

BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SECTORAL TRANSFORMATION CHARTERS: A SYNOPSIS

Executive Summary

This brief report has been put together in preparation for the first meeting of the Charter Facilitation Task Group, one of the two Task Groups of BUSA's Standing Committee on Transformation Policy (TRANSPOL). The thematic focus of the report is the interplay between Broad-Based Black Economic Empowerment and Transformation Charters. In particular, the report outlines, in very broad terms, the fundamental principles that underpin the BEE policy framework and the central features of the existing Charters. The report is intended as a prologue to iterative processes of the Task Group that will, hopefully, culminate in the formulation of generic principles to guide and inform the development of transformation charters in the various sectors of the economy.

The report is divided into four parts. The first part presents an overview of the key policies driving the strategic implementation of the BEE transformation agenda. This is followed by a part that examines the objectives of empowerment charters and how the government (DTI) intends to disseminate information about charters to stakeholders and other interested parties. The third part deals with the core elements of the BEE balanced scorecard (ownership, management and control, employment equity, skills development, preferential procurement, enterprise development and corporate social investment) and describes the approach the DTI intends to use to measure compliance with the core elements of the scorecard. The last part looks at the objectives of the various charters and how these link with the national policy objective of increasing the meaningful participation of blacks in the mainstream economy.

1. Background and Context

- 1.1 Over the past few years, a host of policy and legislative instruments have been introduced to give effect to the RDP's objective to deracialise business ownership and control through focused programmes of Black Economic Empowerment.
- 1.2 To achieve broader and meaningful participation of black people in the mainstream economy, the Black Economic Empowerment Commission (2201) argues for the adoption of a coherent national BEE strategy, which must be implemented in a coordinated and integrated manner.
- 1.3 Further, for BEE to be meaningful, it must be conceptualized as an integral part of the broader empowerment processes, which include, inter alia, poverty alleviation, job creation, rural development, urban renewal, land ownership, specific measures to empower black women, meaningful ownership, skills and management development, education and access to finance for households and for the purpose of conducting business.
- 1.4 In particular, the Commission recommends, inter alia, that within ten years a third of productive land must be in black hands; blacks should hold a quarter of shares on the JSE Securities Exchange; at least half of state procurement should go to black companies; professions should be at least 40% black; restructured state owned enterprises should be at least 30% black owned.

- 1.5 Following the publication of the Commission's report, the government has released the following three important documents regarding the BEE processes: (i) South Africa's Economic Transformation: A strategy for Broad Based Black Economic Empowerment (2002) (ii) the Broad Based Black Economic Empowerment Act No.53 of 2003 and (iii) the draft Code of Good Practice. (2003)
- 1.6 One can identify four distinct principles that constitute the foundation of the Strategy document: (i) BEE should drive economic growth and development; (ii) BEE entities should promote the highest standard of corporate governance; (iii) BEE activities should include all the sectors (private, public and non-governmental) and (iv) BEE should accelerate the incorporation of historically disadvantaged into the mainstream economy. The document also spells out BEE targets and timeframes, and also describes the meaning of various forms of black ownership and control.
- 1.7 The Code explains the approach to be adopted by the government in the measurement of BEE compliance and explicitly defines ownership as equity ownership. The Strategy and Code documents are not legally binding documents, but clearly articulate the government's current policy on BEE.
- 1.8 The principal objective of the BEE Act is to redress the apartheid-induced economic inequalities and disparities by (i) promoting economic transformation in order to enable meaningful participation of black people in the mainstream economy and (ii) achieving a substantial change in the racial make-up and composition of ownership and management structures of existing and new enterprises. The Act also makes provision for the establishment of the Black Economic Empowerment Advisory Council, which advises the President on the implementation of BEE.

2. Transformation Charters

- 2.1 At the risk of oversimplification, charters may be described as negotiated agreements amongst stakeholders designed to set minimum standards for the transformation of the economy into a dynamic and globally competitive economy.
- 2.2 In particular, section 12 of the BEE Act empowers the Minister of Trade and Industry to issue, by notice in the Gazette, codes of good practice on BEE that may include guidelines for stakeholders to draw up transformation charters in their sectors.
- 2.3 Charters may be published in the Gazette for information if the Minister is satisfied that the charter has been developed by major stakeholders in the sector and that the said charter promotes the objectives of the BEE legislation.

3. BEE Balanced Scorecard

- 3.1 While the primary purpose of the BEE scorecard is to measure progress towards BEE of businesses that are subject to a charter or a code, its objective is to ensure that there is a common approach for determining the BEE status of businesses. In addition, the scorecard provides appropriate flexibility to respond to different set of economic and enterprise conditions.

- 3.2 Three core elements of BEE are measured by the scorecard: (i) direct empowerment (which entails **ownership** and **control/ management**); (ii) human resources development (which involves **employment equity** and **skills development**) and (iii) indirect empowerment (which deals with **preferential or affirmative procurement** and **enterprise development**). Sector specific activities or residual, which invariably relate to **corporate social responsibility**, is another element of the scorecard.
- 3.3 The core BEE elements measured by the scorecard are designed to ensure that the benefits of BEE are extended to a significantly broader base of enterprises and individuals.
- 3.4 The scorecard operates on the basis of a weighted average and the overall weighted average score that a business obtains determines the BEE rating of that business undertaking, which may range from limited contributor to BEE (i.e. 0-40 score) through satisfactory contributor to BEE (i.e. ; 40-65 score) to good contributor to BEE (i.e. any score above 65).
- 3.5 To ensure uniformity in the measurement of transformation progress, the Strategy document and Code have defined, and assigned weights to, the various core elements of BEE as follows:

Ownership

Ownership is defined by the twin elements of economic interest and control, though economic interest is the pre-eminent element. The meaning of control includes the right or the ability of a BEE shareholder to direct or otherwise control the majority of the votes attached to the shares in a company, the right or the 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 business.

Indications are that employee share schemes may qualify as ownership if the schemes' beneficiaries control the shares held by the scheme and earn the economic interest associated with that shareholding. Ownership carries a weight of **20%** on the BEE scorecard, though the BEE Commission has set a target of 25.1% over a ten-year period.

Management

This component of the scorecard is defined by the percentage of black persons occupying executive management positions. This is designed to measure the involvement of black persons in day-to-day management and high-level decision making. Management carries a weight of **10%** on the BEE scorecard, though the BEE Commission sets a target of 40% over a ten year period.

Employment Equity

Employment equity carries a weight of **10%** on the BEE scorecard and seeks to ensure that certain targets are met for the representativity of black people in general and black women in particular at senior, middle and junior management level positions.

Skills Development

Skills development carries a weight of **20%** on the BEE scorecard and the contribution to this component of empowerment is measured by the skills development expenditure as a percentage of the total payroll.

Affirmative Procurement

The percentage of total procurement that is sourced from suppliers that are BEE compliant defines this element of empowerment. Affirmative procurement accounts for **20%** in the BEE scorecard, though BEE Commission recommends that 30% of private sector procurement be sourced from black-owned and black-empowered enterprises

Enterprise Development

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 substantial skills transfer. A weight of **10%** is assigned on this component in the BEE scorecard.

Residual Criterion

This is designed to offer flexibility to businesses to respond to factors most relevant to their specific circumstances. Factors worth considering include investment in housing, transport and healthcare of employees, beneficiation, labour-intensive production and construction methods, and investment and support to enterprises operating in rural communities and the geographic areas identified in government's integrated sustainable rural development strategy and urban renewal strategy. This component of empowerment accounts for **10%** on the BEE scorecard.

4. Content and Form of Charters

- 4.1 Since the introduction of the first charter in 2000, the form and content of charters have changed over time, as the attached APPENDIX A indicates.

Liquid Fuels

Introduced in 2000, the charter sets out the criteria for BEE covering ownership, control, sustainability and skills transfer. The charter also commits major multinationals to promoting empowerment in the industry. In consequence, a number of BEE acquisitions and mergers have occurred in the industry over the past few years.

Mining

The primary aim of this charter is to facilitate access to resources by all South Africans, expand opportunities to black South Africans, improve the existing skills base, promote employment and improve the socio-economic welfare of mining communities. Mining companies have to compile annual reports regarding empowerment progress and the reports must be audited externally. Since the promulgation of this charter, a number of BEE transactions have taken place in the industry.

Financial Services

In addition to increasing the ownership, control and management of the financial services sector by blacks within the next ten years, the primary aim of this charter is to increase the poor households and communities' access to financial services, direct multibillion investments into infrastructure and support agricultural development, low income housing and SMMEs. Two major BEE transactions have occurred since the finalisation of the charter.

Maritime Transport

This charter seeks to increase awareness among BEE companies in the transport sector about investment opportunities and incentives in order to increase the ownership, control and management of maritime transport sector by blacks. The charter also seeks to ensure that the restructuring of ports, port operations and services proceeds in a manner that result in an increase in black participation at all levels. A few BEE transactions have taken place as a result of the charter.

ICT

This charter seeks to promote meaningful participation of blacks in the growth of the sector, achieve a substantial change in the racial and gender composition of ownership, management and control structures as well as in the skilled and specialist positions of new and existing structures, increase the extent to which black women, communities, disabled persons, workers, co-operatives and the youth participate meaningfully in all areas of the sector and to 'bridge the digital divide' i.e. to facilitate access to ICT by black people, the rural and urban poor as well as other marginalized groupings.

Others Charters in the pipeline

Currently charters are being developed in property, liquor, construction, agriculture, health care, the accounting and legal professions, and tourism. There may well be other sectors that are in talks about developing their own charters.

APPENDIX A

Table 1: Comparative summary of charters

	LIQUID FUELS	MINING	FINANCIAL SERVICES	ICT	MARITIME
Date of Charter	Nov 2000	Dec 2002	Sept 2003	Sept 2004 (draft 4)	2004
Ownership	25%	26%	10%; 25%(7 years)	25%, 51%	25.1 (5 years)
Skills development	No target	1 2 0 0 - 5 0 0 0 learnerships (5 years)	1.5% spend above SD levy pa, 4.5% of staff learnerships (5yrs)	1.3% spend above SD levy p.a.	5% in 3 years (all people)
Management posts	No target	40% (not well defined)	20-50%(5 years)	30-50% (5yrs); 50-80% (10 yrs)	40% (not well defined)
% of procurement to BEE	Increased - No target	Increase - no target	50%-70%	30-60% (5 yrs); 60-80% (10 yrs)	30% (private)
Enterprise development	No target	No target	Measured i.t.o. procurement spend, investment, skills development and infrastructure	No target yet	25.1% direct investments in BEE companies(5 years)
Facilitation of finance for BEE	No	R100bn	R75bn		
Community/ social investment	No	Yes	0.5% pa	Yes	Increase – no target