



The Equitable Transformation Alliance
Company registered as a NPO

Directors:

PH Janisch

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The Equitable Transformation Alliance

The Equitable Transformation Alliance (ETA) is a concerned group of South African business people and legal practitioners who are anxious about the state of legislation that is being promulgated by the government of South Africa and the Department of Trade and Industry specifically. We feel that the free hand that the government is using in its legislative process is impacting on our constitutional rights. As such we believe that there is cause for concern about the 2013 Broad-Based Black Economic Empowerment Codes of Good Practice (gazette number 36292, dated 2nd November 2013, hereinafter referred to as the 'Revised Codes') as well as the Revised Codes' empowering Act for these Revised Codes that was also recently amended.

We, like most corporate citizens in South Africa, are supportive of a wide number of government initiatives like the National Development Plan and National Growth Path as well as all empowerment codes of good practice gazetted before the 2nd November of 2013. It follows that we are supportive of any empowerment code that adheres to the four foundational principles and philosophy that underpin those Codes of Good Practice gazetted before November 2013. These principles can be summarised as follows:

- a) B-BBEE must be Broad-Based;
- b) B-BBEE must be inclusive;
- c) B-BBEE must be based on good corporate governance;
- d) B-BBEE must be based on an economic growth model

*The Equitable Transformation Alliance in association
with KMG and Associates Inc*



Although the Dti and its Minister have stated on numerous platforms that the Revised Codes support these principles – closer inspection of the Revised Codes read together with the Preferential Procurement Policy Framework Act (PPPFA) and its regulations shows that it is aiming to achieve exactly the opposite.

Issues with the Revised Codes

We believe that the Revised Codes are procedurally, legislatively and constitutionally flawed and a significant threat to both the principles of the rule of law and sustained economic growth. In addition the gazetting of these codes are symbolic of a department that does not pay attention to its constituents resulting in arbitrary legislation and supporting legislation being forced onto an unwilling audience in all spheres of society. It is our intention therefore to approach the court to:

1. Obtain an interdict to prevent gazette number 36928 (the Revised Codes) from becoming effective on 11 October 2014,
2. Pronounce on the Constitutionality of the Revised Codes;
3. Pronounce on what the minister may or may not include in any revised BEE Code of Code practice,
4. Determine what is fair and unfair discrimination in terms of section 9(5) of the Constitution of South Africa.

For the avoidance of doubt it must be noted that we are specifically not seeking the abolishment of B-BBEE but only the direction it has taken as embodied by the Revised Codes and the Amended B-BBEE Act.

Equitable Transformation Alliance

The ETA is a section 8 non profit company which has been incorporated as a vehicle to pursue legal action against the government of South Africa where we feel that they have overstepped their legislative and constitutional mandate. The ETA's current focus is the withdrawal of gazette 36928 (*Revised Codes*) as a BEE code of good practice.

Directors

Paul Janisch

Paul Janisch is a concerned BEE consultant who has been operating within the BEE industry since 2004. He is a recognised authority on the subject and enjoys a wide readership of his BEE blog (http://www.bbbee.typepad.com/paul_janisch/)

Arno Jansen van Vuuren

Arno is the commercial director of Klopper Myburg Gwanagwa & Associates Incorporated (KMG). KMG will be responsible for the preparation of an application in terms of the Promotion of Administrative Justice Act 3 of 2000 (phase 1) and contesting the Constitutional validity of the revised codes (Phase 2). KMG will be assisted by Adv JA Klopper and SC A Badenhorst in the preparation of the above.

MP Ferrara

MP is a qualified Chartered Accountant and a director of Norfer Auditors. MP will act as the accountant for ETA and provide a platform for transparent application of funding.

Legal Team

Attorney - Arno Jansen van Vuuren

Arno has been practicing as a commercial attorney for a period of 10 years, and has extensive knowledge of the BEE codes with specific reference to ownership structures.

Junior advocate – Johnny Klopper

Adv Klopper is a former Director of KMG. Adv Klopper practiced as a commercial attorney for 21 years and dealt extensively with BEE restructuring he was also appointed as legal advisor to ABVA and drafted legal opinions to the DTI on the subject matter. Adv Klopper subsequently became a member of the Bar Association of South Africa and is currently practising as an Advocate at Circle Chambers Pretoria.

Senior Counsel - Andre Badenhorst

Adv Badenhorst is a member of the Bar Association of South Africa and is currently practising as an Advocate at Circle Chambers Pretoria. Adv Badenhorst is a senior Advocate with 30 years experience and specialise in Administration Law, Commercial Law and Company Law.

Request for funding

The action is estimated to cost in the region of R3million. This money will need to be raised from concerned parties.

- All donations will be treated with the strictest of confidence.
- All funds available at the conclusion of the Legal Mandate will be used to develop fair BBBEE practises in South Africa.
- All donors will be permitted to examine ETA's financial statements.

Banking details

Contributions can be directly deposited into KMG and Associates' Trust account.

ACCOUNT HOLDER: KLOPPER MYBURGH GWANGWA & ASSOCIATES INC.
BANK: ABSA TRUST ACCOUNT
ACCOUNT NUMBER: 1042620650
BRANCH CODE: 632005
REF: ETA

Contact details

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Further information

More detail on the nature of the ETA's action can be provided at a donor's request.