

April 2013

A man must be big enough to admit his mistakes, smart enough to profit from them, and strong enough to correct them. - John C. Maxwell

BEE COMPLIANCE: THE NEW BBEE AMENDMENT BILL

During 2012, Government published the Broad-Based Black Economic Empowerment Amendment Bill. This Bill will have a material impact on business in South Africa, as it seeks to amend the Broad Based Black Economic Empowerment Act in a number of important aspects. Some of the more pertinent aspects are referenced herein.

Promotion of compliance

The Bill allows Government (and other public entities) to determine and implement their own transformation policies. Accordingly, should there be any conflict between the Government's (and/or other public entity's) transformation policy and any code of good conduct issued in terms of the Act, the Government's (and/or other public entity's) policy will govern. This will create a scenario where business may be required to navigate not only compliance with the Act and its BEE Codes of Conduct, but also the specific transformation policies of Government (and/or other public entities).

Fronting practices

The issue of fronting is addressed, by putting a definition to the practice as follows: "any action which directly or indirectly undermines or frustrates the achievement of the objectives of the Act". This definition is extremely wide and includes conduct that indirectly undermines or frustrates the objective of the Act. It is so wide in fact, that it could even include failure to obtain a BEE certificate.

Offences and penalties

The Bill creates an offence for intentional misrepresentation of information for purposes of securing a B-BBEE status, providing false information to a Government entity and failure by a public officer to report any offence in terms of the Act. A person convicted of such an offence in terms of the Act could be liable to a fine and/or imprisonment of twelve months or ten years. In respect of juristic persons, the fine will be calculated up to a maximum of ten percent of such juristic person's annual turnover.

Businesses are therefore advised to ensure that they obtain advice regarding their BEE practices and that their BEE compliance structures are verified as soon as possible to ensure compliance with the objectives of the Bill before it is promulgated as legislation.

Law & Laughter

Q: "What's the difference between a good lawyer and a bad lawyer?"

A: "A bad lawyer can let a case drag out for several years. A good lawyer can make it last even longer."

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FINALITY REACHED IN THE MUNICIPAL ACCOUNT DEBATE

The much publicized and heavily debated saga of a rates payer and her battle against her local authority came to an end recently when the Constitutional Court ("the CC") handed down its judgment in the matter. Mrs Radioman refused to pay rates and taxes on her property, due to what she perceived as bad or lacking service delivery. She did however pay for electricity usage and other services rendered by the Municipality.

The municipality consolidated the charges for the various services and the rates and taxes into one account, disconnected her electricity supply and demanded payment of the full arrears. She approached the Magistrates Court for relief and the Court granted the application. On appeal to the High Court the order was set aside. The Supreme Court of appeal upheld the High Court decision and finally, she approached the CC for relief on two grounds, these being that her electricity account was in not in arrears and that secondly, the three grounds for disconnection set out in the Electricity Regulation Act or ERA had not been met.

The CC summarized conditions for payment of Municipal charges as follows:

1. The customer has an obligation to promptly pay amongst others, service fees, rates and duties and to comply with Municipal by-laws;
2. The customer must pay for all services consumed from commencement of the service agreement until the account has been settled and cannot elect how an account is to be settled if not settled in full or when in arrears;
3. Where a consumer fails to make full payment of any amount or fails to comply with any condition of supply, the Municipality may restrict or disconnect any service. This right to disconnect shall prevail notwithstanding the fact that payment has been made in respect of any one service.

In short, where an account is consolidated, the full account must be paid in order to avoid disconnection of any of the services. The judgment surely raises questions among the members of various ratepayers associations throughout the country, who motivate their members to withhold rates and taxes in protest to alleged bad service delivery.

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