



Broad-Based Black Economic Empowerment Amendment Act 46 of 2013



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Introduction and Background

- 2013 marked 10 years since the promulgation of the BBBEE Act
- The Act was positioned as *soft legislation* with no consequences for non-compliance
- The Act had to be strengthened to ensure effective and consistent implementation and reporting across the economy



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Objects of the Amended Act

Align the Act with other legislation impacting on B-BBEE and with the codes of good practice

Establish the B-BBEE Commission to monitor and evaluate B-BBEE

Deal with non-compliance and circumvention

Give effect to government policy aimed at reducing inequality, defeating poverty and creating employment



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MATERIAL AMENDMENTS

- Aligning the Act and the codes
- Introduction of a trumping clause
- Creating the B-BBEE Commission
- Specifying requirements re: monitoring, evaluation and reporting
- Introducing offences penalties & prohibitions
- Introducing the concept of “B-BBEE verification Regulator and professionals”
- Clarifying & extending the Minister’s power to make regulations



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DEFINITIONS

The Bill proposes the introduction of/amendment to the following definitions –

- ‘B-BBEE Initiative’
- ‘black people’ (amendment incorporated from code)
- ‘Commission
- “fronting practice’
- ‘knowing’, ‘knowingly’ or ‘knows’ broad-based black economic empowerment’
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Aligning the codes and the Act

Amendments proposed to align the codes and the Act and to clarify the status of the codes.

- Interpretation clause extended to include trumping provision that entails the BBEE amendment act will trump any law that was in force prior to the date of commencement of this Bill if the conflict pertains to any aspect dealt with in this Bill.
- **Trumping provision will kick in 12 months from the effective date of the Bill**
- Minister's power to issue codes of good practice clarified,
- Minister may allow organs of state and public entities to set criteria for procurement & other economic activities that exceed those set out in the codes;



Aligning the Act and the codes, cont...

- Provide explicitly that **every organ of state must take into account** any relevant code of good practice in terms of this Act;
- Provide explicitly that codes of good practice remain in effect until amended, replaced or repealed;
- An enterprise in a sector in respect of which the Minister has issued a **sector code may only be measured for B-BBEE compliance in accordance with that code**;
- Enterprises required to report annually on B-BBEE compliance to sector councils



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B-BBEE Commission

The proposed B-BBEE Commission is intended to provide an institutional environment for the monitoring and evaluation of B-BBEE

- Commission established as an entity within the administration of the DTI, headed by a Commissioner appointed by the Minister.
- The Minister may issue directives of a general nature to the Commission concerning the performance of its functions, with which the Commission must comply.



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B-BBEE Commission, cont...

- S13F: Functions –
 - Oversee, supervise and promote adherence with the Act
 - Strengthen and foster collaboration between the public and private sector in order to promote and safeguard the objectives of B-BBEE
 - Receive and investigate complaints relating to B-BBEE
 - Investigate any matter relating to B-BBEE
 - Promote advocacy, access to opportunities and educational programmes and initiatives



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Functions of B-BBEE Commission, cont...

- Maintain a registry of major B-BBEE transactions
- Receive and analyse prescribed reports concerning B-BBEE compliance
- Promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of B-BBEE
- Exercise such powers which are not in conflict with the Act as may be conferred by the Minister



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B-BBEE Commission, cont...

- Core obligations of the state, public entities (including SETAs) and listed companies to report to the Commission
- Powers to conduct investigations set out. The Commission may investigate any matter concerning B-BBEE, in response to complaints received or on its own initiative
- Safeguards concerning confidential information submitted to the Commission
- Protections against conflicting interests of employees of the Commission



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Offences, penalties and prohibitions

The Amended Act proposes the introduction of offences, penalties and prohibitions to deal with non-compliance and

Offences in Connection with the Commission

Include:

- Unauthorised disclosure of confidential information by a person acting on behalf of the Commission
- Hindering, obstructing, or improperly influencing the Commission
- Knowingly providing false information to the Commission (see proposed definition of “knowingly”)



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Offences, penalties & prohibitions, cont...

- Misrepresenting the B-BBEE status of an enterprise
- Providing false information or misrepresenting information to a B-BBEE verification professional in order to secure a particular B-BBEE status
- Providing false information or misrepresenting information relevant to assessing the B-BBEE status of an enterprise, to any organ of state or public entity



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Offences & penalties, cont...

- Engaging in a 'fronting practice' (as defined in s1)
- Failing to report an by verification professionals, procurement officers or other officials of an organ of state or public entity)



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Offences & Penalties cont

- Minimum penalty 10 years imprisonment (and/or a fine), or
- if the offender is not a natural person, a fine of 10% of its annual turnover
- Maximum penalty for an offence relating to the Commission, or for a failure to report, is 1 year imprisonment (and/or a fine



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Penalties, cont...

- Value of the transaction which was derived from, or sought to be derived from to be considered,
- A person convicted of an offence under the Act is prohibited from contracting or transacting any business with an organ of state or public entity for a period of 10 years.



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B-BBEE Verification Professionals

Proposed introduction of the concept of 'B-BBEE Verification Professional' to strengthen compliance with the Act (s1)

- Defined as a person who performs any work in connection with rating the B-BBEE status of enterprises for an accredited rating agency.
- 'B-BBEE Verification Professional Regulator' to play regulatory and oversight role



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B-BBEE Verification Professionals, cont...

- It is envisaged that, in future, Verification Professionals will be registered in terms of the Auditing Profession Act, and the Independent Regulatory Board for Auditors will function as the Verification Professional Regulator
- This will require amendments to the Auditing Profession Act



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Regulations, guidelines & practice notes

- Minister's power to make regulations clarified and extended.
- In particular, Minister's power to make regulations concerning the conduct of investigations by, and provision of information to, the Commission, are set out.
- Minister may issue guidelines and practice notes relating to the interpretation and application of the Act



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WAY FORWARD

- The Act will come into effect on a date to be determined by **the dti** which will be before the end of the 2014/15 financial year end.
- Presidential proclamation will announce the date



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THANK YOU



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