

Watchdogs' vigilance can save BEE's bacon

MUCH of the effort to empower people previously disadvantaged stands to be reduced to nothing more than a charade if the financial leakage caused by rights issues or equity calls is not addressed.

We have observed the impact of many equity calls on BEE enterprises and have concluded that closer scrutiny by all concerned is necessary.

Many rights issues — in which a company offers shares to existing shareholders in proportion to their holding of old shares — appear calculated to deliver a bloodless coup against empowerment.

This is partly achieved by positioning the issue into a period and circumstances that make it impossible for the black partners to exercise their rights.

Seen alongside the rise of the “once empowered, always empowered” movement, BEE is experiencing daylight robbery.

Although rights issues are a normal and widespread practice in the world of commerce, they pose a major challenge for BEE, as the practice tends to default into diluted black ownership.

This has become a major loophole exploited by sly operators. These operators use calls for equity to effectively legitimise BEE fronting.

A number of public sector licensed operations have suffered the BEE leakage caused by rights issues.

The leakage transpires in the following manner: A BEE formation bids for a business licence. The bidder is awarded the licence on the understanding that the operation is controlled by black people.

However, in rolling out the operation, the concerned business requires additional capital. A rights issue is activated which requires that all shareholders exercise, or lose, their rights. Due to historical reasons, many black entrepreneurs or investors have no capital reserves to tap into in order to exercise their rights. They then lose their rights to shareholders with deep pockets, who happen to be white partners in the business.

BEE gets diluted while the enterprise continues to enjoy the benefits of an empowered company.

There are numerous examples of this scenario leading to heavy dilution of the initial position of the black investors.

This has occurred on a grand scale in the listed property sector of the JSE.

In the recent past, a number of JSE-listed property funds (real estate investment trusts), concluded BEE equity deals. Like other BEE



Philisiwe Mthethwa

deals, these promised between 10% and 15% equity to BEE groups.

Many of these deals have been diluted to insignificance when compared to their initial promise because of rights issues used to fund portfolio expansions.

Although this BEE leakage is partly a result of grand plots by sly operators, these operators are only exploiting a structural gap that must be addressed by the BEE fraternity.

The first line of defence must come from the monitoring and policing of BEE implementation as required by the Broad-Based Black Economic Empowerment Act.

It must be the primary duty of the BEE monitoring and policing arm of the government to pick up glaring inconsistencies in the claims made by firms.

This calls for vigilance by BEE verification agencies, which must pick up and reflect the BEE equity leakages in the annual BEE certificates of measured entities.

Anecdotal evidence suggests verification agencies are not doing their job properly. Many BEE certificates continue to reflect the black ownership level that was promised at inception of deals, despite everyone knowing that many of these initial promises have been heavily diluted due to debt obligations and equity calls, or both.

If BEE verification agencies played their part, half the battle would be won.

The situation demands a well-resourced oversight ecosystem: the BEE Advisory Council and the BEE Commission, alongside vigilant BEE verification agents.

Once the agencies or members of the public have highlighted inconsistencies in empowerment credentials claimed by a particular company, the commission must light the fire under such companies. They must either remedy the situation or face stiff penalties.

The situation also demands better organisation of empowerment funding institutions so that they can swiftly intervene when called to investigate an impending leakage as a result of a proposed rights issue.

The National Empowerment Fund is ready to intervene where it can.

● *Mthethwa is the CEO of the fund*