

BBEE Amendment Bill may not solve the problem

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The Broad-Based Black Economic Empowerment (BBBEE) Amendment bill that is under review after the period for public comment is expected to be released later this year. The bill seeks to address the gaps and unintended negative consequences of the Black Economic Empowerment Act of 2003. But government may find that by plastering up some of the cracks, new breaches will be uncovered.

An end to fronting?

The bill's introduction of tough new measures to combat fronting has been welcomed by many businesses and verification practitioners and is long overdue. Fronting practices usually refer to misrepresentation or window dressing pertaining to ownership, management appointments and the use of artificial BEE compliant intermediaries.

Fronting will become a statutory offence punishable by fines or imprisonment and the revised regulations will go a long way towards preventing the proverbial puppet show and enrichment as opposed to real development and empowerment.

More red tape and new requirements

A new BBBEE commission will be put in charge of evaluating and monitoring compliance, investigating instances of fronting and prosecuting offenders.

However, the commission will need to provide clear guidelines on what constitutes fronting as opposed to empowerment and how the process of governance is going to work in practice. Companies that attempt to develop their black staff may find themselves on the wrong side of the commission. We can see that the future might have a CCMA type process to resolve these issues. What would the process be for a company that may be unfairly accused of fronting by a competitor or disgruntled employee?

Even more problematic than putting pressure on business is that the bill gives public sector bodies the power to determine and implement their own transformation policies, provided that they have the consent of the relevant minister.

Since these policies are set to take precedence over the BBBEE codes, this could be a recipe for conflicting legislation with far-reaching consequences, including untold confusion for the suppliers who will be at the receiving end. This particular amendment should not be allowed to make it into the final bill.

Tightening up on verification agencies

Verification agencies will have to implement greater vigilance and better measurement processes and heed the bill's call to report instances of fronting. They themselves can be prosecuted if they fail to identify misrepresentation practiced by their clients.

State gets regulatory autonomy

The bill requires all public sector entities and state-owned enterprises to use BEE compliant suppliers. This means that any company wishing to do business with government needs to validate their BEE compliance through being verified by an accredited verification agency or IRBA approved B-BBEE Registered Auditor. Exempt Micro Enterprises also need to provide proof of their exempt status and more companies are demanding the SANAS logo on EME certificates.

This has unfortunately led to an increase in fraudulent certificates sold to unsuspecting emerging black business owners. Veri-Com recently uncovered one such a scam artist operating right outside of the dti offices at Campus Square selling fraudulent BEE certificates and tax clearance certificates.

Balancing regulation and growth

It is obvious that the South African economy should have a much larger participation by real black business and there are many programs set up by government to assist black companies to become successful and sustainable, but the ever-increasing administrative burden of compliance is taking its toll on all business. Hopefully government will succeed in growing the economy without damaging it first. Deon Oberholzer is the CEO of Veri-Com and a specialist consultant in B-BBEE.