

[Print this page](#)

BEE MATTERS: Plan ahead to avoid being blind-sided in unpredictable realm of sector charters

Sep 14, 2016 | Gideon Gerber

The construction industry's trauma is a cautionary tale on the importance of being prepared for whenever sector charters kick in, writes Gideon Gerber

NOTHING stays the same. This saying is accurate when applied to business owners in SA who need to adapt constantly to an ever-changing environment in the pursuit of remaining profitable and being entrepreneurial.

To achieve this, it is imperative for business owners to have good professional advisers and consultants a phone call away, to help interpret changes and to implement strategies effectively.

The last thing a business owner needs is unforeseen change. It's like a blind tackle in a rugby match — it hurts the most because you had no time to brace yourself.

So let's apply this to the black economic empowerment (BEE) policy and legal framework, which is designed as a programme to facilitate change. We were all aware that various aspects would evolve, which would necessitate amending the rules. Unfortunately, too many of the changes are so unpredictable and unexpected that they present dire complications for entities that need high BEE compliance.

What makes this environment even more unpredictable is poor communication from the authorities and the way in which amendments are announced. Revoking the construction sector charter on February 17 is a case in point. Companies were left high and dry, as most of them have their financial year ends at the end of February and could not implement the changes in time.

Other sector charters, such as those for agriculture, information and technology, and transport are long outstanding.

The original plan was that all the charters would be aligned with the amended BEE Codes of Good Practice, which was implemented on May 1 2015. These charters will kick in sometime in the future, but that is now becoming such an uncertainty that businesses are finding it difficult to plan.

No indication has been given when the other charters will be implemented and whether a transitional period will apply. Companies are aware of what was landed on the construction industry, and they need to prepare in advance of their sector charters kicking in, to avoid the blind tackle blow.

The biggest challenge for generic companies with an annual turnover of more than R50m is skills development. To earn points for this, companies' initiatives for providing training for black people are measured as a percentage of their annual payrolls or as a leviable amount, as referred to in the BEE codes.

For the construction industry, this percentage of the annual payroll jumped overnight from 1.5% to 6% when the construction charter was revoked. Other sector industries' requirement for generic companies is currently 3% — which will also go up to 6% to align with the amended codes.

The other big change is the training of unemployed black people. Expenditure on payroll and the skills transfer must be incurred in the financial year to be measured.

Longer training programmes, such as learnerships, internships and apprenticeships, must, at least, start in the financial year. Companies that need a verification done, for example, in September 2016, cannot quickly pay for training and expect to earn points at that verification.

Any money spent now would apply to the period ended February 2017 and would have an influence on a BEE certificate issued only after that financial year end.

Companies need to plan ahead and in good time. Several are exploring the possibility of learnerships, which make a lot of sense, as they optimise points and allow for bonus points and opportunities for generous tax recoupment.

Businesses that are still considering spending money on training for this year and that plan to conduct learnership programmes should do so without further delay.

A blind tackle is looming in the form of section 12H of the Income Tax Act, which provides that the present tax recoupment system allowing for two R30,000 allowances to be deducted as an additional expense will apply to learnership programmes entered into only before October 1. It is uncertain which tax recoupment programmes, if any, will be in place for learnerships after October 1.

Companies that are waiting for the new sector charters to be implemented should immediately start implementing the 6% expenditure with unemployed learnerships as part of the training programmes.

Overspend on unemployed trainees can always be used for socioeconomic development. But a lack of foresight and action in this regard can only do one thing: hurt, badly.

Gerber is an attorney and the founder and director of Serr Synergy, specialising in BEE-structuring and compliance

~ o O o ~

BusinessDay
BDlive

