



# The Way to **BEE**



A guide to broad-based  
black economic empowerment  
in South Africa

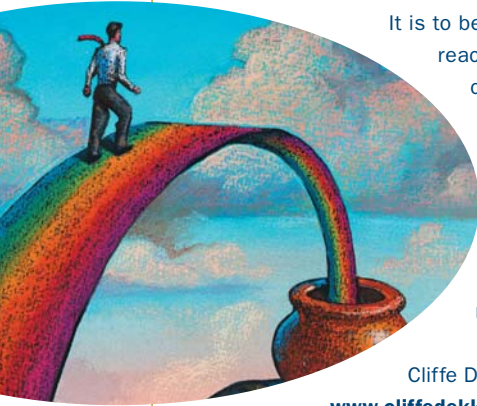
2004



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## The Way to **BEE**

Cliffe Dekker has compiled this guide to broad-based black economic empowerment in South Africa with a view to highlighting some of the issues that businesses must face in meeting the challenge of empowerment.



It is to be expected that the implementation of such a far reaching macro-economic strategy will necessitate constant review and refinement. Cliffe Dekker is committed to ensuring that an up to date knowledge base of materials pertaining to BEE is available to its clients.

Our website contains a constantly updated version of this publication as well as a number of important resource documents pertinent to BEE.

Cliffe Dekker's The Way to BEE is located at:

**[www.cliffedekker.com/literature/bee/index](http://www.cliffedekker.com/literature/bee/index)**.

As new resource documents and other relevant materials relating to BEE become available, these will be added to our website.

Please do not hesitate to contact our BEE team should you have any queries relating to this publication, the website or BEE in particular.

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# 1 INTRODUCTION

*'Our country requires an economy that can meet the needs of all our economic citizens – our people and their enterprises – in a sustainable manner. This will only be possible if our economy builds on the full potential of all persons and communities across the length and breadth of this country. Government's objective is to achieve this vision of an adaptive economy characterised by growth, employment and equity by 2014.'*

**South Africa's Transformation:** A Strategy for Broad-based Black Economic Empowerment, Department of Trade and Industry, March 2003.

The systemic disempowerment mechanisms used under apartheid and other forms of racism before it have led to an economic imbalance that excludes the majority of South Africa's citizens from the economic mainstream.

Since the early 1990s, various tentative steps have been taken by government to achieve greater diffusion of economic power within the black community. These have been recorded in new or amended legislation together with programmes and policy statements aimed at overcoming economic inequalities and underdevelopment. Their lack of significant success stems largely from a failure to achieve consensus on the manner in which the problem should be tackled.

Black economic empowerment (BEE) emerged as a central objective of the Reconstruction and Development Plan, the country's original blueprint for transformation. Outside of this document, BEE has lacked a workable manifesto of its own. In 2001, the BEE Commission released its report (the BEE Commission Report) which contained as one of its most important recommendations the adoption of an integrated national BEE strategy, designed to co-ordinate measures to achieve meaningful participation by black people in the economy within 10 years.

After the release of this initial plan, the finalisation of the mining charter late in 2002 was the first significant indication that co-ordination and commitment to specific BEE objectives might be achievable across the broad spectrum of South Africa's industrial landscape.

Thus spurred-on, government released three important documents –

- the Strategy for Broad-Based Black Economic Empowerment (Strategy) in March 2003;
- the Code of Good Practice (Code), which is an explanation of the approach to be adopted by government in the measurement of BEE compliance; and
- the Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) (the BEE Act) which was passed into law on 6 January 2004 and will come into operation on a date to be determined by the President, by proclamation in the Government Gazette.

The Strategy and Code are not legally binding documents but give a clear indication of government's current policy in relation to BEE. Achieving authentic BEE will require a re-assessment of traditional business models and corporate cultures. A real commitment to BEE is now an economic imperative.

## 2

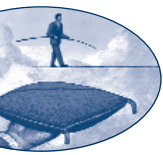
## IMPLEMENTATION OF BEE

### 2.1 Who qualifies for BEE?

The intended beneficiaries of BEE have been variously defined as 'previously/historically-disadvantaged individuals/persons', 'designated groups' and 'black people'. These terms have not always been consistently defined, particularly in so far as white women and the disabled fall within the definition of previously-disadvantaged individuals. A considerable measure of certainty is achieved in the BEE Act, which contemplates 'meaningful participation of black people in the economy.' The BEE Act defines black people as 'a generic term which means Africans, coloureds and Indians.' In the earlier drafts of the BEE Bill the term 'black people' was limited to South African citizens or permanent residents of South Africa. This qualification has been omitted from the BEE Act. The financial charter has, however, extended the definition to include permanent residents for the purposes of evaluating BEE compliance in so far as management control and human resource development is concerned.

### 2.2 How is BEE defined?

Government defines BEE as having three separate, but linked, contexts. The first is direct empowerment, the objective of which is the promotion



of ownership and control by black persons over the South African economy. The measurement criteria are ownership and management.

The second relates primarily to the promotion of human resource development.

The final element is referred to as indirect empowerment. It evaluates a range of criteria relating to a business, such as the level of procurement sourced from black-empowered or black-owned businesses, as well as enterprise development through investment in, and joint ventures with, black-empowered or black-owned businesses.

### **2.3 In what contexts will BEE be subject to measurement?**

Government has identified two focal points for the measurement of BEE. These are:

- BEE in the commercial context; and
- BEE self-regulation.

### **2.4 BEE in the commercial context**

*What is the strategy with regard to government regulation of commerce?*

The BEE Act empowers the Minister of Trade and Industry to issue codes of good practice either generally or for particular sectors. These codes are intended to be applied in determining the qualification criteria for granting licences, concessions and other authorisations under any law, in developing preferential procurement policies for government and the public sector, and in defining the qualification criteria for the sale of state-owned enterprises and the establishment of public private partnerships. They are also intended to establish targets and weightings for the purpose of measuring BEE compliance.

The minister is also empowered to gazette sectoral transformation charters developed by consensus of the major stakeholders in various sectors within the South African economy and to issue BEE strategies, of which the Strategy is assumed to be the first.

### *How will government apply BEE in the regulation of commerce?*

Organs of state and public entities, in exercising their discretion to award licenses, concessions or other authorisations, are required to review an applicant's BEE compliance credentials. This review will take the form of an assessment of the applicant's direct and indirect empowerment and human resource development on the basis of a BEE scorecard, constituted either in terms of the transformation charter applicable to the sector in which the applicant operates, or in terms of a code.

The definitions of 'organ of state' and 'public entity' are extremely wide in ambit (see Glossary of Terms). They include the various government departments responsible for issuing licences, Icasa, the Development Bank of South Africa, the IDC, the Accounting Standards Board, the Competition Commission, the Medical Schemes Council, the Financial Services Board, the SA Tourism Board and the National Electricity Regulator. The definitions are linked to the schedules of the Public Finance Management Act 1999 (Act No. 1 of 1999).

While it is unlikely that BEE compliance will be an absolute requirement for the grant of any licence, concession or authorisation, BEE is set to become an evaluation criterion in its own right, bearing a high degree of significance.

### *How will government apply BEE in the context of public procurement?*

For some time now, bidders for public procurement have been required to demonstrate their BEE credentials. This practice remains unchanged in the context of the BEE Act, but it appears that compliance with the BEE scorecard applicable to the transformation charter for the sector in which the bidder operates, or a code applicable to the bidder, will be used as the measurement tool in determining a company's BEE credentials. What is important is that the obligation to consider BEE as a factor in public procurement now extends to all organs of state and public entities.



### *What approach to BEE has been adopted in the existing transformation charters?*

The common basis for measurement in the mining and financial services industry transformation charters is a BEE scorecard where targets are agreed for direct and indirect empowerment, as well as human resource development on an iterated basis over a 10 year period. In the case of the mining charter, conversion of existing mineral rights held by mining firms into the so-called new order rights was made contingent upon attainment of the five year target, thereby providing a robust enforcement mechanism. In the context of the financial services sector, no attempt has been made to impose punitive sanctions for non-compliance.

## **2.5 Self-regulation**

### *How will self-regulation of BEE work?*

A common feature for future charters will be an element in the BEE scorecard that rewards a company for its level of procurement from and investment in other BEE compliant companies. This approach is intended to maximise the impact of BEE by providing a secondary level of enforcement whereby the private sector itself will encourage compliance by its suppliers and the entities into which it invests.

A complicating factor in the implementation of this approach is that very few sectors are currently subject to a charter or a code and that it is not always possible to evaluate objectively compliance at this secondary level.

### *What is the mechanism for self-regulation?*

The scorecard result of a supplier or a company into which an investment is made will be relevant to the scorecard result of its customers or investors. In the absence of sectoral charters or codes, any procurement from or investment in any business satisfying the requirements of a 'black-owned enterprise' or 'black-empowered enterprise' may be counted towards the customer's or investor's BEE scorecard.

### 3.1 What is the relevance of the enterprise definitions?

The enterprise definitions are essentially abbreviated measurements of the BEE status of a business. They are intended to provide the evaluator with a simple measurement of direct empowerment.

### 3.2 What is a black-owned enterprise?

A black-owned enterprise is defined as being a business that is '50.1% owned by black persons and where there is substantial management control'.

The crucial factor is that ownership refers strictly to economic interest in the relevant business. Black people must be eligible to receive at least 50.1% of the profits. The term 'substantial management control' refers to membership of any board or similar governing body of that business. The quantitative measure placed upon the level of black ownership required in order for a business to be regarded as a black-owned enterprise is absolute. Should black ownership amount to anything less than 50.1% the business will not qualify as a black-owned enterprise.

Insofar as substantial management representation is concerned, the BEE Commission report suggested that the 10-year target for management representation should be in the region of 40%. Given the duplication of the substantial management representation requirement under the definition of a black-empowered enterprise (see below), it may be argued that substantial management control could be satisfied by 25.1% of all directors serving on a board.

### 3.3 What is a black-empowered enterprise?

A black-empowered enterprise is defined in the Strategy as being 'one that is at least 25.1% owned by black persons and where there is substantial management control'. As is the case with a black-owned enterprise, ownership refers to economic interest. The Strategy stresses that in the case of a black-empowered enterprise, management refers exclusively to executive directors.



### 3.4 What are the other enterprise definitions?

A black woman-owned enterprise is defined as being a business ‘with at least 25.1% representation of black women within the black equity and management portion’.

A community or broad-based enterprise is defined as being a business which has ‘an empowerment shareholder that represents a broad base of members such as a local community where the benefits support a target group, for example black women, people living with disabilities, the youth and workers’.

A co-operative or collective enterprise is defined as being ‘an autonomous association of persons who voluntarily join together to meet their economic, social and cultural needs and aspirations through the formation of a jointly owned enterprise and democratically controlled enterprise’.

At this stage, the purpose of the additional enterprise definitions is unclear. They may be used to enable companies to diversify their ownership or investments to include charitable, socially responsible and community based organisations.

### 3.5 What are the benefits of qualifying under the enterprise definitions?

Customers of, and investors in, black-owned and black-empowered enterprises are entitled to count their procurement from, and investment in, those enterprises towards their own BEE scorecards, effectively rendering those enterprises more desirable as suppliers, or as targets for investment.

The three remaining enterprise definitions may be relevant in a number of contexts, including:

- as pre-selection criteria in the award of public procurement contracts;
- as selection criteria for hold-over public procurement contracts (i.e. contracts reserved for particular categories of enterprise);

- as pre-selection criteria for certain government-initiated financing and support programmes for small and medium sized enterprises.

## 4 THE BEE SCORECARD

### 4.1 What is the relevance of the BEE scorecard?

The BEE scorecard is used to measure the progress towards BEE of businesses that are subject to a transformation charter or a code. The BEE scorecard is also relevant to any enterprise making application for a licence, a concession or other authorisation to an organ of state, or bidding for public procurement contracts.

### 4.2 Is there a standard form BEE scorecard?

The scorecard adopted in terms of the mining charter differs significantly from that proposed in the Code. The financial charter scorecard is very similar to that proposed by the Code but differs in some significant areas. It seems likely that the form and content of the scorecards to be adopted in future will be negotiated on a case-by-case basis so that a standard form scorecard is unlikely. That said, the Code suggests that the essential components of all future scorecards will measure direct and indirect empowerment, and human resource development.

### 4.3 How does the BEE scorecard work?

The scorecard works on the basis of a weighted average. The scorecard proposed in the Code identifies seven criteria and each is given a weighting. Compliance targets for the seven criteria are set either by the applicable transformation charter or code.

The calculation methodology is demonstrated in the following model scorecard.



Criteria	Weighting	Target *	Actual Level	Conversion	Per Criterion Score
Direct Empowerment					14.6
Ownership	20%	25.1%	12%	$100\% \div 25.1\% \times 12\% \times 20$	9.6
Management	10%	40%	20%	$100\% \div 40\% \times 20\% \times 10$	5
Human Resource Development					18.4
Employment Equity	10%	40%	20%	$100\% \div 40\% \times 20\% \times 10$	5
Skills Development	20%	30%	20%	$100\% \div 30\% \times 20\% \times 20$	13.4
Indirect Empowerment					23.4
Preferential Procurement	20%	30%	20%	$100\% \div 30\% \times 20\% \times 20$	13.4
Enterprise Development	10%	10%	10%	$100\% \div 10\% \times 10\% \times 10$	10
Sector Specific					8
Variable Criteria	10%	50%	40%	$100\% \div 50\% \times 40\% \times 10$	8
Overall Weighted Average					64.4

\* The targets will vary from sector to sector

The overall weighted average score is used to designate a business as falling into one of the following BEE contributor ratings:

- limited contributor to BEE - a score between 0 and 40;
- satisfactory contributor to BEE - a score between 40 and 65; and
- good contributor to BEE - a score in excess of 65.

The financial charter has used a more complex overall weighted average mechanism which awards symbols based on performance ranging from an "A" for a score in excess of 80 points to an "E" for a score of less than 40 points.

## 4.4 Ownership

### *How is ownership defined for the purposes of the BEE Scorecard?*

The Strategy and Code define ownership as having the twin elements of economic interest and control. Economic interest is the pre-eminent element.

The financial charter uses the terms 'direct ownership' and 'indirect ownership'. The definition for direct ownership is essentially the same as the definition of ownership used in the Strategy and Code, while the definition of indirect ownership includes economic interest but excludes the requirement of control.

The Strategy and the Code do not contain a precise definition of economic interest, whilst the financial charter uses the term 'equity interest'. The term equity interest appears to refer to a stake in the total equity of a company, while the term economic interest is considerably wider. Dividends or interest payments accruing to shares or other instruments are clear examples of economic interest.

While the Strategy and Code identify control as a corollary of ownership, the concept appears to have been inserted solely to deal with government's concern that passive ownership of assets (through pension and provident funds, unit trusts and other collective investment schemes) is not in itself sufficient to bring about a real transformation of the economy and may lead to a form of fronting.

Control has the following meaning in the Strategy and Code:

- the right or the ability of a BEE shareholder to direct or otherwise control the majority of the votes attaching to the shares in a company;
- the right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of directors; or
- the right to control the management of a business.



The control element is a *sine qua non* for ownership in the context of the scorecard proposed in the Strategy and Code.

### *What about lost ownership?*

A specific concern with the approach to ownership in the Strategy and Code is that businesses may enter into BEE transactions to boost their scorecard, only to find that the BEE investors sell their shareholding at considerable profit prior to the date upon which their level of compliance is to be measured. Indications are that lost shareholding will be counted. The financial charter permits legitimate direct ownership transactions to be included in the calculation of ownership, notwithstanding the fact that they subsequently unwind.

### *Will employee share schemes qualify as ownership?*

There are strong indications that employee share schemes will qualify as ownership, provided the scheme's beneficiaries are able to control the shares held by the scheme and earn the economic interest associated with that shareholding.

### *Does the BEE Act include a gender element in respect of ownership?*

The BEE Act has introduced the possibility of measurement of BEE compliance at the level of ownership to differentiate between male and female black persons. The financial charter has included individual targets for black women under the ownership criterion and it is likely that this will emerge as a common factor in future charters.

### *What is the weighting attributable to ownership?*

In the context of the petroleum and mining charters, ownership is the single most significant indicator of BEE. By contrast, the Strategy and

Code weight ownership at 20% of the BEE scorecard. In the financial charter, ownership is weighted at 14%. This is specific to the financial services industry and should not be seen as representing a new standard in the evaluation of ownership.

### *What are the likely targets for ownership?*

The recommendations of the BEE Commission set a target of 25.1% black ownership over a 10-year period. The mining charter has established a 10-year ownership target of 26%, which is commensurate with the petroleum charter ownership target of 25.1% for the same period. In the financial charter, the target is 25% by 2010. Of this 25%, 10% is to be achieved by direct ownership and the balance by indirect ownership. However, indirect ownership will not count until such time as the 10% direct ownership has been achieved.

### *What additional items count towards ownership?*

In the mining charter, provision is made for attributable units of production accruing from particularly productive subsidiary operations to be counted towards the ownership criterion.

### *What about external companies and international businesses?*

It has been suggested that where an international business establishes a presence in South Africa by way of subsidiary or a South African external company registration, or where a business is jointly listed on more than one stock exchange, including the JSE Securities Exchange of South Africa, then black South African ownership at any level in that international business can be counted towards the South African entity's BEE scorecard. Moreover, it has been suggested that the total international BEE shareholding in such a case would be measured against the value of the South African operation only, which would be of considerable benefit to the company.



The financial charter makes provision for the exemption from the ownership criterion of foreign-owned financial services companies operating in South Africa under certain circumstances.

## 4.5 Management

### *How is management defined?*

Management is evaluated according to the percentage of black persons in executive management. The common objective is to encourage genuine participation by black South Africans in day-to-day management and high-level decision making. The financial charter permits participation by black permanent residents to count towards the management criterion.

### *Does the BEE Act include a gender element in respect of management?*

The BEE Act has introduced the possibility of measurement of BEE compliance at the level of management to differentiate between male and female black persons. It is not immediately clear how this differentiation will be measured in the scorecard, but one approach may be to set sub-targets for the level of black female management participation.

The financial charter has included individual targets for black women under the control (or management) criterion and this may be a common feature in future charters.

### *What is the weighting attributable to management?*

In the context of the petroleum and mining charters, management was not given significant weight although both included a commitment to the achievement of greater representation for black persons in management. In much the same tenor, the Strategy and Code weight management at 10% of the scorecard and the financial charter weights control (or management) at 8%.

### *What are the likely targets for management?*

In terms of the recommendations of the BEE Commission, management representation was set at 40% over a 10-year period. While the charters for the mining and the petroleum sectors do not set a target, the financial charter has established a target of 33% black participation at board level by 2008 which includes a separate target for black women participation of 11%.

### *Must there be a link between ownership and management?*

There is no requirement in the Strategy or Code that there be any link between the persons having ownership of the BEE investment in a business and those serving as management. There appears to be no difficulty with loading the black-owned shares with a greater level of participation at management level.

## **4.6 Employment Equity**

### *How is employment equity measured in the BEE scorecard?*

The Strategy and Code make reference to a weighted employment equity analysis. There is no indication as to how this analysis is to be derived. The financial charter provides a user-friendly methodology to calculate employment equity. This methodology is based upon the attainment within 5 years of certain targets for representivity of black people in general and black women in particular at senior, middle and junior management level. The three tiers of management are defined with reference to annual remuneration.

### *Does the BEE Act include a gender element in respect of employment equity?*

The BEE Act is silent on the question of the gender measurement of BEE compliance at the level of employment equity. The financial charter has



included individual targets for black women under the employment equity criterion and it is likely that this will emerge as a common factor in future charters.

### *What is the weighting attributable to employment equity?*

The Strategy and Code weight employment equity at 10%. The petroleum and mining charters do not measure employment equity while the financial charter gives it a 15% weighting.

### *What are the likely targets for employment equity?*

Prior to the adoption of the financial charter there had been no indication of government's intended targets for employment equity. Under the financial charter, 5 year targets ranging between 20% and 50% black participation are set in respect of each of the three tiers of management. Separate targets are established for black women participation. By 2014, 33% participation at all levels should be enjoyed by black women.

## **4.7 Skills Development**

### *How will skills development be measured?*

The Strategy and Code use skills development expenditure as a percentage of the total payroll as the indicator of skills development contribution for the purposes of the scorecard.

### *What is the weighting attributable to skills development?*

Skills development is weighted at 20% of the BEE scorecard proposed in the Strategy and Code. The financial charter has set the weighting at 5%.

### *What are the likely targets for skills development?*

Prior to the adoption of the financial charter there had been no indication of government's intended targets for skills development. The financial

charter requires at least 1.5% of payroll to be spent on the training of black employees. In addition 4.5% of new employees are required to be recruited into “learnerships” targeting black matriculants.

## 4.8 Affirmative Procurement

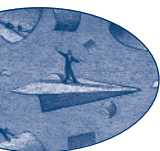
### *How is affirmative procurement measured?*

Affirmative procurement is defined as the percentage of total procurement that is sourced from suppliers that are BEE compliant. In the absence of a charter or code setting forth a BEE scorecard applicable to its sector, a supplier may rely upon its qualification as a black-owned or black-empowered enterprise under the enterprise definitions.

### *What is the weighting attributable to affirmative procurement and what are the likely targets?*

Affirmative procurement is weighted at 20% of the scorecard proposed by the Code and 10% in the financial charter. It was considered in both the petroleum and mining charters, but no targets have been set. The report of the BEE Commission recommended that 30% of private sector procurement be sourced from black-owned and black-empowered enterprises.

In the financial charter a hefty target of 50% of all procurement by 2008 and 70% of all procurement by 2014 has been established. However, the financial charter has included an additional enterprise definition of ‘black-influenced company’ which also qualifies as a BEE supplier. A black-influenced company is one that is 5% to 25% black-owned. In terms of the financial charter, the attributable value of affirmative procurement is calculated on a sliding scale with reference to the level of the supplier’s BEE credentials. Hence, procurement from a black-influenced company can only be included within the total affirmative procurement to the extent of 50c in every rand, while procurement from a black-owned enterprise or a black women-owned company may be included to the extent of 125c in every rand.



## 4.9 Enterprise Development

### *How is enterprise development measured?*

Enterprise development is defined in terms of the total investment by a company in other entities which are BEE compliant. In the absence of a charter or code setting forth a BEE scorecard applicable to the entity in which the investment is made, it may rely upon its qualification as a black-owned or black-empowered enterprise under the enterprise definitions.

The Strategy and Code state that enterprise development may take a variety of forms including:

- direct investment in black-owned and black-empowered enterprises; or
- joint ventures with black-owned and black-empowered enterprises that result in 'substantive' skills transfer.

### *What is the weighting attributable to enterprise development and what are the likely targets?*

Enterprise development accounts for 10% of the BEE scorecard proposed by the Strategy and Code. In the financial charter, it is weighted at 5%. No indication as to the likely targets has emerged at this stage.

## 4.10 Residual Criterion

### *What is the residual 10% of the scorecard used for?*

While six indicators have been laid down as standard criteria in the BEE scorecard, a seventh wild card factor, weighted at 10%, has been reserved in order to allow for a measure of flexibility. Sectors will be permitted to determine a residual factor most relevant to their specific circumstances. It is likely that sectors will be expected to use the opportunity to encourage activity that will foster socio-economic growth and development of the industry, which are among the key principles

enumerated in the Strategy and Code. They cite the following as factors worth considering:

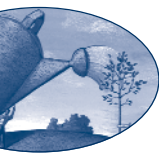
- infrastructural support to suppliers and other enterprises in the same area or community;
- labour-intensive production and construction methods;
- beneficiation;
- investment and support to enterprises operating in rural communities and the geographic areas identified in government's integrated sustainable rural development programme and urban renewal programme; and
- investment in the social wage of employees (for example, housing, transport and healthcare).

In addition, scorecard points may be allocated for local content in procurement, 'Proudly South African' membership, effective corporate governance, sound environmental practice, research and development expenditure, sponsorships and social responsibility programmes, and so forth. The mining charter provides a framework that rewards mining businesses for addressing issues specific to the industry, such as encouraging beneficiation, ensuring non-discrimination against foreign migrant labour, implementing a strategy for the development of mine communities and rural labour-supplying areas, and improving hostel living conditions and nutrition amongst employees.

In the financial charter 43% of the scorecard has been allocated to industry-specific criteria such as empowerment financing, corporate social investment and facilitating the provision of services to the previously unbanked or under-banked.

#### **4.11 Are there opportunities for double counting?**

The Strategy and Code are clear that enterprise development by means of joint ventures with black-owned or black-empowered enterprises '...may



involve processes such as outsourcing parts of the established enterprise's projects or jointly contracting for certain projects that will result in a transfer of skills to the black enterprise'. The measure of effectiveness of such joint ventures is 'whether or not the black enterprise is able to perform the core elements of the joint projects on a stand-alone basis without compromising the competitive advantage contributed by either enterprise'.

While the criteria are strict, this allowance permits a unique opportunity to outsource portions of a business to a joint venture vehicle in which there is at least a 25.1% BEE ownership. This arrangement would permit the outsourcing business to claim the full value of procurement sourced from the joint venture and the 74.9% of the investment in that vehicle towards their BEE scorecard.

#### **4.12 Are there opportunities to benefit from over-performance?**

Following the calculation methodology in the Code, it is possible that performance in excess of the target may result in a significant over-performance bonus. There is no indication as to whether this will be recognised.

In principle, the mechanism of a bonus is fair, as it rewards particularly successful implementation of one or more of the scorecard criteria. The financial charter has eliminated the possibility of an over-performance bonus, but does make provision for the award of a limited number of bonus points.

## 5 CONCLUSION

Although government has provided the blueprint, the future success of BEE will depend on fostering a spirit of co-operation with, and encouraging initiatives from, the private sector. A recent contribution to BEE came from the Oppenheimer family in the launching, on 5 August 2003, of the Brenthurst Initiative, a business-minded, investor-friendly strategic intervention aimed at linking BEE with economic growth.

The essence of the initiative is an attempt to encourage South African business to commit to broad-based BEE while at the same time ensuring growth and continued investment in the South African economy. At the heart of the initiative are the following three recommendations:

- the agreement on, and adoption of, a national transformation scorecard;
- the creation of corporate tax incentives linked to transformation performance; and
- the closing of the BEE funding gap through interventions within the South African economy to release capital and create new and sustainable sources of BEE equity.

Undoubtedly, there is no magic BEE bullet and effective transformation of the South African economy will require a range of creative and practical interventions. Failure to acknowledge the imperative of BEE is no longer an option and government's BEE strategy, coupled with contributions from the private sector, such as the Brenthurst Initiative, must be embraced if the challenge of achieving broad-based BEE and therefore a truly representative economy, is to be achieved.



## 6 GLOSSARY OF TERMS

**'BEE'** means black economic empowerment.

**'BEE Act'** means the Broad-Based Black Economic Empowerment Act No. 53 of 2003.

**'BEE Commission'** means the commission established in May 1998, under the auspices of the Black Business Council, entrusted with the objective of researching and reporting on BEE in South Africa.

**'Black-empowered enterprise'** means an enterprise that is at least 25.1% owned by black persons and where there is substantial management control.

**'Black-owned enterprise'** means an enterprise that is 50.1% owned by black persons and where there is substantial management control.

**'Black people'** means Africans, coloureds and Indians.

**'Black woman-owned enterprise'** means an enterprise with at least 25.1% representation of black women within the black equity portion of management.

**'Broad-based BEE'** means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people.

**'Code'** means government's Code of Good Practice published on 20 August 2003 explaining government's approach in the measurement of BEE compliance.

**'DTI'** means the Department of Trade and Industry.

**'Financial charter'** means the Financial Sector Charter published on 17 October 2003.

**'Government'** means the Government of the Republic of South Africa.

**'Organ of state'** means:

- (a) a national or provincial department as defined in the Public Finance Management Act 1999 (Act No. 1 of 1999);
- (b) a municipality as contemplated in the Constitution of the Republic of South Africa Act 1996 (Act No. 108 of 1996);
- (c) Parliament;
- (d) a provincial legislature;
- (e) a constitutional institution listed in schedule 1 of the Public Finance Management Act 1999 (Act No. 1 of 1999).

**'Mining charter'** means the broad-based socio-economic empowerment charter for the South African mining industry.

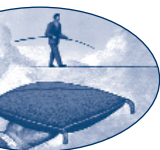
**'Previously-disadvantaged Individuals'** generally refers to persons who were subject to unfair discrimination prior to the adoption of the Constitution in 1998.

**'Petroleum charter'** means the charter for the South African petroleum and liquid-fuels industry which aims to empower historically disadvantaged South Africans in the petroleum and liquid fuels industry.

**'Public entity'** means a public entity listed in schedules 2 and 3 of the Public Finance Management Act 1999 (Act No. 1 of 1999) as amended from time to time.

**'Strategy'** means the Government's strategy for broad-based BEE in SA.


**'Transformation charter'** means the policy instruments, as developed by various industry sectors, which serve as a framework for progressing the empowerment of black persons in the South African economy.



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## DOCUMENTS

- Black Economic Empowerment Commission Report 2001
- Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) (obtainable at [www.dti.gov.za](http://www.dti.gov.za))
- Financial Sector Charter (obtainable at [www.banking.org.za](http://www.banking.org.za))
- Government's Code of Good Practice published on 20 August 2003
- Government's Strategy for Broad-Based Black Economic Empowerment (obtainable at [www.dti.gov.za](http://www.dti.gov.za))
- Maritime Transformation Charter (obtainable at [www.transport.gov.za/library/docs/maritime](http://www.transport.gov.za/library/docs/maritime))
- Mining Charter (obtainable at [www.dme.gov.za](http://www.dme.gov.za))
- Petroleum and Liquid-Fuels Charter (obtainable at [www.dme.gov.za](http://www.dme.gov.za))
- Skills Development Levies Act 1999 (Act No. 9 of 1999)
- Skills Development Act 1998 (Act No. 97 of 1998)
- Employment Equity Act 1998 (Act No. 55 of 1998)



The Way to BEE - a guide to broad-based black economic empowerment, has been written by directors of Cliffe Dekker Inc.

This booklet is published for general information and is not intended as legal advice.

As every situation depends on its own facts and circumstances, professional advice should be sought.

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