



AMERICAN CHAMBER OF COMMERCE

IN SOUTH AFRICA (NPC)

7 February 2012

AMERICAN CHAMBER OF COMMERCE (AMCHAM) SUBMISSION TO THE DRAFT BROAD-BASED BLACK ECONOMIC EMPOWERMENT BILL

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1. BACKGROUND TO THE AMERICAN CHAMBER OF COMMERCE

The American Chamber of Commerce in South Africa represents 250 American companies, 60 of which are Fortune 500 companies. These companies collectively contribute R210 billion per annum to the South African economy and employ more than 120 000 direct employees and several times that number indirect employees, the overall majority of whom are South African citizens. American business is focused on alleviating poverty and addressing unemployment so that South Africa can grow its economy and this is evidenced by the fact that they contribute between 10% and 20% of all corporate social investment spend in South Africa.

The American Chamber of Commerce is taking the opportunity of commenting on the proposed Broad-Based Black Economic Empowerment Bill as the American companies subsist in the South African environment, employ mainly South African employees, and are subject to the laws of South Africa.

2. SUMMARY OF THE DRAFT BROAD-BASED BLACK ECONOMIC EMPOWERMENT BILL

The American Chamber of Commerce in South Africa is committed to transforming the workplace in South Africa to ensure a stable and thriving economy in the long term. We agree that fronting, which is linked to financial gain, cannot and should not be tolerated. A number of the definitions, however, have not been finalized and are very broad and we look forward to these being clarified. The creation of a BEE Commission to regulate the proper functioning of the legislation is welcomed to ensure that equity and fairness are exercised.

Of concern is the insertion of Clause 12 which states that the Minister may permit organs of state or public entities to determine their own transformation policies. It further states that any conflict that may arise between a Code and the Transformation policy made in terms of Section 12 will result in the Transformation Policy reigning supreme. This clause is rejected as business requires clarity and certainty on policy issues and the creation of additional policies will create confusion and inconsistency. It will also increase the cost of doing business in South Africa which will impact the competitiveness of the country. Business requires uniformity to ensure the requirements are easy to implement. It is our view that the Codes should be the ultimate measure as the codes were negotiated with all of the relevant stakeholders and are customized to suit the particular industry for which they were formulated.

3. COMMENT ON THE DRAFT BROAD-BASED BLACK ECONOMIC EMPOWERMENT BILL

AMENDMENT OF SECTION 1 OF ACT 53 OF 2003

Section 1 (a): Definition of “B-BBEE Transaction”

The insertion of the definition of “B-BBEE Transaction” to be underlined to be consistent with the rest of the document.

Section 1(d): Definition of “Commission”

Require clarity on “Council” and the “Commission”. Their different objectives should be outlined.

Section 1(e): Definition of “Fronting B-BBEE Practice”

Sub-section 1(e)(di) Require clarity and a definition as to what a “significant limitation” is.

Sub-section 1(e)(dii) Please outline what “reasonably” means

Sub-Section 1(e) (diii) Please explain what “arms length” means

Section 1 (e): “knowing, knowingly or knows”

How will this be measured, monitored and evaluated.

Section 1 (e): Definition of “Local Content

What is the “stipulated minimum threshold”?

SUBSTITUTION OF SECTION 8 OF ACT 53 OF 2003

Section 8: Remuneration and reimbursement of expenses

Clarity is required on the National Treasury Regulations regarding this amendment

AMENDMENT OF SECTION 10 OF ACT 53 OF 2003

Section 10: 10 Status of Codes of Good Practice

Sub-Section 2: Please delete "subject to section 12A". See Insertion of Section 12A in Act 53 of 2003.

INSERTION OF SECTION 12A IN ACT 53 OF 2003

Section 12 A: Transformation Policy

We object to the inclusion of this clause as it is preferable that an integrated and uniform approach is utilized when the private sector deals with organs of the state and public entities. Additional policies will create confusion and inconsistency. In addition, if additional policies are put in place that the private sector has to comply with, it will increase the cost of doing business in South Africa. We respectfully point out that certain sectoral charters are already in existence which are clear and concise and additional legislation will add confusion.

INSERTION OF SECTION 16 IN ACT 53 OF 2003

Section 16: Appointment of Commissioner

Sub-Section (4): The policy should include a section to ensure that the commissioner's performance is measured and monitored to ensure the effective operation of the B-BBEE Commission.

Sub-Section (6)(a): Remove "serious" from this statement

INSERTION OF SECTION 19 IN ACT 53 OF 2003

Section 19: Finances

Sub-Section (1)(b): Clarification is required on "money received from any other source"

INSERTION OF SECTION 20 IN ACT 53 OF 2003

Section 20: Offences and Penalties

Sub-Section (1): Please clarify the word "person". Does this statement refer to "person /company / entity/ responsible persons"?

INSERTION OF SECTION 22 IN ACT 53 OF 2003

Section 22: B-BBEE Verification Professional Regulator

Please clarify "agency regulator"

INSERTION OF SECTION 23 IN ACT 53 OF 2003

Section 23: Interpretation of this Act

Sub-Section (2): Please clarify as this statement is vague

INSERTION OF SECTION 24 IN ACT 53 OF 2003

Section 24: Regulations

Sub-Section (2)(b): Multinationals may face restrictions regarding sensitive information they are allowed to divulge because of various legislation requirements including but not limited to the Foreign Corrupt Practices Act. The wording "without limitations" should be deleted.

INSERTION OF SECTION 25 IN ACT 53 OF 2003

Section 25: Short Title and Commencement

This statement has been duplicated.

CONCLUSION

Thank you for the opportunity to comment on the BEE Bill. We commit ourselves to continue to work to achieve transformation, and to contribute to build an economically sound and prosperous South Africa.