

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**BROAD-BASED BLACK
ECONOMIC EMPOWERMENT
AMENDMENT BILL**

[B 42—2012]

*(As proposed by the Portfolio Committee on Trade and Industry
(National Assembly))*

[B 42A—2012]

ISBN 978-1-4850-????-?

No. of copies printed 800

AMENDMENTS PROPOSED TO
 BROAD-BASED BLACK ECONOMIC EMPOWERMENT
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CLAUSE I

1. On page 2, from line 11, to omit the definitions of “B-BBEE verification professional” and “B-BBEE Verification Professional Regulator” and to substitute:

“**B-BBEE verification professional**” means a person who performs any work in connection with rating the status of enterprises in terms of broad-based black economic empowerment compliance on the authority of, or for a rating agency accredited by, a B-BBEE Verification Professional Regulator;
 “**B-BBEE Verification Professional Regulator**” means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals;”.

2. On page 3, from line 3, to omit “Africans, Coloureds and Indians” and to substitute:

[Africans, Coloureds and Indians] persons classified as African, Coloured, Indian or Chinese under Apartheid laws—

3. On page 3, in line 13, after “broad-based” to insert “black”.
4. On page 3, from line 29, to omit “, including the promotion of local content procurement”.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new clause to follow clause 2:

Amendment of section 3 of Act 53 of 2003

3. Section 3 of the principal Act is hereby amended—
 - (a) by the substitution for paragraph (a) of the following paragraph:

“(a) to give effect to its objectives and purposes; and”;
 - (b) by the addition of the following subsection, the current section becoming subsection (1):

“(2) In the event of any conflict between this Act and any other law in force immediately prior to the date of commencement of the Broad-Based Black Economic Empowerment Amendment Act, 2013, this Act prevails if the conflict specifically relates to a matter dealt with in this Act.”.

CLAUSE 5

1. On page 5, in line 7, to omit “[**and**]”,” and to substitute “and”; and”.
2. On page 5, from line 8, to omit paragraph (b).

CLAUSE 6

1. On page 5, from line 22, to omit “take into account and, as far as is reasonably possible,” and to substitute “[**take into account and, as far as is reasonably possible,**]”.
2. On page 5, after line 35 to insert the following subsection:

“(2) (a) The Minister may, after consultation with the relevant organ of state or public entity, exempt the organ of state or public entity from a requirement contained in subsection (1) or allow a deviation therefrom if particular objectively verifiable facts or circumstances applicable to the organ of state or public entity necessitate an exemption or deviation.

(b) The Minister must publish the notice of exemption or deviation in the *Gazette*.”.

CLAUSE 8

1. On page 6, in line 6, after “information” to insert “knowingly”.
2. On page 6, in line 31, after “**Commissioner**” to insert “**and Acting Commissioner**”.
3. On page 6, from line 32, to omit subsection (1) and to substitute:

(1) (a) The Minister must, in consultation with the relevant Portfolio Committee of Parliament, appoint a person with suitable qualifications and experience as Commissioner for a term of office of not more than five years.

(b) The Minister must, for the purposes of paragraph (a), provide the Portfolio Committee with—

- (i) the particulars of at least three possible candidates; and
- (ii) the name of his or her preferred candidate and the reasons for the preference.

4. On page 6, in line 36, after “office” to insert
“for one additional term of office”.
5. On page 6, after line 57, to insert the following subsection:

“(7) If the Commissioner and the Deputy Commissioner are for any reason at the same time unable to perform their functions assigned to them in terms of this Act, the Minister may, on such conditions as the Minister may determine, appoint a suitable person as Acting Commissioner to perform the functions of the Commissioner.”.

6. On page 7, in line 21, after “money” to insert “lawfully”.
7. On page 7, from line 22, to omit subsection (2).

8. On page 7, after line 51, to insert the following subsection:
- (2) A complaint contemplated in subsection (1)(c) and (d) must be—
(a) in the prescribed form; and
(b) substantiated by evidence justifying an investigation by the Commission.
9. On page 8, from line 28, to omit subsection (2) and to substitute:
- (2) All public companies listed on the Johannesburg Stock Exchange must provide to the Commission, in such manner as may be prescribed, a report on their compliance with broad-based black economic empowerment.
10. On page 8, in line 36, to omit “**and assignment**”.
11. On page 8, in line 43, to omit “or 13E(2)”.
12. On page 8, in line 44, to omit “or assignment”.
13. On page 9, in line 61, to omit “The Commission may refer to” and to substitute:
- The Commission may, if it has investigated a matter and justifiable reasons exist, refer to
14. On page 10, after line 9, to add the following paragraph, the current subsection becoming paragraph (a):
- (b) A decision of the Commission to publish any finding or recommendation it has made may not be put into effect—
(i) before proceedings for the judicial review of the decision have been completed or were not instituted within the period allowed therefor;
(ii) if the Commission has referred the matter to the National Prosecuting Authority or the South African Police Service in terms of subsection (5), and no prosecution has been instituted against the person concerned;
(iii) if the person concerned has been prosecuted and acquitted following the investigation of the Commission; or
(iv) where the person concerned has been convicted by a court of law, following an investigation of the Commission, before such person has in respect of the conviction exhausted all recognised legal proceedings pertaining to appeal or review.
15. On page 11, in line 1, to omit “15” and to substitute “60”.
16. On page 11, in line 7, to omit “10” and to substitute “30”.
17. On page 11, in line 9, to omit “five” and to substitute “14”.
18. On page 12, in line 36, after “not” to insert:
- , for a period of 10 years from the date of conviction,

CLAUSE 10

Clause rejected.

NEW CLAUSE

1. That the following be a new clause to follow clause 9:

“Short title and commencement

10. (1) This Act is called the Broad-Based Black Economic Empowerment Amendment Act, 2013.

(2) Except for section 3(b), this Act comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) Section 3(b) comes into operation one year after the date contemplated in subsection (2).

(4) In the event that the President fixes different dates in respect of different provisions of this Act, section 3(b) comes into operation one year after section 3(a) commences.”.

Printed by Creda Communications

ISBN 978-1-4850-0000-0