Broad-Based Black Economic Empowerment
We believe that Broad Based Black Economic Empowerment (BBBEE) is not simply to redress the wrongs of the past, but a pragmatic growth strategy that aims to realise the country’s full economic potential. Therefore, embracing BBBEE has not only proved to be the right thing to do, but is also important for the economic growth of our country and for the sustainability thereof.

The enactment of the Broad-Based Black Economic Empowerment Act (53 of 2003) has resulted in all businesses being required to be assessed in terms of the BBBEE compliance levels in order to remain competitive. This requirement has triggered a sequence of events that compels companies to ensure that their BBBEE strategies are implemented within the ‘spirit’ envisaged by government for the benefit of South Africans.

As per the Act 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:

- Determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law;
- Developing and implementing a preferential procurement policy;
- Determining qualification criteria for the sale of state-owned enterprises; and
- Developing criteria for entering into partnerships with the private sector – Section 10 of Act 53 of 2003

In addition, government introduced the Broad-Based Black Economic Empowerment Codes of Good Practice (“the Codes”) in February 2007, to guide and to measure the progress of transformation in the economy. This served as a framework with which to measure the level of compliance per entity. Under the following pillars:

- Ownership
- Management Control
- Employment Equity
- Enterprise Development
- Skills Development
- Preferential Procurement
- Socio-Economic Development

Section 9 of the BBBEE Act (2003) allows for the development and gazetting of Sector Codes, which enables an industry to tailor the requirements of Sector Codes to allow for nuances that are unique to their industry. These Sector Codes then require the approval of the DTI, to ensure that the aim and spirit of the DTI Codes are not detracted from.

Statement 003 of the Codes makes provision for the gazetting of Transformational Charters (in terms of Section 12 of BBBEE Act) and sector codes (in terms of Section 9 of the BBBEE Act).
A BBBEE strategy is rooted in a vision to grow the economy and results in redressing the exclusion of “black” people and women from gaining access to South Africa’s wealth, income equality, skills development and equal opportunities in general.

It is of utmost importance that businesses operating within the South African economy take note that BBBEE is not solely focused on the transfer of ownership. Most people are often surprised to hear that it is possible for a ‘traditional’ white-owned company to achieve a higher BEE score than a black-owned company. The Generic Scorecard within the Codes follows a broad-based approach in that it allows businesses the flexibility to score points in areas such as Ownership, Management Control, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Socio-Economic Development.

This talks to government’s intention of addressing transformation in a broad-based manner that would assist with the inclusion of all South Africans who presently do not have access to the mainstream economy.

Due to the cleverly-crafted BBBEE legislation, all entities operating within South Africa are compelled to comply as an imperative to remain competitive within the economy.

This has been further emphasised by the recent gazetting of the PPPFA regulations which came into effect on the 7th of December, 2011. The Department of Finance has utilised these regulations to align the PPPFA legislation to the BBBEE legislation as gazetted by the DTI.

The 80/20 and 90/10 preference point system has been aligned to the scoring under the BBBEE legislation, as depicted below.

<table>
<thead>
<tr>
<th>BBBEE Status of Contributor</th>
<th>BBBEE Procurement Recognition Level</th>
<th>Number of points (90/10 system)</th>
<th>Number of points (80/20 system)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>135%</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>125%</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td>3</td>
<td>110%</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>100%</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>5</td>
<td>80%</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>6</td>
<td>60%</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>50%</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>10%</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0%</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

The 80/20 preference point system is applicable to bids from between R30,000 and R1 million. This figure is INCLUSIVE of taxes like VAT etc. The 90/10 preference point system is applicable to bids in excess of R1 million.
An entity therefore requires an annual verification to be performed. With effect from 1 October 2011, only BBBEE status level certificates issued by the following are valid:

- Verification Agencies accredited by the South African National Accreditation System (SANAS)
- Registered Auditors approved by the Independent Regulatory Board of Auditors (IRBA) in accordance with the approval granted by the Department of Trade and Industry (see Statement 005)
- Exempted Micro Enterprises- Statement 000, Section 4 of the B-BBEE Codes of Good Practice still applies for determining eligibility of a Exempted Micro Enterprise.

BENEFITS OF COMPLYING
- Direct empowerment – Ownership and Management Control – boosts the strategic direction and decisions of your business.
- Employment Equity and Skills Development strengthen the skills base and operational effectiveness of your business, while diversity enriches your organizational culture for effective interaction with your clients.
- Procuring from black enterprises, or empowering them, improves their chance of commercial success and balances the country’s economic growth.
- Compliance increases your organisation’s ability to participate in tender processes for business, with government or private sector businesses, and it decreases the likelihood of losing contracts with customers for the provision of goods and services suppliers with better BEE credentials.
- BBBEE reaffirms your entity’s commitment as a responsible corporate citizen and assists in contributing to the improvement and development of the quality of life of communities, thereby fulfilling social responsibilities and growing the consumer base for more economic growth.
CHALLENGES FACED WHEN ATTEMPTING TO COMPLY

A significant challenge faced by companies that have already established operations in South Africa, is the cost of compliance. For a superior BBBEE contributor status to be achieved, BBBEE compliance should be entrenched throughout the organisation. The challenge with this is that an entity’s reporting systems presently do not incorporate the BBBEE legislative requirements and the alignment of such, often requires a change to the Chart of accounts, amendments to the HR reporting system to incorporate the reporting of costs incurred per training intervention etc.

Examples of further implementation challenges are as follows:

<table>
<thead>
<tr>
<th>Pillar</th>
<th>Challenge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>Identification of a suitable BBBEE partner; Retention of the BBBEE partner within the equity structure.</td>
</tr>
<tr>
<td>Management control</td>
<td>Employment and retention of board members and top management</td>
</tr>
<tr>
<td>Employment equity</td>
<td>Employment and retention of management</td>
</tr>
<tr>
<td>Skills development</td>
<td>Prioritisation of accredited skills training for employees</td>
</tr>
<tr>
<td>Preferential procurement</td>
<td>Receipt of BBBEE certificates from suppliers; Addressing the issue of Localisation.</td>
</tr>
<tr>
<td>Enterprise development And socio-economic development</td>
<td>Alignment of the initiatives against the company’s strategic direction as well as a commitment of funds in this regard</td>
</tr>
</tbody>
</table>
Our services cover the following aspects of BBBEE compliance:

Strategy Development

Current State Assessment – This involves performing an independent assessment of the client’s “As Is” status of their BBBEE and transformation efforts. The assessment will revolve around the business meeting the relevant scorecard targets and compliance with the Broad-Based BBBEE Act.

Future State Co-Development – Using the results of the Current State Assessment and in conjunction with client senior management, develop guidelines and goals for the appropriate level of compliance with the relevant industry charters in line with the overall strategy of the business. The future state co-development is a joint effort between the Ernst & Young team and client senior/top management. This ensures that the business benefits from the in depth knowledge of the business possessed by senior/top management and the wealth of knowledge and experience possessed by Ernst & Young around BBBEE transactions.

Policy Co-Development – With the changing landscape of South African business, the inclusion of transformation and BBBEE in the development of policies within business should not be underestimated. The Ernst & Young team will assist client management and staff to develop/re-develop policies around Affirmative Procurement, Employment Equity, Skills Development and Corporate Social Investment. The Policy Co-Development service may extend to other areas of the business should the client request.

Implementation Strategy (deliverable) – Regardless of how brilliant and appropriate a strategy may be, without implementation the strategy is futile. For successful implementation of any strategy it is important to ensure that the correct resources are allocated to this critical stage of the project. Ernst & Young will assist the client to identify the relevant projects, timescales and milestones for successful role out of its BBBEE Strategy. We are able to assist with appropriate resources to ensure a successful roll out is achieved.

Reporting and Monitoring Framework – For successful strategy development, implementation and roll out of an appropriately designed reporting and monitoring framework is essential. Ernst & Young will assist the client with the development of such a framework. Our services can be extended to include the supply of independent auditing of this framework thereby ensuring that objectivity exists within the process. Reporting formats, lines and timescales are discussed with client management to ensure that communication channels and deliverables are agreed on.

Facilitator role for stakeholders – In complex negotiations, it is important to include in the discussions an objective party that ensures the discussions remain focussed and for the best interests of the business. Our experienced facilitators act as the critical pivotal role in BBBEE transaction negotiations and strategy development/implementation. Facilitators are able to operate at different levels within organisations thereby allowing clients the required flexibility in these negotiations and discussions.

Mergers & Acquisitions – Our services include advising shareholders on the disposal of non-core businesses, acquisitions of strategic investments, management buyouts, capital raising exercises, cross-border transactions, identifying BBBEE partners for corporates, identifying investment opportunities for BBBEE groups & capital raising and structuring of BBBEE transactions.

Supplier Development Models – For transformation efforts to be effective, it is imperative that BBBEE extends to the supply chain. Through a collaborative approach, Ernst & Young assists clients with developing models for its suppliers in their efforts to embrace BBBEE within the supply of products and services.

Verification services – The significance for most of our clients is that we are now in a position to issue a verified BBBEE certificate together with the audited Annual Financial Statements which would be independently verified by our Assurance Division. We offer them a value added service, as we already possess an in-depth knowledge of their structure and operations.

Future clients can be assured of a realistic view of their BBBEE status, backed by a certificate signed off by a leading assurance provider and the first of the big four audit firms. This instils confidence in both the customer and seller of services.

We are also committed to furthering the intention and spirit of the BEE legislation, by ensuring that all certificates issued are in accordance with the letter of the law and provide an entity with an accurate view of their present BBBEE status.
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Our Team

Sugan Palanee
Tel: +27 31 576 8077
Cell: +27 83 777 3574
sugan.palanee@za.ey.com

Krish Lutchmanan
Tel: +27 31 576 8196
Cell: +27 72 628 0707
krish.lutchmanan@za.ey.com

Rubeshne Gobardan
Tel: +27 31 576 8138
Cell: +27 82 857 1411
rubeshne.gobardan@za.ey.com

Daryn Andrew
Tel: +27 31 576 8054
Fax: +27 31 576 8554
Daryn.andrew@za.ey.com

Siyabonga Zondi
Tel: +27 31 576 8125
Fax: +27 31 576 8425
Siyabonga.zondi@za.ey.com

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