

REPUBLIC OF SOUTH AFRICA

**BROAD BASED BLACK
ECONOMIC EMPOWERMENT
BILL**

*(As introduced in the National Assembly as a section 75-Bill; explanatory summary of Bill
published in Government Gazette No. of) (The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

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BILL

To establish a legislative framework for the promotion of black economic empowerment; to empower the Minister to issue codes of practice and to publish transformation charters; to establish the Black Economic Empowerment Advisory Council; and to provide for matters connected therewith.

PREAMBLE

WHEREAS under apartheid, race was used to control access to South Africa's productive resources and access to skills;

WHEREAS South Africa's economy still excludes the vast majority of its people from ownership of fixed assets and the possession of advanced skills;

WHEREAS South Africa's economy performs below its potential because of the low level of income earned and generated by the majority of its people;

AND UNLESS further steps are taken to increase the effective participation of the majority of South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans, irrespective of race;

AND IN ORDER TO promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF ACT

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Definitions

1. In this Act, unless the context indicates otherwise—
- “**black people**” is a generic term which means Africans, Coloureds and Indians who are also South African citizens or permanent residents of the Republic;
 - “**Council**” means the Black Economic Empowerment Advisory Council established by section 4; 5
 - “**members**” means members of the Council;
 - “**Minister**” means the Minister of Trade and Industry;
 - “**organ of state**” means an organ of state as defined in section 239 of the Constitution; 10
 - “**prescribe**” means prescribe by regulation; and
 - “**this Act**” includes any code of practice, or regulation made thereunder.

Objectives of Act

2. The objectives of this Act are to—
- (a) promote economic transformation in order to enable meaningful participation of black people in the economy; 15
 - (b) achieve a substantial change in the racial composition of ownership and management structures of existing and new enterprises;
 - (c) increase the extent to which communities, workers, collective enterprises and cooperatives own and manage existing and new enterprises; 20
 - (d) promote investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity; and
 - (e) develop rural communities and empower local communities by enabling access to economic activities, land, infrastructure, ownership and skills. 25

Interpretation of Act

3. Any person applying this Act must interpret its provisions—
- (a) to give effect to its objectives; and
 - (b) in conformance with the Constitution.

Establishment of Black Economic Empowerment Advisory Council 30

4. (1) The Black Economic Empowerment Advisory Council is hereby established.
 (2) The Council must advise the President on black economic empowerment.

Constitution of and appointment of members of Council

5. (1) The Council consists of the President and such other Members as may be determined by the Council’s constitution. 35
 (2) The President is the chairperson of the Council.
 (3) The Council may by resolution provide further for its constitution, the terms of office of its members, quorums, procedures and any other matter affecting the carrying out of its functions.

Reimbursement of expenses 40

6. The Minister may, with the concurrence of the Minister of Finance, determine the reimbursement of expenses incurred by members of the Council.

Codes of practice

7. (1) The Minister may by notice in the *Gazette* issue codes of practice on black economic empowerment that may include— 45
- (a) the interpretation and definition of black economic empowerment;
 - (b) qualification criteria for preferential purposes for procurement and other economic activities;
 - (c) indicators to measure black economic empowerment;

- (d) the weighting to be attached to black economic empowerment indicators referred to paragraph (c);
- (e) guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector;
- (f) a system for reporting on the implementation of black economic empowerment by organs of state, employers and other enterprises; and 5
- (g) any other matter necessary to achieve the objectives of this Act.
- (2) A code of practice issued in terms of subsection (1) may specify—
 - (a) targets consistent with the objectives of this Act; and
 - (b) the period within which those targets must be achieved. 10
- (3) The Minister must, before issuing, replacing or amending a code of practice in terms of subsection (1)—
 - (a) publish a draft code of practice in the *Gazette* for public comment; and
 - (b) grant interested persons a period of at least 30 days to comment on the draft code of practice or amendment, as the case may be. 15

Status of codes of practice

- 8.** Every organ of state must take into account any relevant code of practice issued in terms of this Act in—
- (a) determining qualification criteria for the issuing of licences, or other authorisations in terms of any law; and 20
 - (b) developing and implementing a preferential procurement policy.

Transformation charters

- 9.** The Minister may publish in the *Gazette* for general information and promote a transformation charter for a particular sector of the economy that—
- (a) has been developed by major stakeholders in that sector; and 25
 - (b) advances the objectives of this Act.

Support services and funding of Council

- 10.** (1) The Department of Trade and Industry must provide the Council with the necessary support services and funding out of money appropriated by Parliament for that purpose. 30
- (2) The funds referred to in subsection (1), must be utilised for—
- (a) the establishment and operating costs of the Council; and
 - (b) the development and implementation of a communication plan.

Regulations

- 11.** The Minister may make regulations with regard to any matter that it is necessary to prescribe in order to ensure the proper implementation of this Act. 35

Short title and commencement

- 12.** This Act is called the Broad Based Black Economic Empowerment Act, 2003, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*. 40

MEMORANDUM ON THE OBJECTS OF THE BROAD BASED BLACK ECONOMIC EMPOWERMENT BILL

1. BACKGROUND

South Africa's economy cannot operate to its full potential because the majority of South Africans earn very low incomes and are still excluded from ownership of fixed assets and the possession of advanced skills. This is to the detriment of all South Africans and it is therefore necessary that steps are taken to increase the effective participation in the economy by the majority of South Africans.

The Broad Based Black Economic Empowerment Bill (herein after referred to as "the Bill") is one of a number of steps being taken by government to address the problem.

A Black Economic Empowerment Advisory Council (herein after referred to as "the Council") is proposed as an advisory body. Support services and funding for the council will be provided by the Department of Trade and Industry (herein after referred to as "DTI").

2. OBJECTS OF BILL

The term 'broad based' is used in the Bill's title in that the Bill seeks to—

- * broaden the entrepreneurial base;
- * extend black participation in the economy as measured in terms of ownership, management and skills development;
- * develop local communities and employees; and
- * reduce income inequalities and poverty.

The Bill's objectives are to—

- * promote economic transformation;
- * change the racial composition of ownership and management structures of existing and new enterprises;
- * increase ownership and management by communities, workers and co-operatives;
- * promote investment in black owned and managed enterprises;
- * empower rural and local communities.

3. FINANCIAL IMPLICATIONS

It is envisaged that council members will not be remunerated except for disbursement costs and that the establishment and operating costs of the council will be accommodated in the DTI budget.

4. ORGANISATIONS CONSULTED

The following organisations were consulted:

Black Business Council
Black Business Working Group
Big Business Working Group
NEDLAC

5. CONSTITUTIONAL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

It is recommended that the GCIS (Government Communication and Information System) and DTI develop a comprehensive communication plan around Black Economic Empowerment generally and this Bill in particular.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the opinion that his Bill must be dealt with in accordance with the procedure established by section

75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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