

## Some of the most common misunderstandings around BEE



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### ***BEE remains one of the most talked about issues which is least understood.***

Perhaps it's because it evokes a cloud of emotions which obscures the basic concept and sound business principles it calls for, or perhaps it's because for the last five years or so, everybody has been practicing their own version of BEE until the dti finally gazetted the BEE Codes of Good Practice on the 9th of February this year. Most of us do not know that until the Codes were gazetted, there was no clear guideline on exactly what was being measured, by when, and by whom.

For five years BEE has resembled the "Wild West" of America with different sectors; different corporates; different public entities and different verification agencies all coming up with their own scorecards and rules. With the arrival of the gazetted Codes, we finally have a single national framework for BEE, but there is a huge amount of education and awareness needed as to what they call for.

And many people, who faithfully followed draft versions of the Codes or sector charters, now have to "unlearn" what they knew since the final Codes are significantly different.

This article touches on a number of common misperceptions and suggests a "best-practice" approach.

#### **Issue 1: There is no such thing as "BEE Compliance"**

Many people ask, "What do we need to do to become BEE compliant?" There are two problems with this: Firstly, it creates a "compliance mentality" which usually relegates BEE to a tick-box exercise which mostly fails to achieve true transformation, and, as with all compliance, illicit a fair amount of resentment. Secondly, BEE actually has nothing to do with compliance. The word "compliance" implies that if you meet a certain set of regulations you will have "complied" and failure to do so will result in "non-compliance".

But BEE has been designed as a multi-tiered system rewarding better and better BEE performance. One's BEE score out of 100 equates to a BEE Status Level. There are nine different status levels ranging from Level 1 (being the best possible BEE status) down to Level 8 (a score of between 30 and 40 points). Below Level 8 is a tier, which is unfortunately named "non-compliant" for those who score fewer than 30 points. It would have been better named "non-participating".

In this way BEE is very much like Matric. What's a good score in Matric? Is it a pass? A university exemption? An A or ten A's so one can be on the front page of the newspaper?! Well, it depends entirely on the capability and the aspirations of the student. And just as one can't be "Matric compliant", one can't be "BEE compliant". Rather, one attempts to achieve the best possible BEE status level based on one's capabilities and aspirations. Some organisations wish to lead from the front and become synonymous with exceptional BEE; others want to merely keep up with the competition; and others still, are simply trying to get in the game.

#### **Issue 2: "I don't supply government, so I don't need BEE"**

Hopefully this concept is waning for most but it does raise the questions as to "Who does need to participate?"

The net of BEE is widening rapidly and BEE of 2007 is very different from the BEE of 2005. Back then, the major driver for BEE participation was Public Sector Procurement and the "knock-on" effect of the public sector's major suppliers demanding BEE from their suppliers.

But "the times, they are a' changing!" In 2007 and going forward, Public perception is probably going to be the most powerful driver of BEE.

Already, one's BEE status level is public domain information. Which means, it is available for EVERYONE to see on a National Database as soon as one completes one's verification. Not only can your competitors;

clients; suppliers; investors and even staff see your score; the press can have a field day exposing the best and worst performing organisations in a particular sector; sub-sector or region.

Added to this, is the likely emergence later this year of a national BEE label for consumer goods and services, which will be supported by a major nation-wide advertising campaign to consumers, helping them understand that when they purchase or support a BEE labeled product or service, they are supporting a company that cares for the people of this country. Tests have shown that black and white consumers alike are keen to support BEE labeled products even if they cost a little more. For some it was in order to “support a brother”. For others it was just “the right thing to do”. This has far-reaching implications for retailers, franchises and manufacturers of consumer products.

Shareholder activism is increasingly becoming an issue, whether it be the PIC’s demands that Sasol and Barloworld transform more quickly, or whether it be the need for businesses to qualify for the JSE’s SRI. Socially-Conscious investment is the way of the future.

In any case, the growing social role of business – as measured by the growing number of ways to measure a business’s social commitment and performance – is testament to the modern environment where public sentiment is a major player in business performance. Businesses need a “social-license” to operate as much as they might need a regulatory license. The message is clear – ignore BEE at your peril! But perhaps one should invert that and see the huge opportunities that exist when a business pro-actively seeks to make the most of the opportunity for positive growth and branding which BEE presents.

### **Issue 3: “I don’t need to follow the dti’s BEE Codes – I’m under a Sector Charter”**

This is probably one of the most misunderstood areas of BEE. For clarity, the BEE Act and Codes allow Sectors to develop two kinds of frameworks for BEE: -

- 1) The first is a sector charter (or Transformation charter). These are voluntary industry commitments to achieve certain goals. They can be gazetted for information purposes and an industry may self-regulate itself according to these charters. But a sector charter has NO recognition in the BEE Codes framework. That means if one wants to participate in the bigger picture, one will still have to be measured according to the dti Codes to come up with a BEE status level.
- 2) The second option is for a sector to develop a Sector Code. This Code needs to be significantly aligned with the dti Codes. It must involve all the same definitions and frameworks (i.e. the BEE status levels etc.). All seven elements of the dti scorecard must be included and any additional elements must be justified, as they will reduce the weighting of the original seven. As it stands, no sector Codes exist! The dti Codes state clearly that in the absence of a sector Code, the dti Codes are applied.

There is an exception to this. The Mining Charter was developed by the DME (Department of Minerals and Energy) for the purposes of determining the awarding of New Order Mineral Rights under the Mineral Resources Development Act of 2002. As such, the mining charter exists outside of the BEE Framework and is for use by the DME. In the future, the mining sector will either comply with the dti Codes or will develop a Mining Sector Code.

### **Issue 4: “I don’t need a black partner – I’ll get my BEE points elsewhere”**

While the Codes do allow smaller businesses to leave out elements and even larger businesses can choose to ignore an element and get sufficient points elsewhere, it is critical to seriously consider whether one can afford NOT to get black partners. The modern South African business landscape is a far cry from the past and business will always be about “who you know”. Good BEE partners bring internal and external changes; open new, and sustain existing networks; bring new thinking and ideas. Many staff in businesses don’t take BEE goals seriously and don’t believe the organisation is serious about transformation until a BEE deal is done.

Even a good understanding of the Codes will show that the Ownership element is often one of the easiest areas of the scorecard (if approached properly), whereas areas like Employment Equity and Enterprise Development can be very difficult to score well in.

As one can see, these are just a few of the common misunderstandings related to BEE. It behoves one, now that the final Codes exist, to get the full picture from professionals who have a thorough knowledge of the Codes and from financial specialists who can show a “Best-practice” way forward having learnt from the successes and failures of the past few years. The sooner the country gets past its misperceptions, the sooner we can begin to tackle real issues and hold up true best-practice.

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