

Circular 1

28 October 2014

BROAD-BASED BLACK ECONOMIC EMPOWERMENT: THEN AND NOW

This is the first of a series of circulars examining the development of Broad-Based Black Economic Empowerment (**BBBEE**) in South Africa.

Since its inception, the concept of BBBEE and the legislative framework regulating it have evolved significantly. The purpose of this circular is to provide you with an understanding of the history of BBBEE in South Africa.

HISTORY OF BBBEE

Prior to 1994, many South African companies took active steps to redress the inequities created by Apartheid.

For example, during the 1980s, and in response to international sanctions imposed against South Africa, the Sullivan Principles were adopted by US multi-nationals with operations in South Africa. In other cases, foreign companies disinvested from South Africa or refused to purchase goods produced by South African companies.

In 1994, South Africa's first democratic government was elected with a clear mandate to redress the inequalities of the past. This mandate is embodied in the Constitution of the Republic of South Africa. The Constitution enshrines the right of all South Africans to equality and section 9(2) of the Bill of Rights provides for specific measures to be taken to redress historical imbalances.

After 1994, various steps were taken by the State to dismantle Apartheid and progress the goals contemplated in section 9(2) of the Bill of Rights.

The State introduced the Reconstruction and Development Programme (the **RDP**) which set out a comprehensive plan for addressing identified socio-economic consequences of Apartheid. The priorities of the national budget were re-orientated in line with the RDP.

Various key new Acts of Parliament were passed including the Restitution of Land Rights Act, the Extension of Security of Tenure Act, the Employment Equity Act, the Preferential Procurement Policy Framework Act and the Minerals and Petroleum Resources Development Act.

BBBEE was defined formally, for the first time, in the 2001 BEE Commission Report as:

“an integrated and coherent socio-economic process... It is aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa's financial and economic resources to the majority of its citizens. It seeks to ensure broader and meaningful participation in the economy by black people in order to achieve sustainable development and prosperity.” (BEE Commission Report, page 2)

The BBBEE process culminated in the passing of the Broad-Based Black Economic Empowerment Act 53 of 2003 (**BBBEE Act**) into law on 7 January 2004.

CURRENT BBBEE LEGISLATIVE FRAMEWORK

The BBBEE Act provides the legislative framework for BBBEE in South Africa. The objectives of the BBBEE Act include the facilitation of BBBEE by promoting economic transformation in order to enable meaningful participation of black people in the economy.

The Broad-Based Black Economic Empowerment Amendment Act (**BBBEE Amendment Act**) was assented to by the President on 23 January 2014 and came into operation on 24 October 2014. The BBBEE Amendment Act will bring about significant changes to the way in which BBBEE is regulated in South Africa.

These changes are considered in the next circular in this series.

FURTHER ADVICE

Should you require advice or assistance on any BBBEE related matters, please contact Michael Jackson on 031 – 536 8512, email : mjackson@coxyeats.co.za or Keren Watson on 031 - 536 5818, email : kwatson@coxyeats.co.za or Simon Watson on 031 - 536 8530, email : swatson@coxyeats.co.za or Jason Goodison on 031 - 536 8517, email : jgoodison@coxyeats.co.za or Jenna Padoa on 031 - 536 8529, email : jpadoa@coxyeats.co.za.

