



EU Investors' Responses to Broad-Based Black Economic Empowerment
(B-BBEE): A Skills Enhancement Model

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DISCLAIMER

This report was commissioned by the EU-funded "EU-South Africa Partners for Growth" Project. The findings represent the views of the authors and do not necessarily reflect the position of either the EU or the EU Delegation to South Africa.

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EXECUTIVE SUMMARY

South Africa offers many attractive assets for foreign investors, such as its diversified and advanced economy, its abundance of natural resources and its well-developed infrastructure. Unfortunately, investors remain concerned about the lack of clarity concerning policy and structural reforms. The Broad-Based Black Economic Empowerment (B-BBEE) Policy is one such policy, which often elicits a “deer-in-the-headlights” response from even the most seasoned investors. The B-BBEE Policy is the South African Government's key instrument in Reconstruction and Development. Through the policy, economic transformation has progressed from being just a strategic vision to a legislated, measurable actuality. However, as the proponents of B-BBEE sought to increase the regulatory and measurability aspects of B-BBEE, the policy, primarily effected through the B-BBEE Codes of Good Practice, has become rather convoluted and complex, often frustrating businesses rather than encouraging transformative practices.

Fostering EU investments in South Africa and supporting transformation is a central theme of the EU-SA Partners for Growth Programme¹, with B-BBEE being one of the sub-themes. Previous studies commissioned by the EU have identified various B-BBEE related challenges experienced by EU investors; of concern has been the B-BBEE Shareholding Policy. Thus, this report entitled: EU Investors' responses to Broad-Based Black Economic Empowerment (B-BBEE): A Skills Enhancement Model seeks to explore the B-BBEE experiences of European-owned businesses operating in South Africa, and contributing to the following objectives:

- Fostering investments that generate tangible economic transformation in the country
- Achieving a better recognition of the EU's contribution to economic transformation
- Advocating a model for skills enhancement.

This report is the culmination of desktop research on the impact of B-BBEE on foreign investors and a succinct qualitative study on the B-BBEE experiences of EU companies in South Africa. The report aims to convey the responses of the EU companies interviewed in the study, and, drawing on information from existing writings on economic transformation, relevant legislation and policies, as well as lessons from other jurisdictions, to finally contribute constructively to the public debate about economic transformation in the country by proposing a Skills Enhancement Model, which will provide alternative policy options for the readers consideration.

The report approaches the said topic through firstly contextualising the discussion within the B-BBEE landscape by sketching the legislative backdrop, which has led to the current B-BBEE framework. Although seemingly unnecessary to the informed reader, this section of the report holds foundational relevance to the discussion in that it brings awareness to the regulatory nature of B-BBEE.

Section 3 of the report uses a project management approach to deliver the findings of the study entitled: The B-BBEE Experiences of EU Companies in South Africa. The study revolves around discussions on the following key points:

- Response to B-BBEE in general

¹ EU-funded project under the EU Partnership Instrument – https://eeas.europa.eu/topics/partnership-instrument/425/partnership-instrument_en

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- Effects of B-BBEE implementation on the company
- Cost implications of B-BBEE implementation in the company
- Equity Equivalent Programme (EEP) and/or Youth Employment Service (YES) policy implementation
- The company's contribution to economic transformation in South Africa
- Skills improvement models that could be shared in the South African business arena
- B-BBEE changes that could enhance the company's role in positively transforming business in South Africa

Participants in the study represented a sample of EU investors of diverse profiles, ranging from medium-sized enterprises to large multi-nationals, and extending across various industry sectors from manufacturing to services.

The following is a brief synopsis of the findings generated by the interviews:

- Respondents displayed a sound awareness to the imperatives of B-BBEE.
- The effects of B-BBEE implementation on the company are far-reaching, extending beyond the resourcing for a mere administrative exercise. The frustrations experienced in implementing B-BBEE range from "too many ambiguous and often-changing rules" (making reference to the B-BBEE Codes which have undergone multiple changes in recent years), to trying to stay focussed on business imperatives whilst attending to the intricacies of B-BBEE compliance.
- Costs incurred through B-BBEE were highlighted as a key challenge experienced by the businesses. Interviewees provided candid responses to the expenses related to B-BBEE and the resulting concerns about the financial viability of these costs, as well as the concerns around the sustainability of their businesses.
- The Equity Equivalent Programmes (EEP's) and the Youth Employment Service (Y.E.S) Initiative have not taken off in the way the South African Government had intended. The EEP's processes are generally viewed as being complex and once again, ill-affordable to even large businesses. Businesses tend to shy away from the Y.E.S Initiative, as they remain cautious to the staffing and placing commitments which are an imminent component thereof.
- Discussions on the aspect of Skills Development contributions rendered the most robust responses. EU companies have evidently gone beyond simply embracing the Skills Element of the B-BBEE scorecard, offering Skills Development, often in specialised areas of study which, the current education system cannot be expected to deliver on. These skills initiatives add significant value to the respective learning candidates as well as to the respective industries; however, these initiatives are not always acknowledged through the current B-BBEE Policy. **The EU businesses interviewed have called for Skills development to have a more prominent seat in the B-BBEE landscape.**

The paper also seeks lessons from other jurisdictions, namely Namibia and Malaysia. The selection of these jurisdictions emanated from the following 'research needs':

- Finding a comparative approach to the current SA dilemma regarding the Ownership element of B-BBEE (in this case, Namibia offers the closest comparison)
- Finding a comparative approach to the current SA dilemma regarding Skills Development; wherein SA faces significant unemployment and lack of educational opportunities, particularly for previously disadvantaged persons, as well as the need to elevate Skills Development to the

forefront of its transformation agenda in order to ensure sustainable transformation (in which case, Malaysia's experience offers the relevant insights).

Having drawn from the desktop research, the findings of the qualitative study, and the lessons from the other jurisdictions, this paper proposes a **Skills Enhancement Model for B-BBEE**. The model clarifies its intended outcome, viz.: To respond to the South African Government's long-term strategy of transformation through facilitating the empowerment of South Africans (employed and not-yet-employed), by harnessing educational opportunities that are readily available through foreign investors. As a mechanism for change, the model identifies the B-BBEE areas to be recalibrated. Finally, the support measures and actions for the proposed implementation of the model are shared.

What lies before you is the precipice for change. The cognition of extensive research, the sharing of understandings, and the foundations and mechanisms for what we are intending to achieve. As your eyes embark upon the viewing of this paper, and your mind explores this journey, I'll leave you with this quote from author Malcolm Gladwell: "Transformation isn't about improving. It's about re-thinking."

1 BACKGROUND AND INTRODUCTION

The European Union-South Africa (EU-SA) Partners for Growth Programme supports the EU Delegation (EUD) in its efforts to maximise bilateral trade and investment flows between the European Union and South Africa. The Programme follows a holistic approach, wherein the three components: (i) technical component, (ii) advocacy component, and (iii) visibility component, are explored within the respective over-arching dimensions of its partnership with South Africa. This report focusses on the aspects of the South African Broad-Based Black Economic Empowerment (B-BBEE) Policy which have been shown to be particularly impacting on EU businesses in South Africa. The rationale for this research theme is founded in various related papers and studies commissioned by the EU.

In the 2019 Investment Climate in South Africa Discussion Paper², the EU Chamber of Commerce and Industry in Southern Africa, mentions the B-BBEE Ownership Policy as a Key Investment Climate Factor needing to be addressed if South Africa is to enhance its attraction to investors. Amongst the measures proposed for consideration are:

- (a) The conditional relaxing of Black Equity Ownership
- (b) Reducing weighting of Black Equity Ownership and shifting B-BBEE points to favour job creation initiatives (in this case the YES initiative is sighted as a possible consideration) and skill creation
- (c) Simplify the Equity Equivalent Investment Programme to make it more accessible for multinational investors and for greenfield investors.

According to the EU-funded 2018 study³ undertaken together with BMF and DTIC through the SA-EU Dialogue Facility, the B-BBEE Shareholding policy was found to be not only problematic for non-listed small EU companies, especially those in family ownership, but also a deterrent for investments. Furthermore, the following specific challenges were identified:

- The amended Codes of Good Practice in 2013 resulted in downgraded ratings for many companies, including EU companies
- Equity Equivalent, which is measured against the value of the multinational's operations in South Africa or against 4% of the Total Revenue from its South African operations annually over the period of continued measurement, may be economically non-viable for many companies, especially new investors and small-to-medium enterprises
- Ease of administration and cost of B-BBEE compliance.

Thus, informed by these previous studies and findings, the main purpose of this paper is as follows:

- To enhance foreign businesses understanding of doing business in South Africa, and specifically, the design and intent of the country's B-BBEE policies
- To collect and present evidence on the experiences of EU businesses in the implementation of B-BBEE
- To showcase the existing contributions by EU businesses to economic transformation in South Africa

² <https://www.euchamber.co.za/wp-content/uploads/2020/02/EUChamberInvestmentDiscussionPaper.pdf>

³ Contribution of EU investments to Inclusive Growth in South Africa: https://sadc-epa-outreach.com/images/files/events/BMF_Foundation_Report_FINAL.PDF

- To consider alternative and more effective approaches to economic transformation, based on the experiences of EU firms and on countries elsewhere
- To propose changes to the B-BBEE framework which could contribute to facilitating new transformative investments and which will support growth, jobs and sector-specific needs in South Africa

It is important to note that this report addresses the B-BBEE Policy as directed through the B-BBEE Codes of Good Practice. It does not include any exploration of the Sector Charters and Sector Codes, which would be applicable should the respective business fall within the Gazetted Sector Charters and Sector Codes.⁴ Rather, this report aims to respectfully convey the responses of the EU companies interviewed, allowing their voices to be heard above the 'sea of B-BBEE debates'. With cognizance to the above backdrop, the document draws on information from existing writings on economic transformation, relevant legislation and policies, as well as lessons from other jurisdictions. Finally, based on these first-hand accounts of experience and the secondary readings, this report will propose a model for B-BBEE recalibration, which will provide alternative policy options for the readers consideration.

2 BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE)

This section will briefly address the B-BBEE Policy as it relates to the context of this paper's discussion.

2.1 Understanding the essence of South Africa's B-BBEE Policy⁵

Nearly two decades have passed since Cyril Ramaphosa (Chairman of the BEE Commission in 2001) signed the prologue page of the Black Economic Empowerment Commission Report⁶. At that time in South Africa's transformation history, the B-BBEE Policy as we know it today, was referred to simply as Black Economic Empowerment (BEE). The terms of reference of the BEE Commission were as follows:

- Develop a clear and coherent vision and strategy for BEE
- Locate the empowerment project as part and parcel of the transformation of South African Society; and
- Examine ways in which black business can speak with a united voice.

The BEE Commission (2001) believed that "an Integrated National BEE Strategy was integral to the success of the Reconstruction and Development Programme (RDP)", which was the country's blueprint for transformation. At that point in South Africa's then young democracy, seven years had already passed without BEE having rendered the envisaged transformation results.

⁴ <http://www.thedtic.gov.za/financial-and-non-financial-support/b-bbee/b-bbee-charters/>

⁵ 'Policy': Throughout this document, the word Policy, as it relates to "B-BBEE Policy" will denote an inclusive reference to all the related Gazetted B-BBEE documents.

⁶ <https://www.westerncape.gov.za/text/2004/5/beecomreport.pdf>

B-BBEE is intended as a form of economic empowerment initiated by the South African (SA) government in response to the criticisms against BEE. Where BEE focused narrowly on Black Economic Empowerment and thus unfortunately also gave rise to challenges such as fronting⁷, B-BBEE aims to distribute wealth across as broad a spectrum of previously disadvantaged South African society as possible. In so doing, the B-BBEE policy proposes to advance economic transformation to boost the involvement of Black people (African, Coloured, Indian, and other non-white South African citizens) in the economy of South Africa. The B-BBEE Act draws on the understanding that years of systemic racism contribute to contemporaneous economic depression, and that Government's intervention can amend the results of past racist regimes.

Through the B-BBEE Policy, the SA government aims to achieve the following non-exhaustive list of key objectives:

- Empower more black people to own enterprises.
- Promote access to finance for black economic empowerment.
- Assist in the development of the operational and financial capacity of B-BBEE enterprises, especially small, medium, and micro enterprises (SMMEs) and black-owned enterprises.
- Increase the extent of black female ownership of enterprises.
- Ensure that black-owned enterprises benefit from the government's preferential procurement policies.

Albeit that the objectives refer to SMMEs, the actual B-BBEE Codes of Good Practice⁸ refer instead to Exempted Micro Enterprises (EMEs)⁹; where 100 percent of the ownership could be white persons. The implication of these seemingly conflicting descriptors has led to much controversy and misunderstanding of the B-BBEE Policy. In practice, the implication of these directives is that the SA government, whilst in principle, applying the B-BBEE Codes in an all-inclusive manner (regardless of race), still retain the 'discretion' at preferably supporting black-owned businesses, whether through material or financial resources.

The 2017-2021 Strategy of the Broad-Based Black Economic Empowerment Commission¹⁰ states that the Commission (a regulatory body) is guided by amongst other things:

- National Development Plan
- B-BBEE Policy and Strategy
- Industrial Policy Action Plan
- Black Industrialist Policy
- New Growth Path
- the dti Medium Term Strategic Plan

To this effect, the B-BBEE Codes of Good Practice identify the Elements used by Government to assess a company's B-BBEE status. These Elements are given values in points. A company needs to try to achieve, through sound and honest business practices, as many points as possible. Collectively the

⁷ Section 1 of the B-BBEE Act defines **Fronting** as follows: "A transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of this Act"

⁸ 11 October 2013 – Gazette number 36928

⁹ Enterprises with a turnover less than R10 million

¹⁰ The current B-BBEE Commission is a regulatory body, established by Section 13B of the B-BBEE Act 46 of 2013. On 1 August 2015, a task team was assigned to establish the B-BBEE Commission, which started its operations in June 2016. See www.bbbee.commission.co.za

Elements are referred to as the B-BBEE Scorecard. The following table outlines the Elements contained in the Generic¹¹ Scorecard as well as their values:

5 Elements of the Generic Scorecard	Weighting points per element
Ownership	25
Management Control	19
Skills Development	20 (+5 bonus)
New enterprise and supplier development	40 (+ 4 bonus)
Socio-economic development	5
	109 (118)

For further detail on the legislative application and requirements of B-BBEE, please see further readings:

- Amended Codes of Good Practice: Notice 1019 of 2013, Gazette No. 36928
- Amended statement 000, 300, 400: Notice 303 of 2019, Gazette No. 42496
- EU Chamber of Commerce and Industry in Southern Africa: Research & Publications: Flash Report – Key Changes in B-BBEE Legislation

2.2 Government's administration of B - B B E E

When considering the general implementation and administration of B-BBEE, there *appears* to be no “hard law” binding private enterprises in South Africa to meet specific B-BBEE targets or to implement the B-BBEE policy. However, this does not preclude companies from seriously considering the development of their B-BBEE positions, as failure to achieve a good B-BBEE rating will undoubtedly reduce their chances of engaging in business with Government, State-Owned-Entities and private sector customers. Moreover, with the COVID-19 crisis, compliance with B-BBEE rules has become particularly relevant in order access several relief funds made available during the crisis. Most private sector businesses also have B-BBEE procurement targets to consider and will therefore need to be selective about the entities they procure from, ensuring that they select entities with good B-BBEE scores so that their own procurement targets are indeed achieved. It can therefore be said that the holistic success of B-BBEE is based on a ‘cumulative ripple effect’ model, wherein the business entities who subscribe to the B-BBEE policy direct the overall success of the policy through an almost self-regulating business ecosystem.

¹¹ Generic Scorecard: the scorecard for all companies that are not covered by a specific industry sector scorecard (and from which industry scorecards are based). This is not to be confused with “Generic” sized companies, that is, whose turnovers exceed R50 million.

In terms of section 14 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), as amended by Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act 46 of 2013) the B-BBEE regulations¹² came into effect. These regulations relate to the administration and implementation of the Broad-Based Black Economic Empowerment Act, 2003 as amended and the functions of the Broad-Based Black Economic Empowerment Commission. The B-BBEE regulations include but are not limited to matters pertaining to:

- B-BBEE Compliance Reporting:
 - Sphere of government, public entity, or organ of state
 - Public Company listed on the JSE
 - Sectoral Education and Training Authority
 - Sector Charter Councils
- B-BBEE Complaints
- Registration of major B-BBEE Transaction – a transaction above a threshold determined by the Minister.

2.3 Does B-BBEE affect foreign investment?

The simple answer to this question is a definitive “YES”, especially given that the B-BBEE Policy does not at its basis of application distinguish between local and foreign-owned business. Rather, the B-BBEE Codes of Good Practice apply the following general classification for businesses operating in the South African economy:¹³

- Exempted Micro Enterprises (EME's) - R10 million (or less) total annual income
- Qualifying Small Enterprises (QSE's) - a total annual income of between R10 million and R50 million
- Generic Enterprises (GE's) – R50 million and above.

Thus, the decision by prospective investors, as to whether-or-not they should invest in South Africa, will certainly require them to strategically design their responses towards the compliance criteria of B-BBEE. In so doing, these prospective investors must examine both their capacity and willingness to embrace the B-BBEE elements. Foreign-owned businesses with turnovers less than 10 million, are afforded the same B-BBEE recognition privileges as similarly defined local businesses. Unfortunately, the same cannot be said for foreign-owned businesses falling within the QSE and GE groups. These businesses are likely to experience more complexities than local businesses as they respond to the Priority Elements¹⁴, namely Ownership, Skills Development and Enterprise and Supplier Development.

The B-BBEE Codes, in promoting Black **Ownership**, encourages all companies, including foreign investors, to consider the inclusion of South African Black shareholders. The decision to extend shares to locals, regardless of their race, in the host country is sometimes met with concern – not influenced necessarily by the individuals' demographics, but rather by concerns emanating from the political stability of the host country. Pettinger¹⁵ points out that “Countries with an uncertain political

¹² <https://www.bbbeeecommission.co.za/regulations/> Gazette No. 10610. 6 June 2016

¹³ Where relevant the Gazetted Sector Charters and Sector Codes will apply – see footnote 3

¹⁴ Priority Elements: see Gazette No. 36928 wherein a large enterprise must comply with all priority elements and a QSE with Ownership as a compulsory element and either Skills Development or Enterprise and Supplier Development.

¹⁵ Pettinger, T., (2019,) Factors that affect foreign direct investment (FDI), <https://www.economicshelp.org/blog/15736/economics/factors-that-affect-foreign-direct-investment-fdi/>

situation, will be a major disincentive. Also, economic crises can discourage investment. ...Related to political stability is the level of corruption and trust in institutions, especially judiciary and the extent of law and order". South Africa unfortunately has displayed challenges in terms of aspects related to policy (such as the often-changing B-BBEE Policy), economic stability and crime (including white-collar crime, which has resulted in significant damage to the South African fiscus). This could result in investors being hesitant to bring South African shareholders on board. To mitigate potential risks, it remains pertinent for investors to ensure that international standards of business ethics and corporate governance are applied not only by themselves, but by their local partners as well.

Foreign investment provides the ideal opportunity for **skills** sharing with the host country however, it remains essential that capacity enhancement initiatives are structured in ways that mutually empower the direct beneficiaries as well as the industries they represent. The B-BBEE Codes require substantial investment in skills as a percentage of profit/revenue, regardless of whether such training is needed or justified. Also, it is much easier for large firms, which have internal skills development functions, but much more difficult for smaller investors, especially in higher value-added sectors where staff levels and training needs are much lower.

The **New Enterprise and Supplier Development Element** holds 40 points (+4 bonus points) on the B-BBEE scorecard, thus impacting significantly on companies' overall B-BBEE levels. To achieve these points, international companies are likely to have to adjust their usual sourcing models and shift away from their known and trusted providers globally, in favour of the South African market. Whereas this may be possible in some sectors, in others, especially where the necessary inputs are not available in South Africa at international prices, this will undoubtedly lead to inefficiencies.

It is thus evident that B-BBEE does indeed affect foreign investment, both when investors are still deciding on investing, and when they are active contributors to the South African economy. The following section will further reveal the impact of B-BBEE on foreign-owned businesses.

3 THE B-BBEE EXPERIENCES OF EU COMPANIES IN SOUTH AFRICA: A QUALITATIVE¹⁶ STUDY

3.1 The purpose of the study

Much research exists on the topics of B-BBEE and foreign direct investments. Key to the EU-SA Partners for Growth Programme has been the research studies mentioned in the background component of this report. The purpose of *this* study is primarily to **gain new insights and understanding on how EU-owned businesses operating in South Africa are experiencing B-BBEE.**

3.2 The methodology and focal areas of the study

The following steps outline the methodology of this study:

1. Basic criteria were defined to inform the selection of company participants:

¹⁶ Qualitative Research is primarily exploratory research, used to gain an understanding of underlying reasons, opinions, and motivations, most often from the standpoint of the participant. Thus, the qualitative study involves the systematic collection, organisation, description, and interpretation of textual, verbal, or visual data.

Ideally, companies interviewed in this study had to be registered in South Africa, with headquarters in an EU member state.

2. Potential participants were identified with the assistance of the various Business Chambers.
3. Invitations, outlining the purpose of the interviews were compiled and sent to stakeholder companies.
4. Discussion guidelines were developed in the form of 'questionnaires'. The questions ensured that there was a consistency in the discussion points explored with the respondents, thus allowing for the responses to be systematically collated.
5. Interviews were conducted with the senior representatives (CEO/MD etc.) and/or the senior members responsible for management of transformation policies in the company (B-BBEE / transformation / HR manager).
6. Findings of the study were collated and are reflected in this report.

The key **interview discussion points** were as follows:

- Response to B-BBEE in general
- Effects of B-BBEE implementation on the company
- Cost implications of B-BBEE implementation in the company
- Equity Equivalent Programme (EEP) and/or Youth Employment Service (YES) policy implementation?
- The company's contribution to economic transformation in South Africa
- Skills improvement models that could be shared in the South African business arena
- B-BBEE changes that could enhance the company's role in positively transforming business in South Africa

3.3 Participant profiles

Although the intended respondents were European-owned businesses operating in South Africa and headquartered in Europe, the interviews included, in some cases, representatives from the European Bilateral Chambers of Commerce and Industry. In one instance, the owners of the company are European, however the business, a medium-sized enterprise (QSE by B-BBEE descriptor), is only registered in South Africa.

Whilst the actual names of the companies and actual interviewees will remain confidential, all the interviewees expressed their support at having their responses shared through this report in a transparent and accurate manner, in the hope that this will form a foundation for further constructive exploration of ideas. The following countries, in no particular order, were represented through the interviews: Sweden, Austria, France, Germany and Portugal.

The following table provides a synopsis of the interviewee profiles:

COMPANY	OPERATIONS DESCRIPTOR	NUMBER OF STAFF	APPROXIMATE TURNOVER / ANNUM (ZAR)	B-BBEE LEVEL
A	Processing and treatment of steel / import and sale of welding products	97 (Black Females in senior	260 million	Level 8 (previously level 4)

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		management roles)		
B	Making sensors for industrial automation	23 (All SA. 50% Black South Africans)	49 million (QSE)	Level 8
C	Audit, accounting and consulting	303 (35% SA black shareholding)	Greater than 50 million	Level 2
D	Sale of steel components, supply of specialist marine movable equipment, manufacture of industrials – review of all 4 subsidiaries in SA	Excess of 350 depending on project needs (30% SA Black Female shareholding)	Greater than 1 Billion	Level 3 'on average': individual scorecards
E	Sale and maintenance in aeronautics, defence and space	85 (SA Black Females in senior management roles)	350 million	Level 5
F	Transport forwarding and clearing	35	Not indicated	Level 7
G	Original equipment manufacturer: infrastructure technology	Not indicated (30% SA Black Female shareholding)	Not indicated	Level 3
H	Food-stuff manufacturer	40 (All Black staff)	Less than 50 million (QSE)	Not currently verified
I	Bilateral Chamber representing approximately 50 businesses from the member state, across sectors including food, logistics, construction.	-	-	-

*The purpose of this study did not include Equity assessments, however where data was available, the ratio of South African and ratio of Black¹⁷ staff numbers are indicated.

Although in no way representative of the vast scale of European investors, this sample does indeed reflect a diverse group of firms, large and small, with various B-BBEE levels and across various industry

¹⁷ 'Black' – throughout the report, refers to African Black, Indian Black and Coloured Black natural persons who meet the further defining criteria as set out by the dtic: http://www.thedtic.gov.za/wp-content/uploads/BI_guidelines-1.pdf

sectors ranging from manufacturing to services. Worth noting is the fact that a mere 8 companies listed above provide for more than 900 jobs, most of which are held by South Africans. Furthermore, the collective turnover reflected exceeds a billion Rand, with the highest company turnover also matching the company's impressive level 3 B-BBEE scoring across its subsidiaries' scorecards. It must also be mentioned that 5 of the companies interviewed, deliver in niche markets, wherein they not only contribute to South Africa's ability to respond to global market needs in these highly specialised industries, but also to facilitating South Africa's readiness towards global technological advancements.

3.4 Interview findings

The following sets of interview findings have been collated according to the interview discussion points mentioned above.

“Direct, quoted responses from the interviewees are captured in italics.” Where not quoted in italics, the interviewee responses have been paraphrased, and confirmed with the interviewee at the time of the interview.

3.4.1 Response to B-BBEE in general

When asked the basic question: “What is the company's response to B-BBEE”, the responses vary from “generally positive” to concerns that the current model could encourage negative business practices. Whilst some expressed a strong commitment to “re-dress” and transformation, there remained a tone of trepidation as businesses seek to comply in response to ensuring that they can operate and contribute to the South African economy.

What is evident in the responses reflected below, is the strong sense of awareness of the concept of B-BBEE. All the interviewees illustrated thought-through and informed perspectives, founded solidly in the companies' experiences and their awareness of industry perceptions as shared through business forum communications and observation.

<i>“Recruiting suitably qualified persons has proven to be a major challenge in niche skills area.”</i>
<i>“Generally positive”</i>
Strong awareness to <i>“re-dress inequalities”</i>
<i>“Generally positive. Sometimes neutral.”</i>
Awareness to support BEE due to business with SA Government.
<i>“Positive but not confident”</i>
Need for SA Government to have awareness that whilst B-BBEE affects SA-based companies, these companies also remain affected by Globalisation.
Current BEE model needs improvement. It has become a <i>“tool for corruption”</i> .
Business successes are not always directly indicative of B-BBEE successes.

3.4.2 Effects of B-BBEE implementation on the company

Exploring the effects of B-BBEE implementation in the companies not only reiterated the challenges which were highlighted in previous related studies, but further confirmed the depth of consideration that companies have to give to the overall impact that B-BBEE has on their business models. One of the respondents, for example, emphasised the fact that *“Implementation holds many considerations, such as: Is it financially viable to implement B-BBEE? What are the psychological aspects (for the business entity) of being rated compliant / non-compliant?”*.

Whether large or medium sized businesses, **all agree that the implementation of B-BBEE according to the current model, is a resource intensive exercise, which requires ongoing monitoring and evaluation against the actual business strategies. Challenges mentioned included:**

- Balancing business needs with business transformation sometimes results in the **loss of competent skills in the desire to pursue business transformation** according to the B-BBEE criteria.
- The **biggest challenges relate to Ownership**. Whilst the entity operating in South Africa is aware of the B-BBEE imperatives relating to Black shareholding, the headquarters and ultimately the business owners (especially wherein the business origins are family based) are not able to relate to the B-BBEE dictates of Ownership, and feel that there is an unfairness in the Policy expectations.
- *“Too many ambiguous and often-changing rules. Uncertainty affects business model implementation.”* – South Africa has seen a **significant amount of B-BBEE policy changes in recent years. The unpredictability leaves investors feeling uncertain**. It also results in companies expending much energy and resources in responding to B-BBEE criteria, only to find the goalposts have shifted just as they were of the impression that they had achieved compliance. This concern is further captured in the following challenge:
- Whilst business keeps awareness of **Employment Equity (EE) and Skills Development (SD) implementation, these aspects do not directly align with the B-BBEE criteria**. The reason for this challenge lies in the fact that the primary mandates of responsibility for effecting these elements do not reside within the same departments of SA Government. That is, EE resides with the Department of Labour, Skills Development with the Department of Higher Education and Training and B-BBEE with the Department of Trade Industry and Competition. As a result, the EE and SD reporting criteria differ across the departments.
- *“There needs to be a culture change around responsibility.”* The current form of B-BBEE *“keeps people poor”*. The respondent raised the need for persons to be encouraged to develop a deeper sense of ownership and responsibility for their own development and in so doing to develop an independence.
- Companies also expressed concern about responding to the Procurement criteria of B-BBEE, as some companies are obliged to use suppliers from within their specialised area of manufacturing, especially where *“original manufacturer requirements”* are applicable; whereas the procurement criteria focus primarily on external empowered suppliers.

It is evident from the above responses that B-BBEE implementation is certainly not approached by EU investors as exclusively an administrative, check-box exercise. Instead, it holds significant impact not only on the capacity of businesses to remain focussed on their core business, but also on their ability to remain active industry players.

3.4.3 Cost implications of B-BBEE implementation in the company

The article 'The top 10 challenges to B-BBEE'¹⁸ lists at the top: "The cost of B-BBEE". De Wet further writes that "the total overall cost of (or investment into) B-BBEE be properly determined before deciding if the company should be empowered in the first place. Then, if B-BBEE needs to be part of the business strategy, each individual initiative should be properly analysed to ensure that it has a return on investment". The article offers an important consideration, namely, that managing a company's response to B-BBEE does indeed come with various challenges, top of which is cost. Yet more importantly, it is essential to remember that businesses exist to make a profit, and that no matter how altruistic in deliverables and expression they are, ROI remains an essential consideration to their sustainability.

The complex and onerous nature of the B-BBEE Codes has resulted in an entire service industry coming about as many companies turn to B-BBEE consultants for assistance in interpreting the Codes. Not only will companies have to spend money on the advisory services for their B-BBEE, they will thereafter need to pay additional fees to their verification agencies.¹⁹

When asked about the costs of B-BBEE, at least 3 respondents referred to the costs of managing B-BBEE through the assistance of consultants and then the costs to verification agencies. Of these 3 companies, one company from the manufacturing sector, with a staff compliment of less than 100 persons, had engaged the services of a B-BBEE consultancy to guide them on their B-BBEE implementation. The costs were "*in the range of R300 000 per year*". During the same time, the company had dropped from a level 4 to a level 8. The company, however, remains visibly committed to transformation, displaying their commitment through their staffing profile (predominantly black persons, including in senior management positions), as well as through their ongoing commitment to skills development. Another company indicated a spend of "*approximately half a million rand on verification and general implementation – excluding skills spend*", with a further "*R1.3 million spent towards bursaries*". Due to the nature of business, the company does not hold a complex structure, neither does it propose much complexity in verification requirements. It does however generate a substantial turnover – suggesting a fair degree of correlation between the company's turnover and the verification pricing.

The following is a non-exhaustive list, as shared by the interviewees, of **further costs embedded in B-BBEE implementation**:

- Costs of skills spend. Businesses are required to continue to contribute towards National Skills Development Imperatives, even after they have successfully up skilled their own employees.
- Enterprise Development initiatives – wherein businesses have assisted staff to set up their own businesses (through the provision of financial assistance, sharing of operations models, infrastructure set-up assistance and/or upskilling).

¹⁸ De Wet, A., The top 10 challenges to B-BBEE. <https://harrycurtisco.co.za/top-10-challenges-b-bbee/>

¹⁹ NOTE: According to the 'R47' – Accreditation of BEE Verification Agencies – verification agencies must ensure that they carry out their duties without them being considered as consultancies or creating a conflict of interest. See www.sanas.co.za The SANAS (South African National Accreditation System) website can also be used to check whether the verification agency is indeed an accredited organisation.

- Recruitment of suitably qualified candidates – wherein highly marketable candidates from designated groups often demand higher salaries than would otherwise be the market norm.
- Legal costs in setting up trusts to respond to Ownership criteria. One interviewee stated: “compliance in terms of shares will result in 26% ROI being lost to the business”. The same respondent pointed out that the business does wish to develop and is *“open to black persons if they can bring value to the business”*. The emphasis from the interviewee being that the preference should not be about race, but rather about merit in terms of business capabilities.

Away from the monetary perspective of costs, one respondent referred to the **cost of B-BBEE as an “Energy Drainer”** – a rather holistic response from a company who is at the forefront of transformation, with around 30% black-female shareholding and on year-to-year level 3 scores across the subsidiaries – all the while also responding to various relevant sector charters and codes as well. The interviewee, whilst passionately committed to transformation, admittedly felt that the successes of B-BBEE implementation required a constant attention with ongoing monitoring and evaluation at all levels of business decision making. Again, whilst this might be doable for large multinationals, it remains a resourcing challenge to smaller businesses, who run the risk of losing focus of their core business while they pursue B-BBEE imperatives.

3.4.4 Implementing Equity Equivalent Programmes (EEP's)

In response to the Ownership challenges of Multinational organisations, in May 2015 The Department of Trade and Industry (the **dti**) published Statement 103, Code Series 100 as ‘The Recognition of Equity Equivalentents for Multinationals’, as an alternative to direct Sale of Equity in return for Ownership points. However, an Equity Equivalent Investment Programme (EEIP) is only considered where evidence is presented of existing global policies that limit Sale of Equity. EEP's are public or private programmes/schemes designed to fulfil the requirements of B-BBEE ownership. The programmes are aimed at providing an alternative pathway for multinationals to contribute towards B-BBEE, other than the traditional sale of shares to black South Africans. The Department of Trade, Industry and Competition (the **dtic**)²⁰ provides the Guidelines for the EEP's for Multinationals and interested companies are expected to submit their proposals to the Equity Equivalent Secretariat in the **dtic**. Points stemming from an EEIP may only be used under the Ownership element and no other element. The Equity Equivalent Investment Programme (EEIP) Ownership Points Certificate awarded will be valid for an agreed investment period. Contributions to Equity Equivalent programmes are measured as actual contributions made using the general principle set out in code series 400 and 500 against any of the following targets:

- 25% of the value of the South African operations of the Multinational, determined using a Standard Valuation Method; or
- 4% of Total Revenue from its South African operations annually over the period of continued measurement.

The application process towards the implementation of the EEP consists of three steps: application for exemption, evaluation and monitoring of progress. Large multinationals must follow the guidelines of **the dtic** if they wish to embark on managing this process internally, also if they outsource

²⁰ www.thedtic.gov.za (NOTE: the **dtic** was established in June 2019 by the incorporation of the Department: Economic Development into the Department of Trade and Industry (the **dti**)).

the management thereof. The process is a costly exercise, not only in terms of the investment made towards the EEP, but also towards the management and implementation thereof. Statement 103 also outlines the details of the contributions required for the EEP.

Of the companies interviewed, none have embarked on an EEP. Two companies considered it but concluded that it would not be a financially viable option, with one respondent stating: "*We are already not coping with 45% of the scorecard. How will we cope with EEP? ...not financially viable.*". Another interviewee indicated that the EEP was not needed, as the company does have black shareholding and invests significantly in skills development. Several of the interviewees indicated a need for "*more information about EEP's*".

3.4.5 Embarking on the Youth Employment Service (Y.E.S) Initiative

On 28 August 2018, the Youth Employment Service (Y.E.S) Initiative²¹ was gazetted to form part of the Code Series 000 of the B-BBEE Act no. 46 of 2013. The Y.E.S initiative aims to promote youth employment whilst at the same time rewarding the Y.E.S companies through improving their B-BBEE scores. To move up 1 BEE level, the Y.E.S company must meet the target and achieve 2.5% absorption rate. To move up 2 BEE levels, the Y.E.S company must meet double the target and achieve 5% absorption²² rate. Successful implementation of the Y.E.S requires that companies do their best to retain the candidates, even under challenging economic conditions. Important to note is that the Y.E.S only responds to the unemployed black youth. White youth do not qualify for the programme. Thus, companies should conduct a proper employment equity planning, ensuring that they align their employment equity targets with a prospective Y.E.S Initiative.

Only one business interviewed has indicated a successful implementation of the YES policy. Two businesses indicated an interest in the YES policy implementation: one business still awaits a response from the relevant government custodians of the policy; while the other could not currently implement the YES policy as they had dropped a B-BBEE level since the previous year (this being one of the criteria of the YES policy – that business maintain their B-BBEE levels year to year).

The business that has implemented the Y.E.S, has done so very successfully, supporting the programme with a comprehensive mentorship programme and ensuring successful absorption of the candidates (99 new employees in the last year as a result of the Y.E.S). During the interview, held with both the Human Resources Manager and the B-BBEE Manager, it was evident that the company had fully embraced the concept of holistic transformation, resulting in B-BBEE being addressed as an integral component of their strategic planning.

None of the businesses interviewed were in principle averse to the Y.E.S Initiative. However, those who have not implemented it, have mostly indicated the lack of "*financial viability*" as the key reason for not implementing Y.E.S, as they do not currently have the capacity, nor the business need to expand their existing staff compliments. One interviewee also pointed out that they did not feel that

²¹ For more detail on Y.E.S go to www.thedtic.gov.za and www.yes4youth.co.za

²² 'Absorption' means "a measure of the entity's ability to successfully secure a long-term contract of employment for the Employee, Learner, Intern or Apprentice" (Notice 303 of 2019: effective 1 December 2019)

the Y.E.S really addressed B-BBEE holistically, as it only responded to the needs of youth, whereas, unemployment numbers in South Africa include older persons as well.

3.4.6 EU companies' contributions to economic transformation in South Africa

The study has shown that these EU Companies, regardless of the challenges experienced, continue to contribute significantly to the holistic imperatives of South Africa's economic transformation. Collectively, the businesses interviewed provide full-time employment to more than 900, mostly South African persons, the majority being black. Turnover of these businesses reflect an estimated 2 billion – resulting in a fair contribution toward South Africa's Revenues. One respondent described the company contribution as: *“(We’re) a top supplier. We are part of a huge supply chain (therefore) creating jobs directly and indirectly.”* Another interviewee cited the company's contribution in terms of the *“development of local black suppliers”*. The same interviewee also shared views on aspects of *“automation”*, a concept that the company embraces and supports through ensuring that part of the development of persons such as the local black suppliers, includes managing the automation as opposed to finding their services being redundant as a result of automation. One company responded to Corporate Social investment through *“supporting orphanage with school uniforms”*. Another *“supports Enterprise Development with the establishment of an in-house Cleaning Services company”*. Although these few companies comprise but a tiny fraction of the overall European investment flows into South Africa, their greatest contribution by far remains their efforts towards **skills development**, which are captured in the following section.

3.4.7 Skills improvement models implemented by EU companies

Albeit that much has been written about the link between unemployment levels and education levels, the awareness thereto is certainly not recent. An article by the Government Communications department sums up the key reason for unemployment as follows:

“Inadequate education and lack of productivity is costing jobs. Unemployment increases progressively with decreased educational levels; and the education system is not producing the skills for the labour market”.²³

The link between unemployment and quality of education has prompted much debate. In the arena of human resource management, a competency is defined as a combination of knowledge, skills, and attributes. The three components of competency are intricately linked and interdependent. A deficiency in any of these components is bound to have a negative effect on both the ability to do a job and productivity levels. Whilst the governance aspects of education in South Africa is regulated by Government, it is the private sector that Government looks toward to address the skills shortages in the country.

The table below seeks to showcase the contributions made by the companies interviewed, in responding to skills development for South Africans. By considering the skills initiatives in relation to

²³ Insight Newsletter Issue 13: <https://www.gcis.gov.za/content/resourcecentre/newsletters/insight/issue13>

the businesses' operations descriptors, it elucidates the impact that the skills are having not only for the individual beneficiaries, but for the respective industry sectors.

COMPANY A: Processing and treatment of steel / import and sale of welding products. As part of the manufacturing sector, the company is active in steel, automotive, railway systems and steel industries.

Staff count: 97

With branches across 4 provinces, the company conducts **ongoing on-the-job training** for both new and existing employees.

A key suggestion from this interviewee was that *"...more emphasis in the B-BBEE model needs to be on education and skills upliftment. Emphasis must be on improving education in order to improve Skills Pool"*. The interviewee also highlighted the shortage of technical specialists in this field, which has impacted negatively on the company's recruitment of suitably qualified persons.

COMPANY B: Making sensors for industrial automation. Sectors served are the mining and automobile sectors.

Staff count: 23

- **The company has an Internal Training Academy.**
- **Training includes a Digital Curriculum implemented for staff to ensure readiness in response to 4th Industrial Revolution, thereby creating sustainable work.** Trainees are affiliated to an **international university programme**.
- Internationally the organisation hosts a **Regional Talent Programme** for 50 offices around the world. The South African office has sent a candidate to **Germany** to be part of this programme.
- The company pays the **tuition fees of 10 students** who are relatives of employees of the company.

COMPANY C: Audit, accounting and consulting.

Staff count: 303

- Offers **12-month learnership** with generous stipend, including Medical Aid.
- Ongoing full **mentorship programme** where candidates are mentored in the various departments within the firm.
- Offers **articled programmes and secondments with 10-20% absorption rate of candidates.**

COMPANY D: Sale of steel components, supply of specialist marine movable equipment, manufacture of industrials.

Staff count: >350 (subject to project needs).

- **Technical training centre** for specialised technical skills
- **Graduate Learnership Programme for 18-24 months in partnership with University.**

COMPANY E: Sale and maintenance in aeronautics, defence and space.

Staff count: 85

- **In-house apprenticeship programme** which impacts 50% of industry.

<ul style="list-style-type: none"> • Apprenticeship programmes in mechanical and avionics areas of study in partnership with leading industry training academy – candidates remain to complete trade test levels.
<p>COMPANY F: Transport forwarding and clearing.</p> <p>Staff count: 35</p> <ul style="list-style-type: none"> • Individualised skills opportunities based on work-place needs. Staff attend external short courses as needed. Currently funding one member's post-graduate study. • Dual vocational training via Chambers (3-year internship)
<p>COMPANY G: Original equipment manufacturer: technology infrastructure.</p> <p>Staff count: not indicated.</p> <ul style="list-style-type: none"> • Regular specialised internal technical training focussed on agility to respond to dynamic IT and AI demands.
<p>COMPANY H: Food-stuff manufacturer</p> <p>Ongoing in-house and on-the-job training and development on automation of systems and production.</p>

As is evident from the above responses, **all the business interviewed expend a significant commitment towards Skills Development**. Many of these skills initiatives exist beyond the framework of their B-BBEE management. In fact, **often these skills initiatives 'exceed' the points that can be awarded on their B-BBEE scorecards, thus going unrecognized and therefore no longer benefiting them from a B-BBEE perspective**. Yet these companies continue to respond positively to the imperatives of the National Skills Development Strategy²⁴ of South Africa; their rationale for doing so ranging from a genuine passion about skills enhancement, a narrative scripted in their own business models and service offerings, to the much more 'back-to-basics' fundamentals of upskilling persons to capacitate them to increase productivity in a more efficient and effective manner.

A key point to harness from these interview responses is the enthusiasm displayed by each company to be able to share these models as extensively as is reasonably possible, including as part of educational outreach programmes and through partnerships with higher education institutions.

3.4.8 B-BBEE changes that could enhance the company's role in positively transforming business in South Africa

When interviewees were asked to reflect on B-BBEE changes that could enhance the company's role in positively transforming business in South Africa, every one of the interviewees called for "**a greater recognition of Skills Development**" with one interviewee suggesting: *"more acknowledgement of specialist training skills sharing. Business input into industry training and development to increase and enhance candidate pool. ...Promote technical educational programmes supported by EU companies"*. Another raised the aspect of improving co-operation between industry players and education bodies and recognizing the business models as platforms to grow professionals. The interviewee also urged that the *"European Mission has to step up the exposure of European business contributions, in particular Skills Enhancement contributions to SA Government"*. This sentiment was also echoed by the suggestion of *"An improved integration between industry and education role players, and*

²⁴ National Skills Development Strategy outline: <https://www.bizcommunity.com/Article/196/500/188470.html>

recognition thereof". It is hoped that this report will indeed serve as a catalyst to this process. In the light of the findings in the previous section, this is hardly surprising – as all these companies invest both time, money, and energy into skills development. Additional transformation ideas included: *"Flexibility in the B-BBEE model / Codes to work with something that works for your business"* and *"Go back to the previous B-BBEE model where there is a choice of 5 elements"*.

Based on the interview findings, **Skills Development has emerged as the distinct preference of approach towards facilitating transformation in South Africa**. The findings also suggest that there is indeed a keenness and willingness amongst European businesses to not only transfer skills to South Africa, but in so doing, to also develop platforms for mutual sharing of skills.

3.5 The essence of the study's findings

The study intended to **gain new insights and understanding on how EU-owned businesses operating in South Africa are experiencing B-BBEE**. The interviews, which constituted the medium of the study, were approached with a spirit of enquiring openness. Whilst previous studies had identified at a high level the B-BBEE challenges that were faced by EU investors, this study, in particular due to its limited number of respondents, allowed for an especially deep level of reveal to the issues explored. The candidness of respondents and their willingness to explore improved ways of contributing to South Africa's economic transformation, not only confirmed in further detail what previous studies had identified, but also provided the research with insight to the context and rationale of their current experience of B-BBEE.

The study has thus provided evidence to the following:

- **EU investors remain both accepting and embracing of the imperatives of economic transformation in South Africa, but there is a level of angst, which can only be alleviated through a recalibration of the current B-BBEE Policy.**
- **The concrete, measurable costs of managing B-BBEE compliance and implementation are high**, impacting significantly on the business bottom line, causing them to often question the ROI of their business actions. The abstract costs of B-BBEE compliance and implementation are difficult if not impossible to measure, but its harsh impact is felt and becomes visible in the cautious approach to business.
- **Businesses have not fully 'bought into' the EEP's and the Y.E.S Initiatives. Reasons mostly cited are the cost considerations to the complex processes involved in implementing these programmes.** A further, less obvious aspect revealed in the interviews is whether these programmes would add sustainable value to the business embarking on them. For many, **the imperatives of these programmes are too short-sighted, as they focus only on the value for the beneficiaries, whilst failing to consider business sustainability.**
- EU investors respond to a range of industry sectors. In this study, **most of the businesses offer specialised industry solutions**, which complement the growth and development imperatives of the South African economy, whilst contributing to employment and skills upliftment.
- **The most substantial evidence of the study reflects in the responses to Skills Development contributions.** EU companies have evidently gone beyond simply embracing the Skills Element of the B-BBEE scorecard, offering Skills Development, often in specialised areas of study which, the current education system cannot be expected to deliver on. These skills

initiatives add significant value to the respective learning candidates as well as to the respective industries; however, these initiatives are not always acknowledged through the current B-BBEE Policy. The EU businesses interviewed have called for Skills development to have a more prominent seat in the B-BBEE landscape.

4 LESSONS FROM OTHER JURISDICTIONS

As indicated throughout this document, B-BBEE remains a challenge for foreign investors, more specifically, the Ownership element of the B-BBEE Codes, wherein the ownership scorecard is optimised if there is 25% black ownership. Other challenges confirmed in the study above, relate to the availability of empowered suppliers from whom to purchase, the costs related to B-BBEE implementation, the lack of viability of programmes such as the EEP, and a myriad more. However, the elephant in the room remains the Ownership element.

The survey findings in section 3 of this document also reveal the significantly positive role that skills development can contribute to effecting holistic economic empowerment. It is at this point worth digressing somewhat to acknowledge a recent World Bank article²⁵ which highlights the following: "Low skills perpetuate poverty and inequality. Skills development can reduce unemployment, raise incomes, and improve standards of living." The article goes on to discuss the relevance of skills development, in particular, technical, and vocational education and training. The article also points to the need for private sector partnerships and workplace training to match the needs of the labour market and teach critical skills. Currently, whilst South Africa purports to have education as a key component to transformation imperatives, it must be noted that the current generic B-BBEE scorecard is not reflective thereof. Currently, skills development points are less than ownership and new enterprise and supplier development. In an attempt to develop a fresh response to B-BBEE -one which works favourably for all stakeholders, it is relevant to consider other jurisdictions who have had similar transformational experiences as South Africa.

One must bear in mind, however, that each country is unique and therefore has its own dynamics to consider. Whilst the initial challenges might appear similar, a solution which works perfectly in one country, may be completely unsuitable in others. Another reckoning factor when comparing these transformation experiences of countries, is the magnitude (sometimes progressive and sometimes volatile) of changes in politics. These inevitably impact significantly on both the policies and the administrations thereof.

This section explores Namibia's solution to the Ownership pillar of its economic policy; and Malaysia's holistic solution to Economic Transformation, which forms part of their Bumiputera Wellbeing Transformation model. The selection of these two examples is a focused and informed choice, based on the following 'research needs':

- Finding a comparative approach to the current SA dilemma regarding the Ownership element of B-BBEE (in this case, Namibia offers the closest comparison)
- Finding a comparative approach to the current SA dilemma regarding Skills Development; wherein SA faces significant unemployment and lack of educational opportunities, particularly

²⁵ <https://www.worldbank.org/en/topic/skillsdevelopment>

for previously disadvantaged persons, as well as the need to elevate Skills Development to the forefront of its transformation agenda in order to ensure sustainable transformation (in which case, Malaysia's experience offers the relevant insights).

In as much as the primary purpose of considering other jurisdictions is to extrapolate the successes, it remains important to acknowledge the mistakes revealed, so as not to end up repeating them in different forms. The two countries referred to below, offer South Africa examples of both how things should not be done as well as how to do better.

4.1 Namibia

Like South Africa, Namibia has a history that has been plagued by racial discrimination. Even post its independence in 1990, Namibia still struggles with inequalities, which it attempted to address through BEE. Namibia's journey with BBE can be summarised as follows:

On 28 July 2004, Prime Minister Theo-Ben Gurirab, presented a passionate speech, wherein he expressed the Namibian governments emblazoned commitment to BEE. Many references to South Africa were made in the speech – many positive references, including citing Cyril Ramaphosa's vision of BEE at the time. Gurirab's stated:

"One more thing, though. BEE is not anti-profit nor anti-property. Far from that. Moneymaking and entrepreneurial assertiveness and innovation must continue to bloom to benefit all. By the same token, BEE is not about self-enrichment crusade for a few black fat-cats. At the same time, BEE can and must serve as a catalyst for helping to create a critical mass of black middle class. Socialists and capitalists alike have historically relied on a vanguard role of a middle class for take-off, transformation and industrialization."²⁶

Clearly, the Prime Minister and the Namibian government expressed some clear and positive intentions around the application and implementation of BEE.

In 2015 the Namibian government passed the New Equitable Economic Empowerment Framework (NEEEF) Bill stating:

"The aim of the NEEEF is to provide a clear overarching policy framework into which all other policies will slot. The NEEEF will supersede all other transformation and empowerment policies of Government as well as provide the framework within which all private sector initiatives, past and future will be expected to conform to. Government will ensure its other policies are consistent and mutually reinforcing with the NEEEF."²⁷

On 28 February 2018, BizNews ran an article, entitled: "South Africa's latest export: New BEE laws coming to Namibia"²⁸, wherein the author writes:

"The government of the southwest African nation that's among the world's most economically unequal is in the final leg of consultations on the National Equitable Economic Empowerment Framework that will make it mandatory for white-owned businesses to sell a 25 percent stake to blacks, President Hage Geingob told reporters Tuesday in the capital, Windhoek."

²⁶ Two perspectives on Black Economic Empowerment in Namibia: https://sarprn.org/documents/d0000918/P1031-BEE_Namibia_2004.pdf

²⁷ <http://www.opm.gov.na/neeef>

²⁸ <https://www.biznews.com/africa/2018/02/28/sa-bee-laws-coming-to-namibia>

In an absolute about-turn in April 2018, President Geingob announced: **“The 25 percent equity stake will not translate into broad-based empowerment and is done away with”**. He went on to state **“Most Namibians especially the previously disadvantaged do not have enough resources to invest in empowerment transactions, nor are they able to obtain access to funding to participate in such transactions.”**

In a more recent article in August 2019, Shikwambi²⁹ writes: “Government has taken a position, in its economic growth summit that the New Equitable Economic Empowerment Framework (NEEEF) **will only apply to companies doing business with government.**” Shikwambi adds: “With respect to the ownership pillar: The compulsory 25 percent equity has been removed. However, all Pillars will remain and be taken into account for enterprises doing business with Government and applying for natural resources licensing.”

In essence, Namibia has, after much consideration, simply made an informed decision to remove the 25 percent equity stake, largely based on the fact that the previously disadvantaged persons who should really be the true beneficiaries of empowerment policies, will not be positioned to benefit from this clause. South Africa's lengthy relationship with B-BBEE has also shown that such ownership criteria have not benefited the poor, instead it has served to further enrich already wealthy parties. Namibia has proven that consultation and relevant research are key to affecting an informed policy decision. Also, through retaining the pillars of the NEEEF for companies responding to business with government, Namibia has ensured that it continues to implement economic transformation. The further lesson for South Africa in observing Namibia's response to economic empowerment matters, is to ensure that policies remain appropriate to the needs they intend to serve. If components of a policy are no longer serving the purpose they were initially designed for, or if they begin to be counter-intuitive to the holistic application of the policy, Governments should either amend them accordingly or remove them.

4.2 Malaysia

Malaysia, like South Africa, is home to many diverse cultures. It too has unfortunately experienced a history riddled with various inequalities, which resulted in economic disparities amongst its various peoples. In response to these challenging situations, Malaysia introduced the New Economic Policy³⁰ (NEP) in 1971. The NEP was designed to “overhaul the economic system in the early years of independence, which had created economic dualism, wide income inequality and ethnic division”.³¹ In 1991, the National Transformation Programme (NTP) was introduced, followed by the New Economic Model (NEM) in 2010. All these transformation initiatives were aimed at addressing inequalities, primarily economic inequalities experienced by the Bumiputera³² people.

Whilst the Malaysian government deemed these initiatives to be successful, they were not without critique from some parties. To better manage the implementation of these initiatives, the Malaysian

²⁹ Shikwambi, M., NEEF to apply only to companies in business with GRN, Aug. 02, 2019:

<https://thepatriot.com.na/index.php/2019/08/02/neeef-to-apply-only-to-companies-in-business-with-grn/>

³⁰ www.malaysia.gov.my

³¹ Dr Irwan Shah Zainal Abidin, Not just economic, but their wellbeing, happiness too, 2017:

<https://www.nst.com.my/opinion/columnists/2017/05/235730/not-just-economic-their-wellbeing-happiness-too>

³² Bumiputera (spelling as per Malaysian government site): an ethnic group making up 61.8% of the Malaysian population : Malaysia 2016 Department of Information <https://www.malaysia.gov.my/portal/content/30114>

government in 2011 established a strategic unit called TERAJU³³, to spearhead the country's Bumiputera economic participation.

In April 2017, the Bumiputera Economic Transformation Roadmap (BETR) 2.0 of the Bumiputera Wellbeing Transformation³⁴ was launched by Prime Minister Najib Razak. After decades of efforts towards transformation, the BETR 2.0 is seen as a more holistic approach to transformation. Whereas previous efforts were directed mainly at economic initiatives and programmes, the BETR 2.0, in protecting and empowering the Bumiputera Agenda, is not limited to economic aspects. Rather, the management of the BETR 2.0 is under the mandate of the TERAJU and includes 5 thrusts:

- Strengthening human capital,
- Promoting higher value,
- Employment and income,
- Increasing Bumiputera share and value of corporate equity,
- Strengthening entrepreneurship and increasing ownership of non-financial assets.³⁵

Prime Minister Razak described the initiative as creating "Bumiputera entrepreneurs who would be more focused, progressive, creative, innovative and ready to compete globally". Razak also added that "fighting for the Bumiputera Agenda doesn't mean (simply taking) the rights of others. Instead, it has to go hand in hand, the government must take care of the legitimate interests of other races in the country".

It is evident in Malaysia's evolution of economic transformation, that its leadership (at this point in its history) had come to appreciate the value of a holistic approach, which seeks to create solid foundations for economic growth by ensuring first and foremost, that its human capital is empowered.

The lesson for South Africa is that Malaysia has critically reviewed its own policies on transformation and adopted the necessary changes to enable it to be better positioned to grow its economy. Malaysia has also recognised the intrinsic value that an educated nation brings to economic development. Adjusting the B-BBEE Skills Development element to hold an 'optional' higher value, might just be South Africa's mechanism to support and encourage foreign investors, and in so doing enhance its human capital through efforts of skills sharing.

5 A PROPOSED SKILLS ENHANCEMENT MODEL

The findings of the study have corroborated the fact that the EU, as a trade and investment strategic and preferential partner, remains committed to South Africa. However, relationships will only remain synergistic if there is a collective desire for ongoing improvement. This paper, through the research conducted and the related study provides evidence of change, viz.:

³³ www.teraju.gov.my

³⁴ <https://www.thesundaily.my/archive/najib-unveils-bumiputera-economic-transformation-roadmap-20-updated-CTARCH440176>

³⁵ www.malaysia.gov.my

- Change in the intended impact of B-BBEE vs the actual impact of B-BBEE (wherein for many businesses, in particular, foreign-owned businesses, the effects of the B-BBEE Policy rather than being empowering, has all but stifled business.
- Change in the awareness of the importance of Skills Development as a cornerstone to successful transformation.

Through harnessing the synergy between the EU and SA, these 'evidences' may indeed become evidence **for** change.

5.1 The intended outcome

A simple observation of South Africa reveals that inequalities still exist in all spheres of life. Of course, research will abound that confirms or disputes this statement. Yet, no amount of research can negate what is visible through direct observation. With this view in mind then, **it is essential to acknowledge that whether a transformation policy be called B-BBEE, or by some other name, is immaterial. South Africa currently still needs a transformation policy. What is of relevance in the policy debate, is whether the transformation policy renders the desired change result;** and as many socio-economic issues have posited, whether the numbers of casualties along the change path are validated against the change destination.

To quote Nelson Mandela: "Education is the most powerful weapon which you can use to change the world".

This proposed Skills Enhancement Model intends to respond to the South African Government's long- term strategy of transformation through facilitating the empowerment of South Africans (employed and not-yet-employed), by harnessing educational opportunities that are readily available through foreign investors.

5.2 The mechanism of change

This model recognises the value of utilising the existing B-BBEE policy as the mechanism for Skills Enhancement. This paper has shown that much of the Skills Development contributions from foreign businesses go unrecognized in the current B-BBEE policy, whilst these same businesses find themselves being compromised when presented with the requirements of the Ownership scorecard, or its current Equity alternatives (such as the EEP's). To this effect this **Skills Enhancement Model** proposes that the current Broad Based Black Economic Empowerment Codes of Good Practice be reviewed to consider the following areas of recalibration:

1. **Create a more flexible Ownership Element through a conditional* relaxing of Black South African Shareholding criteria.**
 - 2a. **In support of point 1 above, increase the weighting points and related targets of the Skills Development Element.**
 - 2b. **Adjust the Skills Development element to include bonus points recognition for structured coaching and mentoring programmes and / or business incubator programmes.**

2c. Greater recognition on the Skills Development element for technical skills training and international training offerings.

**conditional: The reviewed criteria would only be applicable as an option for foreign-owned businesses, as a means of extending a good-faith gesture to the attraction and protection of FDI. The proposed change is also conditional to effecting point 2 above, thereby ensuring that South Africa's Skills Development imperatives are met, as well as strengthening the capacity of its workforce and employability.*

5.3 An Advocacy Framework for the Skills Enhancement Model

The following phased advocacy framework for the Skills Enhancement Model is proposed:

Phase 1: Conduct on-line dialogue session

- The "EU Investors' Responses to Broad-Based Black Economic Empowerment (B-BBEE): A Skills Enhancement Model" should be shared with the relevant stakeholders representing the various European business forums.
- The EU Delegation will host an online dialogue with relevant stakeholders representing the European businesses. The aim of the dialogue will be to identify any concerns and confirm consensus on the proposed Skills Enhancement Model.
- During the dialogue session members for the advisory team will be identified.
- The findings of the dialogue session will be captured in a related report section.

Phase 2: Identify an advisory team and develop a work plan

Assemble an advisory team (approximately 6 persons) to develop and agree upon a work plan for the advocacy process. The team should include representatives from the European Bilateral Chambers of Commerce and Industry and relevant stakeholders (including the **dtic**), identified by the EU Delegation. The team will develop the initial work plan. The work plan should be a detailed exposition of the further phases outlined below and include a detailed communication plan.

Phase 3: Information stabilisation

This phase includes three key components to be implemented by the advisory team:

- Identify the policy change pathway (including the establishment of relevant consultative forums with external stakeholders)
- Conduct knowledge workshops to ensure that all EU investors have clarity not only on the current B-BBEE Codes, but on the potential impact of the proposed changes. These knowledge workshops should include the inputs from the relevant **dtic** custodians of the B-BBEE Policy
- Ensure consistency in conceptual translation. The inputs and support of the **dtic** stakeholders are critical in ensuring that the change mechanisms outlined in section 5.2 above remain aligned with the overall imperatives of the B-BBEE Policy.

Phase 4: Effecting policy change

The advisory team will formulate the policy change document in line with the change mechanisms proposed. The policy change document will then be offered to the South African Government.

Monitoring and evaluation

The monitoring and evaluation of this model is an ongoing task of the advisory team and should not be left to the end of the project life cycle.

It is essential that the advisory team, together with the representatives from the **dtic** continue to monitor and evaluate the impact of the Skills Enhancement policy changes for at least 2 years. This will allow the affected businesses the required time to have implemented the recalibrated policy, as well as to have undergone a B-BBEE verification. These processes will render the required data to calculate the Return on Investment as effected on the individual skills beneficiaries, businesses as well as the sectors of industry.

5.4 Risk management and change support

The current B-BBEE Policy does not distinguish in its application between local and foreign owned businesses. Implementing this proposed Skills Enhancement Model for B-BBEE might therefore elicit resistance from parties who might perceive this change as being unfair or preferential in nature. A further barrier to this model might lie with smaller foreign owned businesses who might perceive the proposed Skills Development Element's changes as financially imposing. These are but some of the change barriers that could be encountered during the consideration of this model. These project risks can successfully be mitigated through the application of the communication plan referred to in phase 2 above. Key to the successful implementation of this proposed change initiative is the timeous, consistent and transparent communication of related developments to relevant stakeholders.

6 THE WAY FORWARD

In responding to the exploration of the EU investors' responses to B-BBEE, this report has sought to contextualise the discussion within the rather vast landscape of B-BBEE, through firstly establishing a legislative point of reference. Thereafter, the rhetorical question: "Does B-BBEE affect foreign investment?" was reflected upon in a brief theoretical exposition of the factors which impact foreign investors. It is hoped that Section 3, the empirical component of this report, has managed to achieve its intended purpose: to provide the reader with a discerning glimpse into the investors' experiences of B-BBEE – a vantage point uniquely afforded as a result of the robust discussions during the interviews. The Skills Enhancement Model for B-BBEE is not cast in stone; and is merely proposed as a foundational aid to future policy related advocacies on this matter that will concretize what is currently mere words on a page.

Finally, it must be said that this document cannot offer a 'conclusion'. Rather, it aspires to empowering the reader to be better positioned to formulate and bring structure to their own

perspectives about the EU investors' responses to B-BBEE; and to be inspired to contribute to further dialogues on ways to ultimately strengthen the partnership between the EU and South Africa.

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