Construction settlement pact leaves BEE waters murky

By Mark Allix

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Far from making things clearer, the government's so-called settlement agreement with seven major construction groups has further muddied the waters with regard to its proposed R4tn infrastructure spending programme over 15 years.

Key to the flurry of stock exchange announcements earlier in October that they had reached a Pax South Africana with the state, the construction companies and the government have not been willing to shed light on wholesale discrepancies in their announcements.

Murray & Roberts became the seventh major JSE-listed construction and engineering group to join a "voluntary" payment scheme that will see R1.5bn put towards transformation in the sector over the next 12 years.

Along with Group Five, Wilson Bayly Holmes-Ovcon, Stefanutti Stocks, Raubex, Basil Read and Aveng, it says the main aim of the agreement is to strengthen the relationship between the sector and the government and to develop a transformed and inclusive construction industry.

But with all the arm twisting that went before - and not forgetting the R1.46bn in Competition Commission penalties to which six of the seven companies had agreed it is hard to take the notion of voluntarism at face value.

Murray & Roberts and Aveng, among SA's largest construction groups, say the South African National Roads Agency has still not withdrawn its claims against those companies that have signed the settlement agreement despite this being the key that makes the agreement binding.

SA's construction industry, with the related steel and cement sectors, has been put through the wringer since before SA's hosting of the Soccer World Cup in 2010.

While competition law in SA has progressed in leaps and bounds in recent years, it is also hard not to see a statist agenda underpinning its intent and decisions, as pursued by departments as diverse as economic development, trade and industry, and labour.

The zeal with which these entities have proclaimed a "developmental state" while pursuing Kumba Iron Ore, ArcelorMittal SA and SA's largest listed construction groups over everything from mineral rights to collusion and black economic empowerment is clear. It was only in October that Kumba was declared the full owner of its Sishen iron-ore mine. Before this, court cases went as far as the Constitutional Court in fending off asset grabs.

These led to charges of forgery, including against a state agency, that appear to have been quietly shelved. That said, opaqueness is still the modus operandi for companies and government agencies engaged in long-running battles over the future of the economy. Now departments perceived to have retained probity in the past have also been dragged into the morass that is SA's body politic.

It also does not go too far to say that some departments have leveraged conditions in the economy that have been created variously by the Department of Mineral Resources, and have - unlike the Treasury - sometimes ignored public management protocols in favour of immediate political gains.

To this end, the fact that Murray & Roberts has decided to exit infrastructure and building markets in SA speaks volumes. While announcing R1.5bn in voluntary payment into a transformation trust fund over the next 12 years should be a cause for celebration, it is instead a reason for asking further questions about the relationship between the government and big business.

With the near demise of SA's steel industry, ArcelorMittal SA, the nation's largest producer, has at last made known the bare details of an empowerment deal. The construction industry uses half of all steel produced in SA, so it is germane that this has been perceived as a costly transaction. But one must ask, how much more costly it would have been if it had not occurred.

The same applies to the latest voluntary deal between construction companies and the government. It has been enough to drive Murray & Roberts offshore, and set off a flurry of new deals such as Aveng's sale of a majority stake in Africa-focused Aveng Grinaker-LTA to empowerment entities.

As in the past, the deals are usually financed by the seller, with shareholder lock-ins over periods of time.

This shows that broad-based black economic empowerment ((B-BBEE) in SA is not much different in shape and form to its more singular predecessor - BEE. Perhaps it is time that this model is changed to more accurately reflect market dynamics.

Source: BDpro