so as to meet with affirmative action requirements.

It also should be noted that the issue of unfair discrimination does not really exist in small enterprises mainly because of their size. In the course of this research when respondents were interviewed, the issue of unfair discrimination did not feature prominently as a problem. It does not make sense for family members to discriminate among themselves, rather, they see themselves as one entity and treated one another with respect.

In view of this, small enterprises should be exempted from the implementation of the EEA as the research findings had earlier indicated. This exemption is likely to increase the growth, good management and good governance of small enterprises.

The above discussion shows clearly why small enterprises should be exempted from the present South African labour legislation (i.e., LRA, BCEA and the EEA). This research has also shown why small enterprises need separate or parallel labour legislation if they are to

survive and achieve their goals and objectives. The exclusion of small enterprises from labour legislation will minimise the current heavy problems that prevent SEs to experience growth and will also increase the entrepreneurial skills among the workers on small enterprises.

In view of the above discussion, the following recommendations must be adopted by the South African government to promote the growth, good management and good governance of small enterprises:

In the first place, the South African government must enact separate labour legislation that small enterprises can easily implement as happened in Nepal, Chile and Peru where separate labour legislation has helped in the growth and development of small enterprises.

Secondly, it is the responsibility of the government to create awareness among employers and employees in small enterprises of the aspect of labour law that is applicable to them. This awareness can be promoted though the media and labour inspectors. In Chile and Thailand, labour inspectors are tasked with the responsibility of small enterprises employees of their rights and obligations. This awareness is important because it enables both employers and employees to know the extent and limitation of their rights. This awareness has also been found to establish a cordial relationship between employers and their workers, thus minimizing conflicts within the work environment.

The government, through the new Ministry of Small Scale Business, should develop a strategy and training opportunity that will enable employers in small enterprises to be well acquainted with global issues, confronting small enterprises. For example, in Peru small enterprises are inspected from time to time and the employers and their employees are given useful information.

In Chile the same is applicable and the employees are given opportunity to attend vocational training that would improve their skills. In 2004 in Chile, a total of 1 368 employers extended such opportunity to their employees. The South African government needs to develop a valid strategic plan that would enable small enterprises to survive and also contribute to the growth of the economy.

The Commission for Conciliation, Mediation and Arbitration (CCMA) that was established in 1997 has helped to resolve disputes in the work place. This independent institution has helped in giving very useful information on dispute resolution and dispute management to both employers and employees in both small and large enterprises. In addition to this, the institution (CCMA) has also helped in the education and training of both employers and employees in their respective organisations.

In the course of this research, one of the respondents had this to say in respect of the CCMA when the respondent was asked how he controls dispute in his work place:

> "Since the establishment of CCMA, we now find it very easy to resolve disputes. When employees refer disputes to CCMA, the disputes are resolved in no distant time without cost. This is quite different to what happened in the past where disputes that are referred to the normal magistrate court the case remains there for more than six months without any hearing. This is now a thing of the past. The CCMA is quite efficient and expeditious in settling disputes and we are happy about this. However, much needs to be done to minimise the bureaucracy we see in the process any time we are at CCMA".

It has also been observed that large enterprises make frequent use of CCMA than small enterprises.

Most small enterprises do not use the CCMA regularly like large enterprises to settle their disputes, mainly because they feel that the process still has some few elements of bureaucracy which is not convenient to them.

The overall interviews conducted with the respondents in small enterprises revealed that they would like to have a special commission, they argued, which should not be bureaucratic like the CCMA. The specific task of the commission is to settle disputes in a very simplistic way. In view of this, this research recommends that the commission should adopt the process of mediation–arbitration which is often referred as *Med-Arb*.

This process of Med-Arb should be totally different from the present CCMA process of dispute resolution which all small enterprises are forced follow to settle disputes. Med-Arb is

generally understood as mediation followed by arbitration, before the same person. However, besides such 'classic' Med-Arb, there are other versions of Med-Arb as Med-Arb with two different neutrals, one as a mediator, and the other as an arbitrator (co- Med-Arb) or when the neutral starts serving as an arbitrator and then either upon his own initiative or upon request of the parties, is asked to serve as a mediator (AR-Med) (Conlon, Henry and Yee: 2002).

In classic Med-Arb and AR-Med, the neutral is asked to wear two similar, albeit identical, hats. Therefore, in this discussion Med-Arb designates any case where the same person serves as both a mediator and an arbitrator in connection with the same dispute.

The main reason that explains the success of Med-Arb include the obvious cost-reduction, through the use of only one neutral for the two stages: the confidence that the parties might have placed in the neutral during the mediation and his supposed enhanced understanding of the case; the incentive that the parties have to settle the case during the cheaper mediation, and avoid the more expensive arbitration that would follow; in addition to this, is the assurance that dispute will have increased chances of resolution, either through a settlement or through an award (Thomas and Lawrence: 1999).

The following are the advantages of Med-Arb:

- Disputes reported are timeously attended to by the Commissioner and settled finally.
- Disputes are settled with very little or no cost.
- Med-Arb gives opportunity to the parties to be in control of the process.
- Parties can easily narrow down the dispute.
- The process builds confidence on the Commissioner and on the parties involved.
- Med-Arb enjoys both the advantages of mediation and arbitration. Mediation has the advantage of allowing for resolution rather than decisions. Arbitration has the advantage of guaranteeing that the matter will be ended when the procedure is over. Med-Arb therefore enjoys both advantages.
- In Med-Arb, the participants agree to be parties to mediation, and if the mediation comes to an impasse, a final settlement will be reached through arbitration.
- Med-Arb is a voluntary process and parties are never under duress to participate.

- The flexible Med-Arb process does not set boundaries unless the parties determine that will be necessary in a particular Med-Arb process.
- Parties to a dispute are encouraged to choose a Med-Arbiter that they respect and trust. The Med-Arbiter should be able to retain that trust throughout the process.

However, Med-Arb also has its own disadvantages and its critics have even gone on to contend that when blended, each individual process is less useful to participants. One critic suggested that some arbitrators and mediators believe that mixing mediation and arbitration is heretical and even unethical. These contentions usually rest upon the premise that each process is intrinsically different, each representing different values, so mixing them effectively diminishes each set of values.

The critics of Med-Arb also argued that the process is unfair because the Med-Arbiter is armed with too much information and thus is too powerful because he or she is privy to confidential information about not only facts of the case, but to the parties' interests.

These criticisms notwithstanding, the advantages highlighted earlier on outnumber the disadvantages and this makes Med-Arb more attractive in settling disputes in small enterprises, particularly when the parties considered that the disputes can be resolved without proper litigation as in the case of large commercial enterprises. In small enterprises parties want to preserve and protect themselves without much damage done to their relationship, especially where the business is family-owned (Gerald, 2005).

It should be noted that the above advantages are not trivial in the management of small enterprises. Applying the principles of Med-Arb in solving disputes in small enterprises may be powerfully appealing to the parties since the process is pragmatic and efficient approach to resolving disputes particularly in small enterprises where parties want to maintain a very good and cordial relationship for the business entity to experience growth, good governance and better management.

In view of this, it is fully recommended that a dispute Resolution Commission that will adopt Med-Arb process and procedures should be established by the South African government to deal solely with resolving disputes in small enterprises.

6.4 Severance Pay

One of the respondents had this to say during my interview with the respondent on the issue of severance pay:

> "You see those of us running small-scale enterprises must be totally exempted from section 41 of the Basic Conditions of Employment in respect of this severance pay debacle. We just cannot afford it if our business is to survive".

From the above quotation from the respondent it is evident that small enterprises must be completely exempted from section 41 of the BCEA. It is known that small enterprises do not survive for a very long time, many of them die before they get to maturity stage in their life cycle due to operational reasons and, most probably, the cost of running the business. Unfortunately section 41 (1) of the BCEA states as follows:

> An employer must pay an employee who is dismissed for reasons based on employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35.

The above clause will definitely be difficult for small enterprises to implement mainly because of the little capital at their disposal to fulfil their obligation. Most small enterprises do not reach their maturity stage before they fold or cease to exist and small enterprises are expected to pay all their employees severance pay as soon as they close their businesses.

In the first place, in this kind of business, because of lack of capital to run the business, sadly the employers are expected to pay severance pay to all the employees now that the business has folded or gone into liquidation.

For the above reason, the researcher supports the arguments that small enterprises must be completely exempted from section 41(1) of the BCEA.

CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS

The statistical analysis of the research finding in Chapter 5 confirms that small enterprises are currently finding it difficult to implement the LRA, BCEA and EEA. In the case of the LRA, it does not make any distinction between small enterprise and large businesses in the implementation of sections 185 to 188 of the Act. In terms of section 185, every employee has the right not to be unfairly dismissed. Section 186(1) defines a dismissal and section 188 sets out the requirements for a fair dismissal which are difficult for small enterprises to implement. The requirements for a fair dismissal (s 188) are as follows:

> An employee in both large-scale businesses and small enterprises must prove that a dismissal (other than an automatically unfair dismissal) relates to an employee's conduct or capacity or is based on the employer's operational requirements and that a fair procedure was adopted during the dismissal.

Two requirements must be complied with in order to ensure the fairness of a dismissal in respect of substantive and procedural fairness. In situations where an employee alleges an unfair dismissal, the onus is on the employer to prove, on a balance of probabilities, that the dismissal is fair. In the same vein, if the employee claims that he or she was dismissed and the employer contends that he or she was not dismissed, the onus is on the employee to prove the existence of a dismissal in terms of section 192 of the LRA.

The government, through the new Ministry of Small Scale Business, should develop a strategy and training opportunity that will enable employers in small enterprises to be well acquainted with global issues, confronting small enterprises. The South African government needs to develop a valid strategic plan that would enable small enterprises to survive and also contribute to the growth of the economy.

In addition to the above strategic plan to be developed by the South Africa Government, the following measures are recommended to be adopted in respect of labour legislations.

7.1 Recommendations

The recommendations are passed on to the Small Enterprises on exemptions and labour practices;

- Small enterprises must be exempted from current labour legislations if they are to experience growth, good management and governance. The current assumption that one size fit all, i.e. that labour legislation must be applied to both small and large enterprises and which does not favour the growth, management and good governance of small enterprises as highlighted in the research, SEs must be excluded from such legislations
- There is need for selective applications of the current labour legislations in respect of small enterprises. Those aspects of legislation where small enterprises are not struggling as highlighted in the research findings which also are not a hindrance to the growth, management and good governance of SEs can be applied to SEs.
- There is also need for a new legislation in terms of parallel application of labour legislation in a situation where it is found that parallel application will favour the growth, management and good governance of SEs.
- In terms of severance pay SEs must be exempted immediately since they do not have sufficient capital to meet the obligation. In view of this, South African Government needs to investigate how best employees who are retrenched from SEs should be compensated without receiving severance pay.

7.2 Practical implications

The practical implication of implementing the above recommendation is discussed below;

- Gauteng Government and the South African Government should be able to formulate policies and valid labour legislations that will promote new labour legislations that will favour the growth, management and good governance of SEs. These policies and legislations should also be drafted in such a manner that will favour both the employees and the employers of SEs.
- There should be legislation and policies that balance the interest of both parties in SEs. The balance of such interest will minimise the prosperity for labour unrest or conflict within SEs.

- Much publicity and awareness of this new legislation and policies must be made known to all the role players in SEs.
- The South African Government must set up a very simple mechanism of resolving dispute between employer and his employees in SEs. The current structure and process of CCMA in Chapter 5 of this research is very mechanistic and expensive for the owners of SEs to follow as highlighted in the discussion of this research's findings. This may be an extra cost to the government; however, it is not a duplication of the CCMA since similar dispute resolution units for SEs exist in Germany, Italy and Nepal.
- South African Government must make use of both international and local experts to draft this new labour legislation and policies for SEs just as the South African Government used both international and local experts in drafting the current Constitution of South Africa.

7.3 Areas for further research

The researcher suggests that further research needs to be conducted in the eight other provinces of South Africa so as to find out if the findings of this research can be applicable to the other provinces. If the findings are applicable then we can generalize about the findings to the whole country.

Furthermore, more research is needed to find out which of the three labour legislations is friendlier to the development, growth and good governance of small enterprise in South Africa. This further research will help us to know the degree to which labour legislation has influenced the development, growth and good governance of small enterprises in South Africa.

Finally, further research is needed to develop a model that shows clearly the relationship between labour legislations and small enterprise. This model will also show possible theoretical underpinning of labour legislations and the survival of small enterprises in developing economy.

A research must also be conducted in future to investigate how labour legislations can be innovative and also responsive to the needs of workers in SEs and at the same time be beneficial to the owners of SEs. This research will therefore establish the mechanism in which a harmonious and cordial atmosphere can be established between the owners of SEs and their employees.

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LIST OF APPENDICES

APPENDIX: A: QUESTIONNAIRE FOR THE RESPONDENTS

1. What is your marital status

Married ☐

Single ☐

Divorced ☐

2. What is your highest level of education?

Primary School **c**ompleted ☐

High School completed ☐

Diploma Holder ☐

University Degree holder ☐

Never went to school ☐

3. What type of business are you working in?

Production business ☐

Service industry ☐

Please specify the name of your business enterprise _____

5. What is your status in the business? An employer ☐

An employee ☐

6. How long have you been involved or employed in this business?

Below one year ☐

1-5 years ☐

6-10 years ☐

Above 10 years ☐

7.1 LABOUR RELATIONS ACT (LRA)

7.1(a) In what ways do you think the Labour Relations Act 66 of 1995 affects the expansion of Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

7.1(b) In what ways do you think the Labour Relations Act 66 of 1995 affects the day to day running (management) of Small Enterprises in South Africa? Please also provide solutions to the identified problems.

7.1(c) In what ways do you think the Labour Relations Act 66 of 1995 affects the self-discipline and accountability in Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

7.1(d) In this section, please answer the questions below based on your experience and observation. Kindly record your answers at the space provided, by the scale indicator (1 = strongly agree, 2 = agree, 3 = neutral, 4 = disagree, 5 = strongly disagree).

	1	**2**	**3**	**4**	**5**
a. The **complete exemption** of small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **growth** of small enterprises					
b. The **complete exemption** of small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **good governance** of small enterprises.					

c. The **complete exemption** of small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **good management** of small enterprises.					
d. The **selective exclusion of** small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **growth** of small enterprises					
e. The **selective exclusion of** small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **good governance**of small enterprises.					
f. The **selective exclusion of** small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **good management** of small enterprises.					
g. The **exclusion of** small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **growth** of small enterprises					
h. The **exclusion of** small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the growth of **good governance** of small enterprises.					
i. The exclusion of small enterprises from the LRA in terms of organizational rights, dismissal process, dispute resolution and collection bargaining process through trade union will promote the **good management** of small enterprises.					
j. The **implementation** of parallel labour legislation for small enterprises will promote the **growth** of small enterprises					
k. The **implementation** of parallel labour legislation for small enterprises will promote **good governance** of					

small enterprises.					
l. The **implementation** of parallel labour legislation for small enterprises will promote **good management** of small enterprises.					

7.2 BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA)

7.2(a) In what ways do you think the Basic Conditions of Employment Act 75 of 1997 affects the expansion of Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

7.2(b) In what ways do you think the Basic Conditions of Employment Act 75 of 1997 affects the day to day running (management) of Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

7.2(c) In what ways do you think the Basic Conditions of Employment Act 75 of 1997 affects the self-discipline and accountability in Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

	1	**2**	**3**	**4**	**5**
a. The **complete exemption** of small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **growth** of small enterprises					
b. The **complete exemption** of small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **good governance** of					

small enterprises.					
c. The **complete exemption** of small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **good management** of small enterprises.					
d. The **selective exclusion of** small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **growth** of small enterprises.					
e. The **selective exclusion of** small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **good governance** of small enterprises.					
f. The **selective exclusion of** small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the**good management** of small enterprises.					
g. The **exclusion of** small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **growth** of small enterprises.					
h. The **exclusion of** small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **good governance** of small enterprises.					
i. The **exclusion of** small enterprises from the BCEA in respect of severance pay, maternity leave and the double remuneration of employees who work on Sundays and public holidays will promote the **good management** of small enterprises.					
j. The **implementation** of a parallel labour legislation for small enterprises will promote the **growth** of small enterprises.					
k. The **implementation** of a parallel labour legislation for					

small enterprises will promote the **good governance** of small enterprises.					
l. The **implementation** of a parallel labour legislation for small enterprises will promote the **good management** of small enterprises.					

7.2(d) In this section, please answer the questions below based on your experience and observation. Kindly record your answers at the space provided, by the scale indicator (1 = strongly agree, 2 = agree, 3 = neutral, 4 = disagree, 5 = strongly disagree).

7.3. EMPLOYMENT EQUITY ACT (EEA)

7.3(a) In what ways do you think the Employment Equity Act 55 of 1998 affect the expansion of Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

7.3(b) In what ways do you think the Employment Equity Act 55 of 198 affect day to day running (management) of Small Enterprises in South Africa? Please also provide possible solutions to the identified problems?

7.3(c) In what ways do you think the Employment Equity Act 55 of 1998 affect the self-discipline and accountability of Small Enterprises in South Africa? Please also provide possible solutions to the identified problems.

7.3(d) In this section, please answer the questions below based on your experience and observation. Kindly record your answers at the space provided, by the scale indicator (1 = strongly agree, 2 = agree, 3 = neutral, 4 = disagree, 5 = strongly disagree).

		1	2	3	4	5
a. The **complete exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **growth** of small enterprises.						
b. The **complete exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **good governance** of small enterprises.						
c. The **complete exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **good management** of small enterprises.						
d. The **selective exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **growth** of small enterprises.						
e. The **selective exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the**good governance** of small enterprises.						
f. The **selective exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **good management** of small enterprises.						
g. The **exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **growth** of small						

enterprises.						
h. The **exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **good governance** of small enterprises.						
i. The **exclusion of** small enterprises from EEA in respect of affirmative action, equity plan and the submission of the yearly report to Director-General of DoL will promote the **good management** of small enterprises.						
j. The **implementation** of parallel labour legislation for small enterprises will promote the **growth** of small enterprises.						
k. The **implementation** of parallel labour legislation for small enterprises will promote the**good governance** of small enterprises.						
l. The **implementation** of parallel labour legislation for small enterprises will promote the**good management** of small enterprises.						

8. Briefly outline the importance of exempting small enterprises from present LRA.

9. Briefly outline the importance of exempting small enterprises from the present BCEA.

10. Briefly outline the importance of exempting small enterprises from the present EEA.

11. Do you think small enterprises should have a separate labour legislation that is different from small business enterprises?

a. YES ☐

b. NO ☐

12. If yes to question eleven, please give your reasons for a separate labour legislation

_____

_____

_____

_____

13. Kindly outline and explain briefly the problems facing the growth, governance and management of small enterprises

_____

_____

_____

14. What do you regard as the possible solutions to the problems identified in question

_____

_____

_____

15. Briefly explain the best way of improving the relationship between employer and his employees

_____

_____

_____

THE END

Thank you very much for your cooperation.