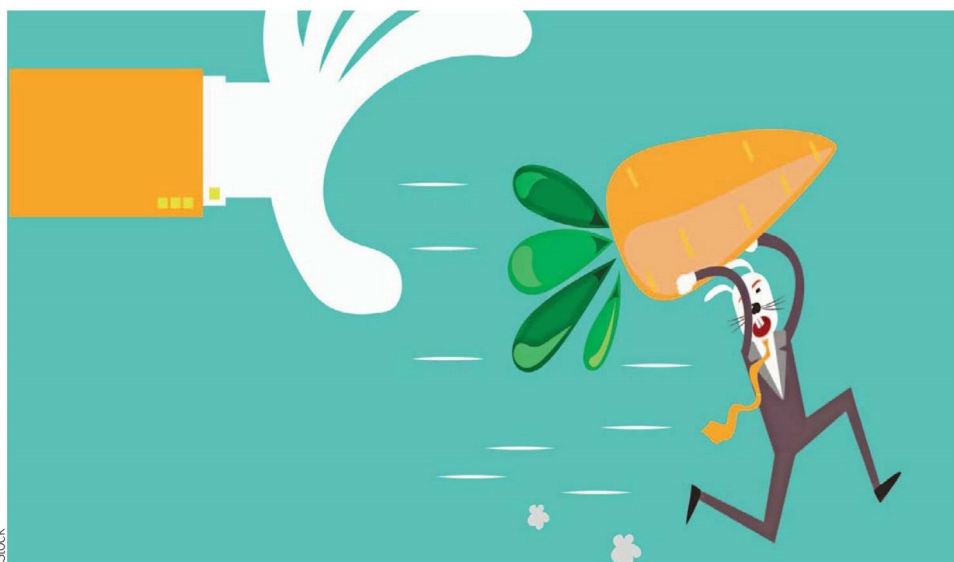




NO SHARE, JUST A TASTE

A report drawn up by the BBBEE commission, appointed in May last year to probe allegations of fronting, has not yet been released. Meanwhile, governance procedures have been strengthened

Stephen Timm



iStock

Uncertainty continues over the use of broad-based and employee share ownership schemes after the BBBEE commission earlier this year ordered a consultancy to halt seminars the consultancy was holding over concern it might advise firms on how to front.

Trade & industry minister Rob Davies has yet to release the findings of a task team he set up in May last year, when new codes took effect, to investigate the use of such schemes, which are commonly employed by companies to gain BEE ownership points.

The task team submitted a report to the minister in January. Davies has also not made any announcement about the findings.

His spokesman, Sidwell Medupe, says the findings will be published "in due course". He says the department will not alter the principles in the BEE codes, only clarify issues.

In September BBBEE commissioner Zodwa Ntuli said the seminars that BEE consultancy Net Value Holdings planned to hold were advertised promising to advise entities that partner it how to retain full operational control of their business and be rewarded for the equity value it brought to the table.

Net Value Holdings MD Anton de Wet says he is co-operating fully with the com-

mission and has nothing to hide.

He says the organisation's trust scheme complies with BEE legislation. The scheme benefits all parties, including the trust's 17 black beneficiaries, who are employees of its investee companies, he says.

The scheme addresses the "massive" challenge that some small businesses face under the BEE codes in either giving away equity to a black partner or risk having their BEE score downgraded by one level, he says.

BEE consultant and former EconoBEE chief executive Keith Levenstein, a member of the task team to probe share schemes, says suspect schemes are rampant. "There isn't anything Net Value Holdings was going to say [at the seminars] that has not been done 50 times over already," he says.

The central problem, he says, is that of economic interest. For example, in a broad-based scheme set up as a trust, black schoolchildren might be nominated as the beneficiaries and be sold a number of shares.

What it means: The commission is concerned that many firms have BEE front companies that fail to provide beneficiaries with real economic rights

They might benefit from having their education paid for, but they don't ever get to own the shares. As soon as they leave school they cease to get any benefit.

In addition, he says, certain prescribed rules in schemes can disqualify beneficiaries from ever owning the shares.

He believes the minister doesn't need to change any regulation; he can just provide verification agencies with clear instruction about following the BEE codes.

He attributes the problem to verification agencies that began following one or two such agencies that had approved BEE ratings for dubiously constructed schemes.

Jenni Lawrence, who heads Grant Thornton Verification Services, says verification agencies don't simply rubber stamp scorecards – adding that the company itself is audited three times annually. "The problem is that the requirements in the code are [a grey area]," she says.

But Ntuli disagrees. "A scheme that strips employees or any shareholders of voting rights is doing that contrary to the act, and it will be viewed as nothing but fronting. We do not believe there is a grey area, as the purpose of BBBEE is clear; we believe some players in the market have just made fronting [the normal way] for too long, and this has become the easy way out."

She says as the commission completes its investigations it will issue recommendations.

However, Transcend Capital MD Bruce Hunt notes that since the release in November last year of the draft verification manual, which provides more clarity on share schemes, governance procedures around schemes have been strengthened.

Afrika Tikkun Services CE Errol Pillay says companies are holding off using the organisation's broad-based ownership scheme, which channels dividends from the companies it invests in to fund early childhood centres and a child support unit.

He admits that while the beneficiaries may "never get financial gain" they would be able to access fully funded services at the centres. This is sure to raise eyebrows. **x**