Redefining the “ordinary course of business”: why your company’s budget matters

“T*he ordinary course of business*” is a phrase found in many of the documents that govern how businesses operate, yet South African law contains no clear definition of *it*. Its meaning has instead been shaped by the courts over many years, which is why each new judgment on the topic deserves attention. In this article, we discuss a recent Western Cape High Court judgment in which a company’s approved budget was relied on as evidence that certain transactions were not in the ordinary course of the company’s business.

Why should this matter to you?

Whether a transaction falls within “the ordinary course of business” often determines what rights you have and whose approval is needed. If you are a shareholder, your shareholders’ agreement or the company’s Memorandum of Incorporation (MOI) may require your consent before the company enters into a transaction outside its ordinary course of business, such as selling off part of the business. If you are a director, concluding such a transaction without the required approvals may leave the transaction open to challenge. The phrase also commonly appears in loan agreements and agreements for the sale of a business, which often restrict what a business may do outside its ordinary course of business. Finally, if you buy or sell goods or services, the Consumer Protection Act 68 of 2008 generally applies only where the supplier acts in the ordinary course of its business, so the phrase can decide whether the Act’s protections and obligations apply to you at all.

In the case, a minority shareholder holding roughly a third of the shares in a company, which gave it a blocking vote on certain reserved matters under the company’s MOI and shareholders’ agreement, approached the court urgently to stop the company from selling one of its core business divisions. It argued that the sale fell outside the company’s ordinary course of business. Although the judgment dealt with the protection of a minority shareholder’s interests, and was therefore not delivered in the context of the Consumer Protection Act, it still

provides valuable guidance on how courts decide what the ordinary course of business is.

As mentioned above, the court placed reliance on the company's approved budget for the relevant financial year, which did not make provision for the impugned transactions. Even though this factor alone was not decisive, the court found this to be a persuasive indicator that the transactions may not have been contemplated as part of the company's ordinary operational activities, and therefore not in the ordinary course of business.

The court's abovementioned reasoning is noteworthy because it suggests that an approved budget may serve as an important evidentiary benchmark when assessing whether a transaction forms part of the anticipated and ordinary commercial operations of a company or not.

The effect of the judgment is that board-approved budgets may be used as evidence when disputes arise concerning whether transactions fall within the company's ordinary course of business or not. Although it will certainly not be the decisive factor, it is now clear that budgets can provide compelling evidence in respect of what the company itself considered to be its ordinary and expected course of business.

What does this mean in practice?

Boards and business owners should treat the annual budget as more than an internal financial tool, because it may later be used as evidence of what the company regarded as its ordinary business. Before concluding a significant transaction that the approved budget does not provide for, check whether the MOI, a shareholders' agreement or any financing agreement requires prior approval and obtain that approval before proceeding. Minority shareholders, in turn, can use the approved budget as a useful starting point when assessing whether their consent should have been sought. If you are unsure whether a proposed transaction falls within your company's ordinary course of business, we recommend that you seek legal advice before proceeding.

The full judgment is available as Lightmap (Pty) Ltd v Cybersmart (Pty) Ltd and Others (2025/209746) [2026] ZAWCHC 233 (14 May 2026).

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