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eINFO

Broad-Based Black Economic Empowerment (B-BBEE)

Broad-based Black Economic Empowerment Act 2003

Codes of Good Practice 2007

by

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Table of Content

1. Introduction 3

2. Historical background of B-BBEE 3

3. Definition and Goals of B-BBEE 5

4 Regulations to achieve B-BBEE goals 6

4.1 Legislation 6

4.2 Transformation Charters 6

4.3 General Scorecard 7

4.3.1 Direct Empowerment 8

4.3.1.1 Ownership and Management…. 8

4.3.1.2 Black Employee Trusts 8

4.3.2 Human Resources Development and Employment Equity 9

4.3.3 Indirect Empowerment 9

4.3.3.1 Preferential Procurement 10

4.3.3.2 Enterprise Development 11

4.3.4 Soco-economic Development 11

4.4 Qualifying Small Enterprise *Scorecard* (QSE) 11

4.5 International Companies 12

4.6 Pending Amendments 2013 13

4.7 Scorecard Overview and Calculation 13

4.7.1 Categories Overview 13

4.7.2 Calculating the B-BBEE Status 15

4.7.2.1 SANAS accredited Verification Agencies 15

4.7.2.2 Calculating the B-BBEE Rating 15

4.8 Financing of B-BBEE 15

5. Conclusion by INTO SA 16

6. CONTACTS FOR INTO SA 17

1. Introduction

The legal equality of all South Africans was achieved with the end of Apartheid in 1994, however the elimination of the aftermath of the former social and economic discrimination of Blacks, Coloureds as well as Indians and Chinese was not realised.

In order to promote and accelerate the economic equality of the black population, the current government has devoted itself to the politics of „Broad-Based Black Economic Empowerment", in short B-BBEE. It centres around a long-term economic policy, which already has had and will continue to have a broad-based effect on the transformation on the South African economy.

It is the declared goal to actively integrate black entrepreneurs into the private economy via the transfer of company ownership, management and control functions. In order to implement these goals - and to make them measureable, in particular - the legislator has introduced Black Empowerment Scorecards.

The restructuring of South Africa's economy based on the scorecards related to the BEE Elements has already begun and will gain even more importance in the coming years. There will be no area in the economy, which will not be affected by B-BBEE. Therefore, every entrepreneur who already does business or who aims to do so in the future should familiarise himself with the requirements and prerequisites of B-BBEE.

2. Historical background of B-BBEE

One of the integral parts of apartheid was the planned and deliberate exclusion of non-whites from the economy. Moreover, blacks were selectively hampered to achieve self-employment and to establish own enterprises. A large majority of blacks had to settle in so-called Homelands[1]. In the beginning of the 90's, the private economy carried out several transactions in which parts of companies were sold to individual or groups of blacks. The long-lasting success in most of those transactions failed to materialise.

In particular, broad segments of the population were not supported but instead, a small elite of blacks was created. Therefore, the government demanded a coordinated strategy in regards to BEE in the mid-90's.

[1] *Settlement Act*, Ciskei, Transkei and Bhoputatswana.

In 1998, the BEE-commission was established to meet these stated demands. It was its task to develop a commonly accepted definition of BEE as well as proposals of methods for restructuring. Even though the government had already previously enacted multiple laws to reduce the unequal treatment in the economy[2], a coordinated and holistic approach with regards to BEE was lacking.

In October 2000, the BEE-commission presented its final report. This report was the basis for the government's strategy paper, which was published three years later[2]. The legal foundation regarding BEE was created in January 2004 as the Broad-Based Black Empowerment Act[3] came into effect. This law replaced, reformed and coordinated the previously enacted laws and support programs. The exact description of the law's regulations and the relating actual provisions for the implementation in practice took place via conduct guidelines in particular.[4]

Of highest importance for companies are the conduct directives and their legal consequences, by name the transformation charters, sector guidelines and the two scorecards. The publication of the first version of different conduct guidelines resulted in massive criticism. The legislator paid heed to this criticism and incorporated many suggestions in the new version. The new version of the Codes of Good Practice was published in 2007, three years after the enactment of the initial BEE Act. The following table serves as a visualisation of the history of the process of development as well as the current status:

From 1994	Black investors take stakes in existing companies. In many, success fails to materialize. *Reason:* Insufficient and unsuitable financial structures. Demands for formal structures become louder. Drafts are conducted in order to develop a broadly based strategy and to enforce measures for implementation.
1998	BEE-commission is established. *Task:* Development of a commonly accepted definition of BEE and proposals for measures for restructuring
2000	In October, the BEE-commission publishes its final report.
2003	In May, the government drafts a strategy paper on the final report of the BEE-commission. *See:* A Strategy for Broad-Based-Black Economic Empowerment

[2] "South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment"
[3] Law Nr. 53 from 2003
[4] Codes of Good Practice

2004	In January, President Thabo Mbeki signs the BEE law into power. During the course of this year, the BEE Council was established from representatives of the government and various interest groups. *Function:* Control and consultation for the implementation and execution of BEE
2007	In February the amended Codes of Good Practice, in particular for Qualifiying Small Enterprises (QSE) are published
2012	Verification agencies are subjected to SANAS[5] and IRBA[6] registration
2013	On 11 October the new Codes of Good Practice were gazetted with a transition period of one year

3. Definition and Goals of B-BBEE (BEE)

The government defines BEE as an integrated and interrelated socio-economically process, which contributes directly to the economic restructuring South Africa's and to a significant rise of the black proportion who will lead, control or own companies within the South African economy. Furthermore, this process shall lead to a significant decrease of income differentials.[7] Surprisingly, neither the current nor the upcoming amended the Codes of Good Practice do not include a definition of BEE.

It should be noted, that the term "Blacks" according to the prevailing legal framework includes all blacks, coloureds and Indians as well as certain Chinese if they were disadvantaged prior to 1990, therefore all non-white segments of the population.[8] This has changed with the recent amendments of the *Codes of Good Practice* in 2013 in favour of a more exact definition differentiating between gender and specific ethnic groups that used to be treated the same under the old term definition. The BEE strategy still aims to achieve the following goals by 2014:

- A significant rise in the proportion of blacks as owners and managers of existing and new companies
- A significant rise in the number of blacks in executive positions
- A rise of blacks' capital share in companies
- The increase in blacks' share in factors of production, e.g. land
- The expansion of economic activities in underdeveloped areas
- Expedited economic growth available equally to all segments of the population
- The increase in the level of income for blacks resulting in the reduction in income differentials

[5] *South African National Accreditation System*
[6] *Independent Regulatory Board for Auditors*
[7] „A Strategy for Broad Based Black Economic Empowerment", S.12, 3.2.2; Codes of Good Practice 2004 Statement 000, S.11
[8] Broad-Based Black Economic Empowerment Act, 2003, section 1

4 Regulations to achieve BEE goals

The government utilises comprehensive regulatory instruments to implement to implement its stated goals. Besides the law, those are the codes of conduct and their legal consequences, the transformation charters, sector charters and scorecards. Particularly mentioned should be the concept of the preferential procurement.[9]

4.1 Legislation

The *Broad-Based Black Economic Empowerment Act*[10] was ratified in January 2004 and came into force the same year. It is one of the shortest, however most significant laws which has come into effect in South Africa in recent years. It was developed purely as a framework law, which contains barely any precise legal regulations. Those can be found in the respective regulations as set out in the *Codes of Good Practice*. These latest version of those codes dates October 2013 and can be downloaded from the Information Library on www.into-sa.com.

The law's goals are found in s2 of the this Act. These coincide with the goals mentioned in chapter 3 above. Precise regulations empower the Minister of Trade and Industry to enact the mentioned *Codes of Good Practice* and to establish a *BEE-Advisory-Council*, which ought to monitor the progress achieved through the implementation of BEE and to advise the government on the continuing implementation of BEE and any occurring questions.[11]

It must be noted, that the BEE law does not contain any mandatory measures for the private sector. Those who do not want to use or implement BEE will not experience any immediate legal consequences nor are they fined. However, negative economic consequences will certainly become noticeable via the scorecard category of preferential procurement, which has since October 2013 become part of the newly amalgamated BEE element "*Enterprise and Supplier Development*".

4.2 Sector Charters

In order to enable the efficient implementation of the B-BBEE strategy on all levels of society and in all sectors of the economy, the private economy needs to be integrated in this process. The government pushed hard for the conclusion of agreements and contracts with and within the private economy, the so-called "charters" in order to enable it. These transformation

[9] *Preferential Procurement*
[10] Act No. 53 of 2003
[11] s5 Broad-Based Black Economic Empowerment Act, 2003

charters are specific social contracts in which an entire sector of the economy undertakes to utilise BEE measures more specifically than in the general *Codes of Good Practice*.

According to the government's guidelines, the charters need to contain the specific requirements of BEE for the respective economic sector, the BEE objectives taking into account a timetable for their attainment. Furthermore, the specific instruments for the implementation of the objectives, an estimate of the financial means required for the implementation and the establishment of institutions for the coordination, monitoring and evaluation of the BEE implementation measures.

The establishment of an own charter and its resulting own scorecard is highly beneficial for the respective economic sector since the respective requirements and sector-specific prerequisites can be taken into account. The various interest groups, e.g. unions, representatives of the sector's largest companies and the government need to agree on the goals and methods which are required for the sector-specific implementation of the B-BBEE goals in order to establish a charter. The charters are published in the official register, if the prerequisites of the Codes of Good Practice are fulfilled.[12] Currently individual sector charters have been gazetted in terms of section 9 (1) on the following dates:

✓ Agri-BEE Charter	28 December 2012
✓ Financial Sector Charter	26 November 2012
✓ Information % Communication Technology Charter	06 June 2012
✓ Property Sector Charter	01 June 2012
✓ Chartered Accountancy Sector Code	10 May 2011
✓ Integrated Transport Sector Codes	21 August 2009
✓ Forest Sector Code	12 June 2009
✓ Construction Sector Code	05 June 2009
✓ Tourism Sector Code	22 June 2009

4.3 General Scorecard

The government decided on the introduction of scorecards in order to measure the legally standardised BEE goals for a specific company and thereby make them measureable with other companies. Every single company is evaluated for its progress in the implementation of BEE according to a standardised point system.

[12] s5 Codes of Good Practice: Statement 010

The total sum of points achieved determines the B-BBEE status of a company. One hundred points are the maximum of points achievable on the scorecard.[13]

It must emphasised, that two different scorecards exist. The legislature has introduced the so-called scorecard for Qualifying Small Enterprises[14] in order to enable small to medium sized companies to obtain a good BEE recognition level.[15] The differences to the general scorecard are significant in practice. Therefore, paragraph 4.5 will elaborate on that QSE scorecard.

The general scorecard currently features the following BEE elements, which have be reduced to only five elements under the Codes of Good Practice 2013:

4.3.1 Direct Empowerment

4.3.1.1 Ownership and Management

The concept of *Direct Empowerment* in terms of BEE comprises the ownership of company shares and voting rights as well as the right of participation in management and therefore in corporate governance. A maximum of 30 points can be achieved in this area. The participation of blacks in the management of a business counts as 10 points, the ownership of company shares yields a maximum of 20 points. It needs be stressed, that in case of non-fulfilment or only partial fulfilment of stated goals, fractional points will be only be allocated under certain sector charters like the Construction Sector Code.

Purely passive capital share ownership is not considered sufficient.[16] The scorecard defines as its goal that at least 25.1% of the voting rights and 25.1% of the economic interests of a business should be owned by blacks. However, it has to be noted that a maximum of 20 points can be scored in this particular area.

4.3.1.2 Black Employee Trusts

In this context and in consideration of *direct empowerment,* the possibility of participation of black employees needs to be mentioned. Instead of having outsiders participate in businesses it is oftentimes preferred to have the own employees participate in the company. However, this does not take place via the transfer of employee shares but via the creation of a Employee Share Ownership Scheme (ESOP) in form of a *BEE Employee Trusts* (BET).

[13] apart from seven possible bonus points
[14] *Qualifying Small Enterprises* (QSE)
[15] s8 Codes of Good Practice: Statement 1000
[16] s5 Codes of Good Practice: Statement 100

Such an ESOP involves the formation of a Trust[17] in which a large number or all employees are the beneficiaries. The Trust receives a loan from the company with which the Trust purchases at least 25.1% of the share capital of the company. This can be from a previous equity holder or as part of a capital increase. Such an ESOP can contribute up to 100% of *direct empowerment* points under the *ownership* element if the structure of the Trust and of the *trust deed*[18] adhere to certain guidelines regarding pay-outs, access to finance and administrative rules.

4.3.2 Skills Development and Employment Equity

Companies ought to comply with the guidelines of the *Employment Equity Act*. This law was enacted in order to employ an amount of blacks in all business areas and in all levels at comparable work and income terms according to the composition of the population within a specified point in time.

The government has introduced multiple programs for advanced training and support for black employees in order to reach this goal and to improve the rather low level of training. A company will be awarded with up to 20 points on the scorecard, if it actively promotes advanced training of its employees within the framework of the official Skills Development Programmes[19] and such programme has been drafted by a Skills Development Facilitator as well as been approved by the respective *Sector Education Training Authority* (SETA).

Employment Equity is rated with a maximum of 15 points.[20] Thereby, for example, 2% disabled ought to be employed in order to collect 2 of the possible 15 points from this area. The majority of the points is awarded by reaching the targets for blacks in various management levels.[21]

Please note, that full points are only awarded if an approved Workplace Skills Plan has been approved by the respective SETA prior to the financial year measured.

4.3.3 Indirect Empowerment

The term *indirect empowerment*[22] consists of two parts, in particular the above-mentioned *preferential procurement* and the *enterprise development*.[23]

[17] Structure similar to a trust
[18] Founding statutes of the Trust
[19] Program for the development of vocational capabilities
[20] Codes of Good Practice: Statement 300
[21] For further elements of the Employment Equity *Scorecard* see s5 Codes of Good Practice: Statement 300
[22] Indirect empowerment
[23] Codes of Good Practice: Statement 600

4.3.3.1 Preferential Procurement

The idea behind the concept of *preferential procurement*, is an effective means to rapidly implement the goals of BEE into practice and to kindle a strong self-interest in BEE. The BEE status of businesses in the private sector ought to be considered in all commercial relationships of the government to the concerned companies. This means that the BEE status will be considered at all times in case of government contracts, the awarding of licenses and concessions, the sale of government facilities and businesses and even in case of procurement of goods. It has become standard practice for tender documents to already state the required BEE status in the tender application. Attention should be paid to the fact that for many tenders not only is the status the determining factor but rather additional requirements like a minimum amount of black owners, for example.

The concept of *preferential procurement* is equally important for the relationship between two private businesses. Each business aims to purchase goods and services from companies with a high BEE recognition level since the *preferential procurement* – for now – represents a significant part of the scorecard with 20 points.

A real life example may clarify this: The grocer Woolworths demands from its suppliers that they possess level 5 Rating at a minimum. Otherwise, those suppliers will no longer be used in the future. This is company policy. Furthermore, this also affects Woolworths' own scorecard. The higher the B-BBEE status of the individual suppliers, the more points Woolworths will have in its own evaluation of its *preferential procurement expenses*.[24] For example, if Woolworths makes purchases of ZAR 100 000 at a Level 5 company, 80% of the expenditure to this supplier, namely ZAR 80 000, will enter into the calculation for Woolworths' scorecard under the item *preferential procurement*. But would Woolworth procure its supplies from a Level 3 company, the contribution to its scorecard would be 110%, i.e. ZAR 110 000. This makes clear that Woolworth would prefer a higher rated supplier, provided the quality is the same.

The BEE element *preferential procurement* has under the new Codes 2013 been included in the newly amalgamated element "*Enterprise and Supplier Development*".

[24] The Preferential Procurement Recognition Level (PPRL) determines which percentage at what B-BBEE rating is relevant

4.3.3.2 Enterprise Development

The second part of the indirect empowerment is the development of black businesses. Investments, price advantages, donations and loans for the smallest and small black companies are assessed positively. The investments need to lead to a direct economic advantage for the receiving company. 10 points maximum are awarded. Under the new Codes 2013 this element forms part of the BEE element *Enterprise and Supplier Development* as mentioned above under 4.3.3.1.

4.3.4 Socio-Economic Development

The remaining 5% of the scorecard are referring to all contributions with regard to Socio-Economic Development and are usually subjected to specific criteria in all sectors, which have already a Charter. The calculations here are based on percentages of net profits after tax (NPAT) or percentages of turnover and are already reflecting the ideas that have been implemented under the new *secondary elements* contained in the revised Codes of Good Practice 2013.

Please note that contributions made under this element will only count, if the beneficiaries of such contribution are at least 75% black.

4.4 Qualifying Small Enterprise Scorecard (QSE)

The legislator has also developed a separate scorecard for small and medium-sized companies, which contains the elements of the common scorecard, however in practice it provides for a significant simplification for such companies to achieve a good BEE evaluation[25] as they companies are only measured under four out of the seven BEE elements, and those four can be chosen freely by the measured company.

Which scorecard is applicable depends on the company's revenue. In the Codes of Good Practice 2013 the annual revenue figures upon which the application of the QSE scorecard depends has been raised from initially "between ZAR 5 million and ZAR 35 million" to "between ZAR 10 million and ZAR 50 million".

[25] s8 Codes of Good Practice: Statement 1000

Thereby, the QSE scorecard is not just applicable to the smallest companies but especially many family businesses. The peculiarity of the QSE scorecard is that only four out of the seven BEE elements need to be fulfilled, thereby entering into the evaluation.

The BEE evaluation of the QSE scorecard is shown in the table in chapter 4.7.1.

4.5 Exempt Micro Enterprises (EME)

A special feature exists for companies whose annual revenue was below ZAR 5 million or after the application of the new Codes under ZAR 10 million or who had been incorporated less than 12 months prior to the BEE verification. All *Exempt Micro Enterprises* (EME) – independent from any black shareholding – qualify automatically for a Level 4 BEE recognition in as far as a turnover proof can be provided in a certain format. If the EME has got more than 50% black shareholders it will get a Level 3 certificate under the old Codes 2007, but a Level 2 under the new Codes 2013. Only under the new Codes can an EME with 100% black ownership can get an initial Level 1 recognition. The prerequisites of the QSE scorecard are only applicable to EME, if the company strives for a better evaluation.

4.6 International Companies

International companies or multi-national group of companies that set up subsidiaries in South Africa will encounter problems with complying with direct empowerment as the ownership vests usually in the foreign holding company. The law has recognised this early and provides substitutions for local equity provided it is practice of the company to own 100% of their subsidiaries world-wide.

Those substitutions are allowed in form of *Equity Equivalent Contributions* (EE) or *Offshore Equity*. The EE refers for those programmes[26] that have been authorised by the Department of Trade and Industry. Further information can be found at the Department of Trade and Industry Document "*Guideline: Equity Equivalent for Multinationals*" and INTO SA will be able to provide an overview over the recognised substitutions under the old as well as new Codes of Good Practice.

Guiding principle for these substitutions is that the full amount of points will be recognised by a Verification Agency if the EE contributions equal at least 4% of the turnover of the South African subsidiary or 25% of the total business value. The current rules regarding *Offshore*

[26] The Codes of Good Practice are mentioning three specific programs: Firstly the support of the *government programmes* ASGISA, JIPSA und NSDS; secondly the *enterprise development programme* and lastly *CSI contributions*

Equity allow the recognition of black South Africans living abroad and holding equity in the holding company.

4.6 Amendments 2013

Prior to 2013 the current Codes of Good Practice have been reviewed and a variety of amendments has been proposed by the Minister for Trade and Industry, Rob Davies, to the public in October 2012. The final version of the Codes of Good Practice have been gazetted on 11 October 2013 and will replace the old codes as from 11 October 2014. In the interims both Codes are valid and each company can choose under which codes they would like to be measured.

The most important change is the reduction of the current seven categories to five categories that are divided in *Primary Element* and *Secondary Elements*. The main focus will lay on the *Primary Elements*, which will consist out of *Ownership*[27], *Skills Development*[28] and the newly amalgamated category of *Enterprise and Supplier Development*[29], a hybrid out of the previous categories *Preferential Procurement* and *Enterprise Development*, and together they will then account for 76% of the total points achievable. It needs to be pointed out that – depending whether QSE or Generic – certain sub-minimum targets have to be reached in the primary elements, otherwise the company gets penalised through a downgrade by one level.

The *Secondary Elements* will consist of only two categories, namely *Management Control* (19 Points) and *Socio-Economic Development* (5 Points), thus they account together for only 24% of the total points achievable. Another major amendment can be found in the amended thresholds for each B-BBEE level. It will require significantly more points in order to move up through the ranks, please find a comparison between the old and the new thresholds in chapter 4.7.2.2.

A comprehensive eINFO on the new Codes is available for Download in the Into SA Information Library, www.into-sa.com.

4.7 Scorecard Overview and Calculation

4.7.1 Categories Overview

The following table provides an overview over the composition of both scorecards, based on the revised thresholds after five years of the old codes 2007:

[27] Accounting for a maximum of 20 out of 105 total achievable points per scorecard
[28] Accounting for a maximum of 25 out of 105 total achievable points per scorecard
[29] Accounting for a maximum of 40 out of 105 total achievable points per scorecard

B-BBEE SCORECARDS

Criteria	Category	Description	Goal	Generic Scorecard *(Turnover > R5m)*	Qualifying Small Enterprises Scorecard *(R5m - 35m)*
				Weighting (Points)	
(1) Ownership	Voting Rights	Voting Rights by Blacks	*25% + 1 Vote*	3	6
		Voting Rights by Black Women	*10%*	2	---
	Right to Draw Dividends	Right to Dividends by Blacks	*25%*	4	9
		Right to Dividends by Black Women	*10%*	2	---
		Right to Dividends by pre-defined Groups	*2,5%*	1	---
	Implementation	Ownership-Criteria fulfilled?	*Yes*	1	1
		Shares in Black Ownership (tiered goals ranging from 2,5% to 25% in 10 years)	*25%*	7	9
	(Bonus Points)	Inclusion of first-time black Shareholders	*(10%)*	(2)	(---)
		Shareholding by Black Women	*(10%)*	(---)	(2)
		Black Participation through ‚broad-based black ownership'	*(10%)*	(1)	(1)
	Σ Sum			**20**	**25**
(2) Management	Participation as Directors	Voting Rights of Black Board Members[30]	*50%*	3	---
		Black Directors actively involved in the Day-to-Day Business[27]	*50%*	2	---
	Management	Black Members of Senior Top Management[27]	*40%*	3	---
		Black Members of other Top Management[27]	*40%*	2	---
		Black Members of other Management	*50,1%*	---	25
	(Bonus Points)	Black Directors not actively involved in the Day-to-Day Business	*(40%)*	(1)	(---)
		Presence of Black Women in Top Management	*(25%)*	(---)	(2)
	Σ Sum			**10**	**25**
(3) Employment Equity	Management Participation	Percentage of Black Disabled Employees (of the total number of employees)	*3%*	2	---
		Percentage of Black Employees in Senior Management[27]	*60%*	5	---
		Percentage of Black Employees in Middle Management[27]	*75%*	4	---
		Percentage of Black Employees in Junior Management[27]	*80%*	4	---
		Percentage of Black Employees in Management[27]	*60%*	---	15
		Total Percentage of Black Employees[27]	*70%*	---	10
	Σ Sum			**15**	**25**
(4) Skills Development	Learning Programs	Percentage of Expenditures for Black Employees (of total Expenditures for Skills Development)	*3%*	6	---
		Percentage of Expenditures for Black Disabled Employees (of total Expenditures for Skills Development)	*0,3%*	3	---
		Expenditures for Black Employees over and above Skills Development Levies (SDL)	*2%*	---	25
	Job Training	Number of Black Participants in Job Training Courses	*5%*	6	---
	Σ Sum			**15**	**25**
(5) Preferential Procurement	(for the first five years, higher targets thereafter)	Percentage Value of acquired Supplies and Services from B-BBEE rated Supplier	*70%* *50%*	12	25
		Percentage Value of acquired Supplies and Services from B-BBEE rated QSE and Micro Enterprises as Supplier	*15%*	3	---
		Percentage Value of acquired Supplies and Services from B-BBEE rated Supplier, that is a) more than 50% black owned, or b) more than 30% black female owned	*12%* *8%*	3 2	---
	Σ Sum			**20**	**25**
(6) Enterprise Development	Contributions	Qualifying Contributions in relation to the Net Profit after Taxes (NPAT)	*(a) 3.0% of NPAT* *(b) 2.0% of NPAT*	15 (a)	25 (b)
	Σ Sum			**15**	**25**

(7) Social Economic Development	Contributions	Percentage of value of annual average of all contributions towards Social Economic Development (in relation to Net Profit after Taxes)	*1% of NPAT*	5	25
	Σ Sum			**5**	**25**

4.7.2 Calculating the B-BBEE Status

4.7.2.1 SANAS or IRBA accredited Verification Agencies

There are no governmental institutions, which perform the calculation of B-BBEE status. Instead, various private companies, so-called *Verification Agencies*, have specialised to calculate and to certify B-BBEE status. The certificate is valid for 12 months and serves as proof of the company's B-BBEE status. Meanwhile, a legally binding obligation for registering exists for *Verification Agencies*, which must follow the guidelines of the *South African National Accreditation Systems* (SANAS) or are registered with the *Independent Regulatory Board for Auditors* (IRBA).

4.7.2.2 Calculating the B-BBEE Rating

The B-BBEE status of a company is calculated by adding the individual percentage or points, respectively.

However the thresholds under the newly revised Codes of Good Practice 2013 have shifted significantly. The companies are now (old) and then (new) categorised according to the total points achieved as shown.

B-BBEE Status	Points (old)	Points (new)
Level 1	100 - 105	100 - 105
Level 2	85 - 99	95 - 99
Level 3	75 - 84	90 - 94
Level 4	65 - 74	80 - 89
Level 5	55 - 64	75 - 79
Level 6	45 - 54	70 - 74
Level 7	40 - 44	55 - 69
Level 8	30 - 39	40 - 54
No Rating	< 30	< 40

4.8 Financing of B-BBEE

The financing of B-BBEE transaction plays an important practical role. Extensive financial means need to be provided since the shares to be transferred are not expropriated but sold at prices in line with market conditions. Essentially, the improper financing holds two risks. Firstly, that the sellers of asset shares transfer their sales proceeds out of the country, thereby withdrawing significant amounts of money from the economy.

Secondly, the savings rate in South Africa is low as compared internationally. Therefore, a suitable financing strategy for B-BBEE transactions must neither endanger the national nor international investment efforts. Types of financing include, but are not limited to:

- Public support programs, targeted onto B-BBEE;
- Project finance;
- Venture capital;
- Direct government-granted loans.

Banks, pension funds, life insurance companies and private investors emerge as private financers whereby banks mostly finance solely in case of a transfer of securities and cession of a part of the claims. Insurance companies and pension funds mostly demand shares in the companies. Costs to the company for the financing are higher than those via banks due to higher economic risk.

5. Conclusion by INTO SA

BEE is one of the government's main components in the necessary transformation of South Africa's economy and society und therefore not a short-term appearance. It is an economic necessity. „BEE is the economic equivalent to democracy"[31].

The practical meaning of B-BBEE will further increase in the years to follow. This is especially true for smaller businesses since larger companies, which are listed on the exchange, have already made large steps in regards to the implementation of B-BBEE goals. Every South African and every foreign investor needs to deal with the requirements.

Many whites associate rather negative things with the process of B-BBEE. The predominant feeling of force has not yet vanished in favour of understanding that this process – and thereby the transformation of society – is a economic necessity. The creation of a few ultra rich instead of the enabling of participation of the broad black populace in the process of transformation was a valid argument against many BEE transactions in the past. White employees felt their job security to be endangered, causing their productivity to drop.

Smaller companies train and invest in blacks only to lose them after the completion of the training to large companies, which want to fulfil their quotas, therefore having a big demand for trained blacks. All these are valid points of criticism that have been addressed in the new Codes of Good Practice 2013, for example by rewarding bonus points for black trainees that are employed after the end of their training.

[31] Margaret Legum, South African New Economic Foundation (SANE), BEE Conference 17.02.2005, Cape Town

However, this is to be confronted with the words of Margaret Legum: "…*after 3 centuries of exclusion of the black people, did white people really expect that transformation goes without any problems?*" [32]

BEE should not be experienced as a necessary evil but also as a big opportunity. Firstly, BEE will in the long-term lead to a participation of all segments of the population in the economy and on its wealth. The black population will have more income at its disposal and thereby increase domestic demand, something that is already noticeable today.

Secondly, individual companies can benefit from BEE. Already existing or new companies can gain more revenue with a correspondingly good B-BBEE rating as they can capture government or new orders in light of the preferred procurement, or in future enterprise and supplier development. The legislature has provided useful opportunities for start-ups and small companies to achieve good B-BBEE evaluations with the introduction of the QSE scorecard and its simplified procedure as well as with the automatic Level 1 – 4 rating for EME.

Into SA consults and supports companies with the structuring from a viewpoint of a successful B-BBEE evaluation. Owing to the close co-operation with an IRBA accredited *Verification Agency* and due to a long-standing experience in the evaluation of businesses in view of the points mentioned above of the at all times valid BEE legislation there is virtually no company that does not qualify for an at least "acceptable" BEE rating.

Further services by into SA can be found on our website: **www.into-sa.com**

6. CONTACTS FOR INTO SA

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[32] Margaret Legum, South African New Economic Foundation (SANE), BEE Konferenz 17.02.2005, Cape Town

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