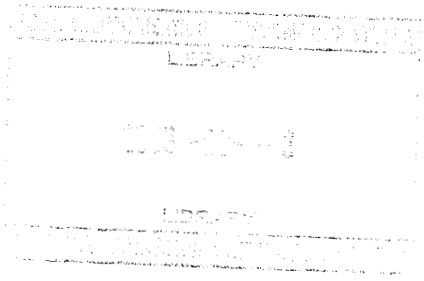
REPUBLIC OF SOUTH AFRICA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT BILL

(As amended by the Portfolio Committee on Trade and Industry (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)



[B 27B—2003]

ISBN 0 621 33879 6

No. of copies printed 1 800

BILL

To establish a legislative framework for the promotion of black economic empowerment; to empower the Minister to issue codes of good 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 productive 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 WHEREAS, 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; and
- establish a national policy on broad-based black economic empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services,

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

ARRANGEMENT OF ACT

Sections

1. Definitions
2. Objectives of Act
3. Interpretation of Act
4. Establishment of Black Economic Empowerment Advisory Council
5. Functions of Council
6. Composition of Council and appointment of members
7. Constitution and rules of Council
8. Remuneration and reimbursement of expenses
9. Codes of good practice
10. Status of codes of good practice
11. Strategy for broad-based black economic empowerment

12. Transformation charters
13. Support services and funding of Council
14. Regulations
15. Short title and commencement

Definitions

1. In this Act, unless the context indicates otherwise—

"black people" is a generic term which means Africans, Coloureds and Indians;

"broad-based black economic empowerment" 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, cooperatives 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;

"Council" means the Black Economic Empowerment Advisory Council established by section 4;

"members" means members of the Council;

"Minister" means the Minister of Trade and Industry;

"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;

(c) Parliament;

(d) a provincial legislature; and

(e) a constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"prescribe" means prescribe by regulation;

"public entity" means a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"strategy" means a strategy for broad-based black economic empowerment issued in terms of section 11; and

"this Act" includes any code of good practice or regulation made under this Act.

Objectives of Act

2. The objectives of this Act are to facilitate broad-based black economic empowerment by—

(a) promoting economic transformation in order to enable meaningful participation of black people in the economy;

(b) achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;

(c) increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training;

(d) increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;

(e) promoting 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;

(f) empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and

(g) promoting access to finance for black economic empowerment.

Interpretation of Act

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

Establishment of Black Economic Empowerment Advisory Council

4. The Black Economic Empowerment Advisory Council is hereby established.

Functions of Council

5. The Council must—
(a) advise government on black economic empowerment;
(b) review progress in achieving black economic empowerment;
(c) advise on draft codes of good practice which the Minister intends publishing for comment in terms of section 9(5);
(d) advise on the development, amendment or replacement of the strategy referred to in section 11;
(e) if requested to do so, advise on draft transformation charters; and
(f) facilitate partnerships between organs of state and the private sector that will advance the objectives of this Act.

Composition of Council and appointment of members

6. (1) The Council consists of—
(a) the President, who is the chairperson of the Council;
(b) the Minister, with the Minister's Director-General as an alternate;
(c) three other Cabinet Ministers, appointed by the President, with their respective Directors-General as alternates;
(d) no fewer than 10 and no more than 15 other members appointed by the President.

(2) When appointing members in terms of subsection (1)*(d)*, the President shall have regard to the need for the Council—
(a) to have appropriate expertise;
(b) to represent different relevant constituencies including trade unions, business, community-based organisations and academics.

(3) In appointing members in terms of subsection (1)*(d)*, the President shall follow an appropriate consultative process.

(4) The President shall appoint a Cabinet Minister who is also a member of the Council to act as chairperson of the Council in the President's absence.

Constitution and rules of Council

7. (1) The Minister must establish a constitution for the Council.

(2) The Minister may amend the constitution of the Council from time to time, after consultation with the Council.

(3) The Council may, by resolution, and after consultation with the Minister, make rules to further regulate the proceedings of the Council.

Remuneration and reimbursement of expenses

8. Council members will not be remunerated for their services, but will be reimbursed for expenses incurred by them in carrying out their duties, as determined by the Minister, with the concurrence of the Minister of Finance.

Codes of good practice

9. (1) In order to promote the purposes of the Act, the Minister may by notice in the *Gazette* issue codes of good practice on black economic empowerment that may include—

(a) the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
(b) qualification criteria for preferential purposes for procurement and other economic activities;
(c) indicators to measure broad-based black economic empowerment;
(d) the weighting to be attached to broad-based black economic empowerment indicators referred to in paragraph (c);
(e) guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector; and
(f) any other matter necessary to achieve the objectives of this Act.

(2) A strategy issued by the Minister in terms of section 11 must be taken into account in preparing any code of good practice.

(3) A code of good 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.

(4) In order to promote the achievement of equality of women, as provided for in section 9(2) of the Constitution, a code of good practice issued in terms of subsection (1) and any targets specified in a code of good practice in terms of subsection (3), may distinguish between black men and black women.

(5) The Minister must, before issuing, replacing or amending a code of good practice in terms of subsection (1)—
(a) publish the draft code of good practice or amendment in the *Gazette* for public comment; and
(b) grant interested persons a period of at least 60 days to comment on the draft code of good practice or amendment, as the case may be.

Status of codes of good practice

10. Every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in—
(a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law;
(b) developing and implementing a preferential procurement policy;
(c) determining qualification criteria for the sale of state-owned enterprises; and
(d) developing criteria for entering into partnerships with the private sector.

Strategy for broad-based black economic empowerment

11. (1) The Minister—
(a) must issue a strategy for broad-based black economic empowerment;
(b) may change or replace a strategy issued in terms of this section.

(2) A strategy in terms of this section must—
(a) provide for an integrated co-ordinated and uniform approach to broad-based black economic empowerment by all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders;
(b) develop a plan for financing broad-based black economic empowerment;
(c) provide a system for organs of state, public entities and other enterprises to prepare broad-based black economic empowerment plans and to report on compliance with those plans; and
(d) be consistent with this Act.

Transformation charters

12. The Minister must publish in the *Gazette* for general information and promote a transformation charter for a particular sector of the economy, if the Minister is satisfied that the charter—
(a) has been developed by major stakeholders in that sector; and
(b) advances the objectives of this Act.

Support services and funding of Council

13. (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.

(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 on broad-based black economic empowerment.

Regulations

14. 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.

Short title and commencement

15. 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*.

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 (hereinafter 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 (hereinafter 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 (hereinafter 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 enterprises owned and managed by black people;
* empower rural and local communities.

3. FINANCIAL IMPLICATIONS FOR STATE

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 this 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.

Printed by Creda Communications

ISBN 0 621 33879 6