



i – Fundi Community of Experts
Broad-Based Black Economic Empowerment &
BBBEE Ownership after the 11th Oct 2013

Presented by Anton Baumann / Transcend Capital
24 October 2013

... a specialist **corporate finance advisory** firm. We specialise in black economic empowerment transactions, having implemented **over 90 such transactions** since 2005.

We provide services across corporate South Africa and have extensive experience in structuring value-adding, sustainable transactions for **multinationals**, mining houses, suppliers to the mining industry, and renewable energy companies.

Our proven corporate finance expertise and understanding of the BEE regulatory environment and its impact on business strategy means we can **combine best practice with innovative thinking**. This enables us to tailor sustainable empowerment transactions to suit the unique needs and circumstances of our clients.

We **project manage transaction implementation** from beginning to end. The Ownership Solutions team will ensure that all the legal, BEE, financial and regulatory requirements are met – **partnering with leading law firms** and BEE verification agencies where appropriate.

We differentiate ourselves by continuously striving to create optimal ownership solutions for our clients – delivering turnkey tailored and innovative empowerment structures and corporate finance advisory services.



Bruce Hunt

B Com, CFA, MBA (Manchester)

Bruce Hunt is the CEO of Transcend Capital (Pty) Ltd and a Director of Transcend Corporate Advisors (Pty) Ltd. He is a specialist in structuring Multinational BEE Empowerment deals and designing and implementing democratic Employee Owned Trusts and Broad Based Empowerment Schemes. Prior to joining Transcend Capital (Pty) Ltd, Bruce was a trader and structured finance professional at Investec Bank.



Shaun Smit

CA (SA)

Shaun Smit is a director of Transcend Capital (Pty) Ltd and specialises in BEE Ownership advisory and transaction structuring – specifically Employee Ownership Scheme (ESOP) and Broad-based Ownership Scheme implementation, Enterprise Development initiatives, and share incentive schemes. Prior to joining Transcend Capital (Pty) Ltd, Shaun worked for Deloitte and Credit Suisse.



Jackie Mathebula

MBA (UP), MM-HR (WBS), B Admin Hons (UNISA)

Jackie Mathebula is a Principal at Transcend Capital (Pty) Ltd. He is also a director of several companies focusing on mining and professional services (B-BBEE and strategic human resources management). Jackie has held executive positions in companies such as Edcon Limited, Harmony Gold Mining Company Limited, and Gensec Bank.



Olga Meshoe

LLB (PTA)

Olga Meshoe serves as Transcend Capital (Pty) Ltd's in-house legal counsel. Olga is also a Senior Consultant at Transcend Corporate Advisors, advising generally on Broad-Based Black Economic Empowerment and specifically on the Socio-Economic Development spend of corporate entities. Prior to joining Transcend Capital (Pty) Ltd in early 2012, Olga was a partner in the banking and finance practice group of Webber Wentzel Attorneys.



Anton Baumann

Lawyer (UP, Berlin), MBA (Berlin)

Anton Baumann is a Principal at Transcend Capital (Pty) Ltd. He is a fully qualified lawyer and a well-known expert in all matters relating to transformation and BEE Ownership. He has in-depth understanding of the challenges multinational companies face in South Africa. Anton has worked as a lawyer in Germany, the United States and Namibia. Prior to joining Transcend Capital (Pty) Ltd, Anton was the MD of NERA Verifications.



Garen Walkerley

BCompt BCompt (Hons) CA (SA)

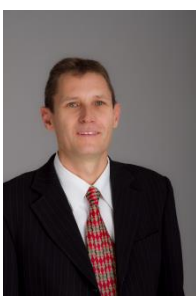
Garen is a Principal at Transcend Capital (Pty) Ltd and specialises in providing Corporate Finance Advisory Services. Prior to joining Transcend Capital (Pty) Ltd, Garen was a Transaction Advisory Services Partner at Ernst & Young and the Transaction Support sub-service line leader for Africa.



Snehal Desai

CA (SA)

Snehal Desai is a Corporate Finance Associate at Transcend Capital (Pty) Ltd and provides specialist support for the designing and implementation of ownership and enterprise development transactions. After completing his articles with KPMG in Johannesburg, he spent a number of years in the practice as an audit manager. Snehal joined Transcend Capital (Pty) Ltd to pursue his interest in Enterprise Development and the creation of a broader economically active society.



Dr. Robin Woolley

Phd, MBA (Wits), BSc (Natal)

Robin is the CEO of Transcend Corporate Advisors (Pty) Ltd and also a director of Transcend Capital (Pty) Ltd. His areas of expertise are strategy development, black economic empowerment implementation, scorecard development and the implementation of employee ownership in companies.





Melanie van Biljon

Honours in Commerce, BCom Honours, PGDMA, CPA, LLB

Melanie is an associate at Transcend Capital (Pty) Ltd and provides specialist support for the designing and implementation of ownership and enterprise development transactions. Melanie was a Manager in KPMG's New York Financial Services practice in the Investment Management industry prior to that Melanie worked at Belliger (Pty) Ltd as a legal adviser and practiced law at Stridom & Breckenkamp Inc. in the Insolvency and Commercial Law Practice.

... SOME OF OUR CLIENTS INCLUDE ...

Company	Services Provided	Company	Services Provided
	<ul style="list-style-type: none"> Tendered for the design and implementation of a multi-billion Rand BEE ownership structure for the Passenger Rail Agency of South Africa 		<ul style="list-style-type: none"> Design and implementation of Broad-Based Ownership Scheme
	<ul style="list-style-type: none"> Assisted with the design and BEE optimisation of the innovative Allan Gray Employee Share Scheme 		<ul style="list-style-type: none"> Advisory on the set-up of a black owned subsidiary
	<ul style="list-style-type: none"> BEE Ownership advisory and BEE optimisation 		<ul style="list-style-type: none"> BEE partner selection and negotiation Corporate finance and tax advisory Tender assistance (regulator matters)
	<ul style="list-style-type: none"> Design and implementation of Employee Ownership Scheme (ESOP) BEE Ownership structuring 	<p data-bbox="1000 654 1263 739">International Consulting Firm</p>	<ul style="list-style-type: none"> Strategic design and implementation of a BEE Ownership Scheme, aligned to the global strategy of the firm
	<ul style="list-style-type: none"> Design and structure of Community Trust structures and major Enterprise Development Trusts BEE Ownership advisory on optimisation of ownership structure 		<ul style="list-style-type: none"> Employee and broad-based ownership advisory BEE Ownership Optimisation
	<ul style="list-style-type: none"> Design and implementation of Employee Share Appreciation Rights Scheme Communication and Rollout of scheme 		<ul style="list-style-type: none"> Advisory on BEE ownership
	<ul style="list-style-type: none"> Restructure of ESOP Conceptualising and design of multifaceted BEE ownership structure 		<ul style="list-style-type: none"> Design and structure of major ED initiative and feasibility of ESOP
	<ul style="list-style-type: none"> BEE Partner selection and negotiation Corporate finance and tax advisory Employee Ownership scheme (ESOP) design and implementation BEE rating preparation 		

THERE ARE MULTIPLE VARIABLES TO CONSIDER WHEN IMPLEMENTING A B-BBEE TRANSACTION



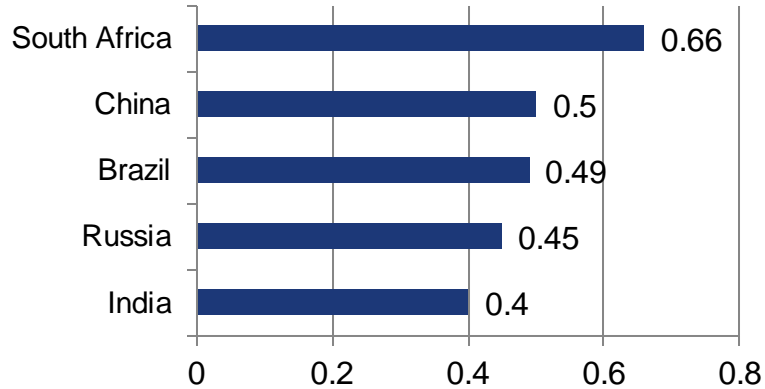
Optimised structuring and meaningful transformation

Effective	Robust	Meaningful	Flexible	Efficient
<p>The recommended Solution is Effective.</p> <p>Transcend Capital will recommend solutions which will maximise our clients overall BEE Level by a potential 23 points and address the pending penalties as per the proposed new BEE Codes of Good Practice</p>	<p>The recommended Solution is Robust.</p> <p>Transcend Capital offers innovative yet tried and tested solutions that have been signed off by South Africa's Leading BEE Verification Agencies, leading law firms and senior legal Council.</p>	<p>The recommended Solution is Meaningful.</p> <p>The Objects of the Broad-based BEE Trust can be widely set within the ambits of the BEE Codes. The Trust will be a contributor to the Transformation of South Africa and therefore enhance the reputation of our clients</p>	<p>The recommended Solution is Flexible.</p> <p>The proposed Solution will be designed in such a way that it takes into account possible changes in legislation funding requirements etc</p>	<p>The recommended Solution is Affordable.</p> <p>Transcend Capital will work together with its clients to arrive at a cost effective solution and weight cost effectiveness against other relevant factors</p>

IMPLEMENTABLE TIMELINE 2 TO 6 MONTHS

RECAP: BROAD-BASED BLACK ECONOMIC EMPOWERMENT WAS INTRODUCED IN SOUTH AFRICA TO ADDRESS HISTORICAL INEQUALITIES

Gini/ IMF 2012



WHAT IS B-BBEE

"South Africa's policy of black economic empowerment (BEE) is not simply a moral initiative to redress the wrongs of the past. It is also a growth strategy that aims to fully exploit its economic potential, by bringing the black majority into the economic mainstream. This will only be possible if our economy builds on the full potential of all persons and communities across the length and breadth of this country"

- DTI 2003 Strategy Document



WHAT HAS CHANGED?

...WE WANT TO
SEE MORE
BLACK
INDUSTRIALISTS
...

- There is a clear and definite move to increase the importance of BBEE Ownership.
- This shift becomes apparent in amendments to the **specific Ownership scorecard** as well as in **amendments to other fundamental principles**.

THE SHIFT TOWARD OWNERSHIP BECOMES APPARENT IN SOME FUNDAMENTAL AMENDMENTS TO THE BBBEE CODES

Enterprise and Supplier Development focused only on BBBEE Owned businesses

More than half of Procurement points focused on Ownership of suppliers

100% Black EME and QSE are Level 1

51% Black Owned EME and QSE are Level 2

- This represents a very distinct shift in favor of small **black owned** companies
- Generics and other non black companies are facing a much more difficult scorecard
- Small **black owned** companies literally do not need to participate in the Transformation efforts of SA

NEW PRINCIPLES MAKE OWNERSHIP TRANSACTION AN IMPERATIVE TO AVOID MATERIAL DROP IN BEE STATUS

- 1 Higher Targets across most of the scorecard will lead to a likely drop in points earned. All companies will be faced with this.
- 2 New sliding scale will lead to a drop in overall performance. All companies will be faced with this.
- 3 Non compliance with sub-minimum requirements on a Priority Element (including Ownership) will lead to discounting of BEE status by one level. Only companies that have not addressed all Priority Elements will incur this penalty.

STATUS LEVELS	OLD SCORING	NEW SCORING
LEVEL 1	≥100 Points	≥100 Points
LEVEL 2	≥85 but <100 points	≥95 but <100 points
LEVEL 3	≥75 but <85 points	≥90 but <95 points
LEVEL 4	≥65 but <75 points	≥80 but <90 points
LEVEL 5	≥55 but <65 points	≥75 but <80 points
LEVEL 6	≥45 but <55 points	≥70 but <75 points
LEVEL 7	≥40 but <45 points	≥55 but <70 points
LEVEL 8	≥30 but <40 points	≥40 but <55 points
NON - COMPLIANCE	<30	<40

Annotations: A yellow arrow labeled '1' points from Level 3 to Level 4. A yellow arrow labeled '2' points from Level 4 to Level 5. A yellow arrow labeled '3' points from Level 5 to Level 6. A green arrow labeled 'OWN' points upwards from Level 6 to Level 5.

COULD RESULT IN SIGNIFICANT REVENUE LOSS OVER 10 YEARS

in '000		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
growth (with BEE)	7%	1,000,000.00	1,070,000.00	1,144,900.00	1,225,043.00	1,310,796.01	1,402,551.73	1,500,730.35	1,605,781.48	1,718,186.18	1,838,459.21	1,967,151.36
growth (without BEE)	0%	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
loss		-	70,000.00	144,900.00	225,043.00	310,796.01	402,551.73	500,730.35	605,781.48	718,186.18	838,459.21	967,151.36
cumulative		-	70,000.00	214,900.00	439,943.00	750,739.01	1,153,290.74	1,654,021.09	2,259,802.57	2,977,988.75	3,816,447.96	4,783,599.32

OWNERSHIP IS A BUNDLE OF RIGHTS CRAFTED INTO THE MOI OF THE COMPANY

The **right to participate in the economic interest** of the company, i.e. the right to receive a dividend.

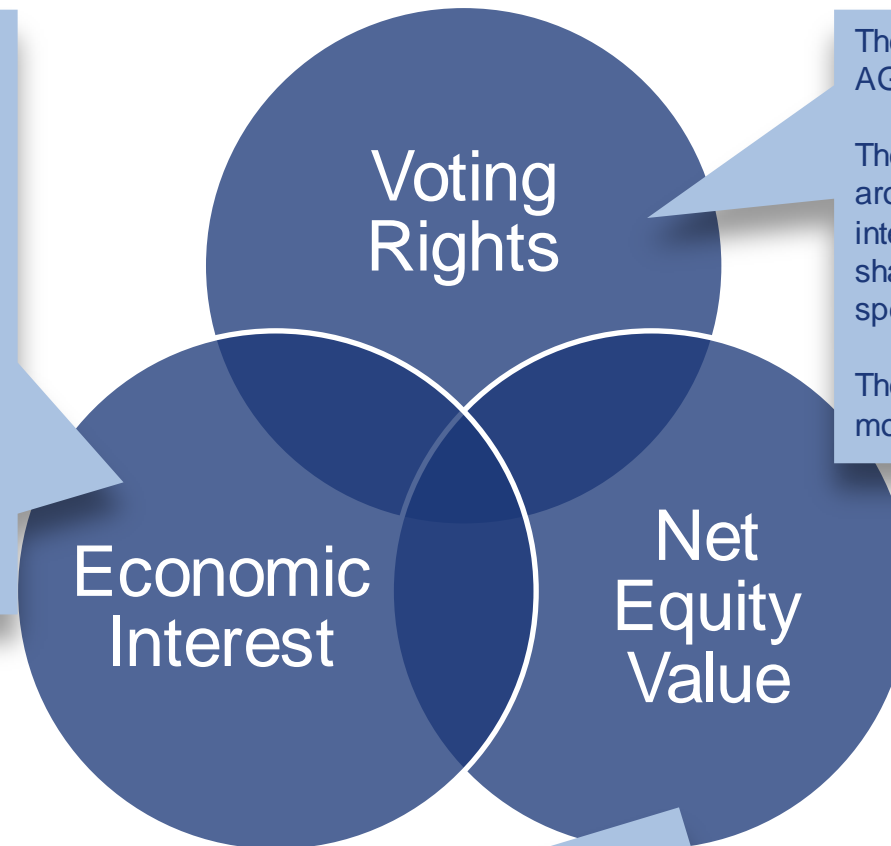
Whether the company actually declares a dividend is irrelevant for the purposes of measurement.

However a BEE Partner will expect an appropriate dividend policy, in the case of Broad-based Schemes a flow of cash is desirable

The **right to vote** in the annual AGM.

The 25.1% target was written around the old Company Act and intended that the black shareholder could then block special resolutions.

The new Company Act allows for more flexibility in this regard



The **wealth creation through Ownership** – whether the value the underlying equity exceeds outstanding acquisition debt.

As a Priority Element, the Ownership sub-minimum compliance target is 40% of the Net Value

THE NEW OWNERSHIP SCORECARD

Indicator	Description	Weighting Points	Compliance Target
Voting Rights	Voting rights in the hands of Black people	4	25% + 1 Vote
	Voting Rights in the hands of Black women	2	10%
Economic Interest	Economic interest in the hands of Black people	4	25%
	Economic interest in the hands of Black women	2	10%
	Economic interest in the hands of: - Designated Black Groups - Broad-Based Ownership Schemes - Employee Ownership Schemes - Co-operatives	3	3%
	Economic interest in the hands of Black New Entrants	2	2%
	Net Value	Net Equity Value	8
Total		25	

Weighting points for Black voting rights increased to 4 (from 3)

Bonus points have fallen away and are effectively incorporated into Economic Interest section

More points available for Broad-Based and Employee Ownership, and lower targets

Lower target for ownership by Black New Entrants

Additional point for Net Value, Ownership Fulfillment point falls away

Total Ownership points increase to 25 from 23

Military Veterans added

Threshold increased to R50mil from R20mil

BEE OWNERSHIP AS PRIORITY ELEMENT NET VALUE IS THE RELEVANT INDICATOR

➔ **Statement 000 Clause 3.3.1.1.1:** “the sub-minimum requirement for Ownership is 40% of Net Value (40% of the 8 points) based on the Time Based Graduation Factor as provided in Annexe 100 (E)”

Net Value points allocated is the lower of Formula A and B

A:

$$A = B [1/(25\% \times C)] \times 8$$

A = score

B = deemed net value

C is “graded target”:

- ✓ 1st year: 10% of target
- ✓ 2nd year: 20% of target
- ✓ 3rd & 4th year: 40% of target
- ✓ 5th & 6th year: 60% of target
- ✓ 7th & 8th year: 80% of target
- ✓ 9th & 10th year: 100% of target

Deemed Net Value

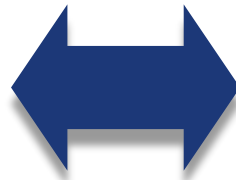
$$A = (B-C)/D$$

A = deemed Net value

B = Value of Equity Instruments in hands of black people

C = Value of Acquisition debt

D = Value of Measured entity



B:

$$A = B/C \times 8$$

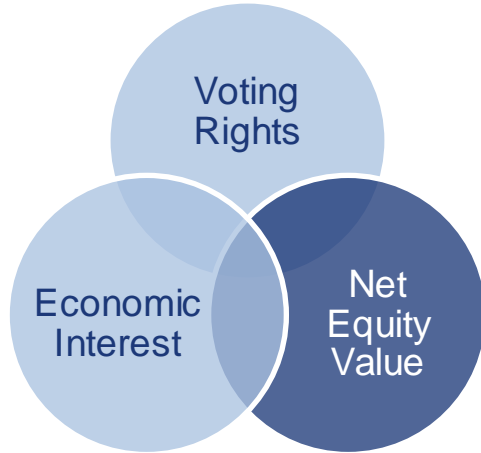
A = score

B = black ownership % (Ec. Interest / FT)

C = target

BEE OWNERSHIP AS PRIORITY ELEMENT NET VALUE IS THE RELEVANT INDICATOR

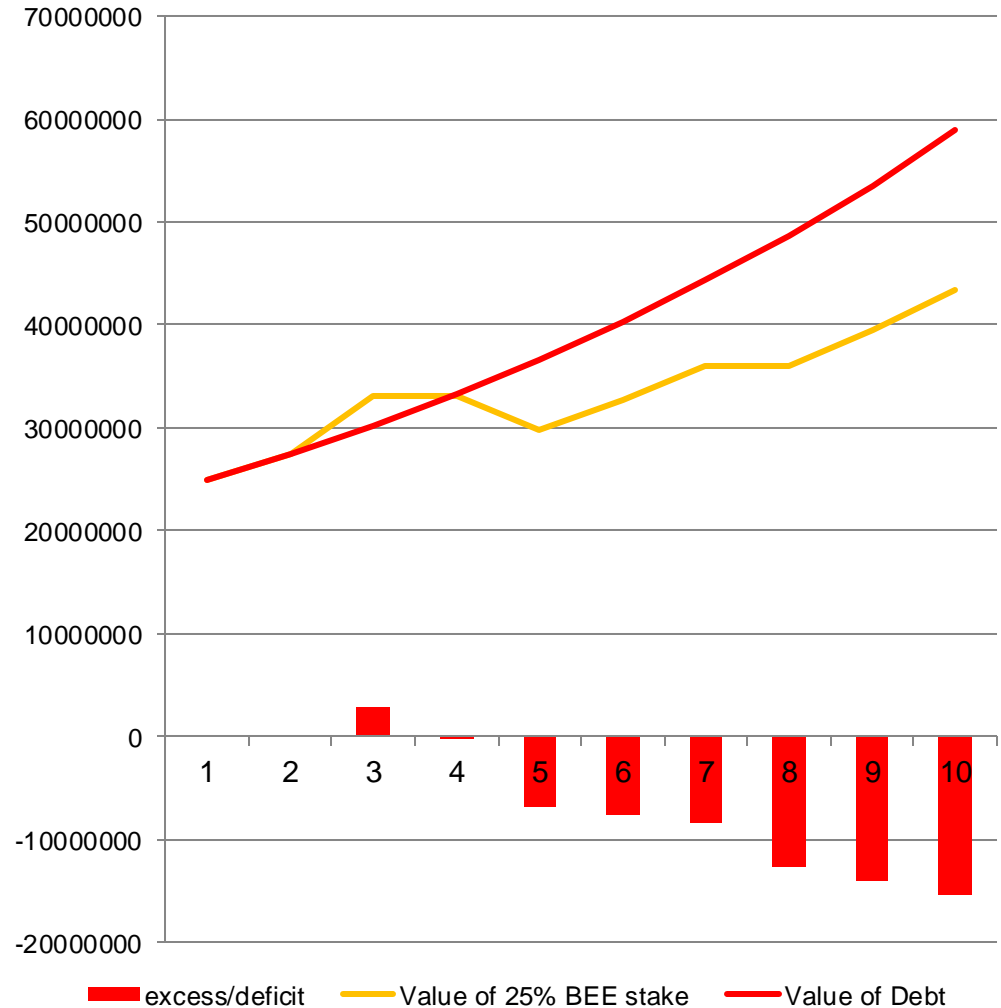
➔ **Statement 000 Clause 3.3.1.1.1:** “the sub-minimum requirement for Ownership is 40% of Net Value (40% of the 8 points) based one the Time Based Graduation Factor as provided in Annexe 100 (E)”



A TRADITIONAL BEE DEAL WOULD OFTEN ONLY LOOK AT VOTING RIGHTS AND ECONOMIC INTEREST, BUT NOT AT NET VALUE.

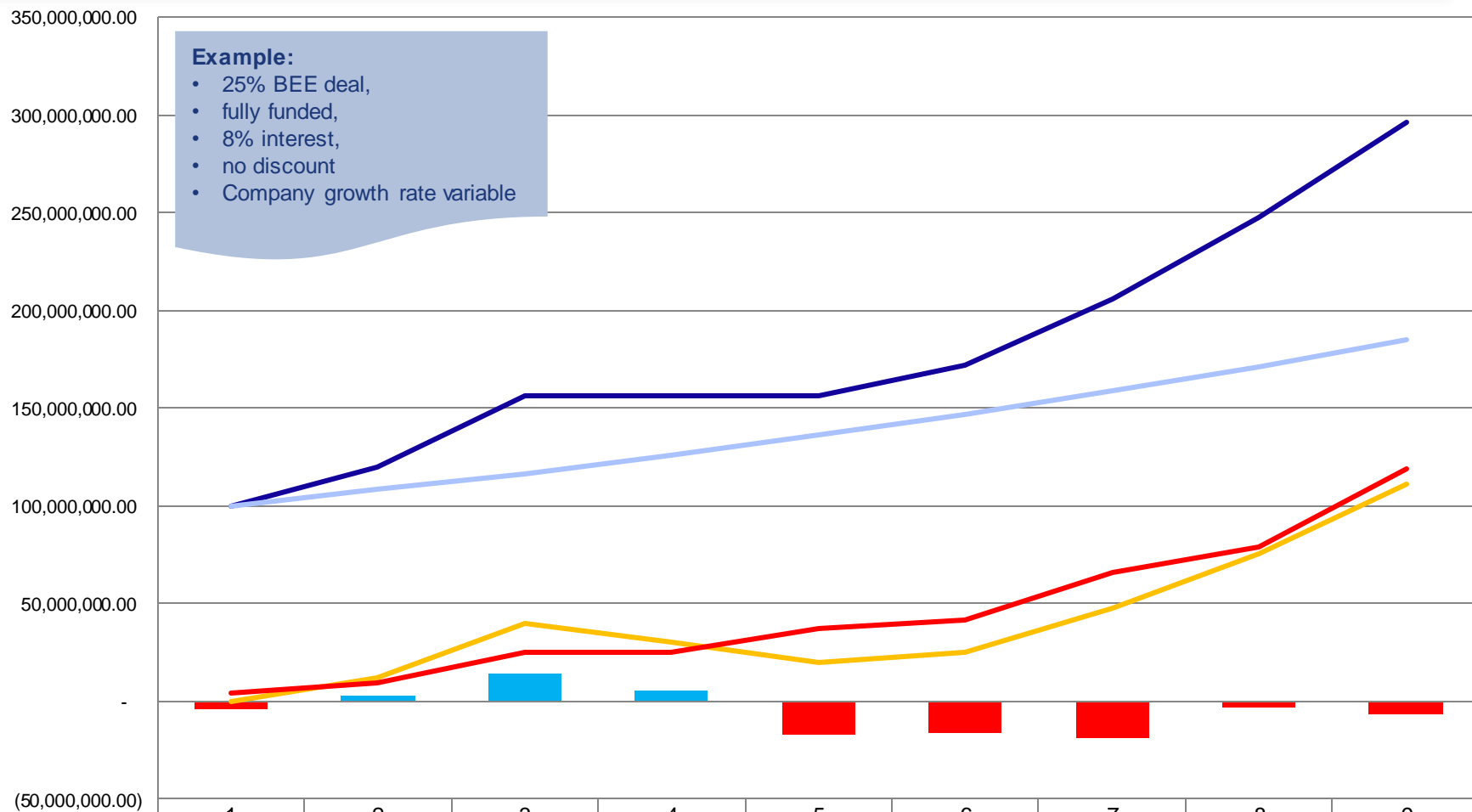
VALUE WAS CREATED IN THE HANDS OF THE INSTITUTION PROVIDING THE FUNDING RATHER THAN THE BLACK PARTICIPANT.

EXCESSIVE INTEREST CHARGES AND COUPONS LEAD TO LITTLE VALUE CREATION IN THE HANDS OF THE BLACK PARTICIPANT



NET VALUE HAS NOW BECOME A CRITICAL ASPECT OF AN OWNERSHIP TRANSACTION

UNDERSTANDING EXPECTED EVOLUTION OF NET VALUE IS CRITICAL

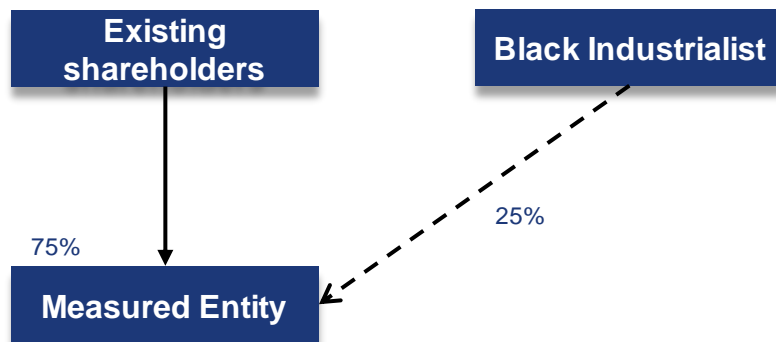


Example:

- 25% BEE deal,
- fully funded,
- 8% interest,
- no discount
- Company growth rate variable

	1	2	3	4	5	6	7	8	9
NV excess/deficit	(4,000,000.)	2,400,000.0	14,400,000.	5,068,800.0	(17,488,896)	(16,516,807)	(18,661,832)	(3,351,706.)	(7,178,141.)
Value BEE	100,000,000	120,000,000	156,000,000	156,000,000	156,000,000	171,600,000	205,920,000	247,104,000	296,524,800
Value Debt (i=8%)	100,000,000	108,000,000	116,640,000	125,971,200	136,048,896	146,932,807	158,687,432	171,382,426	185,093,021
Net Value (NV)	-	12,000,000.	39,360,000.	30,028,800.	19,951,104.	24,667,192.	47,232,567.	75,721,573.	111,431,778
min NV	4,000,000.0	9,600,000.0	24,960,000.	24,960,000.	37,440,000.	41,184,000.	65,894,400.	79,073,280.	118,609,920

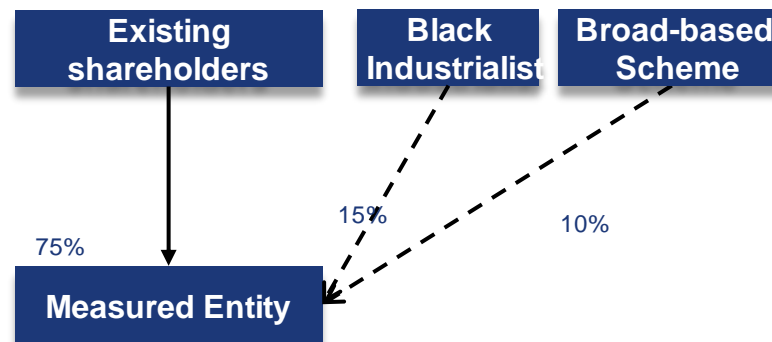
BEE INVESTOR EXAMPLES: OPTIMAL TRANSACTION STRUCTURING IS NECESSARY TO MAXIMISE YOUR BBBEE SCORE



1. 25% Black Industrialist

(Male; not New Entrant; year 1 Net Value target achieved)

	Achieved	Target	Max Score	Actual Score
Voting Rights			6	
Black	25%	25% + 1 vote	4	4
Black Women	0%	10%	2	0
Economic Interest			11	
Black	25%	25%	4	4.0
Black Women	0%	10%	2	0.0
Specified Black Groups	0%	3%	3	0.0
Black New Entrants	0%	2%	2	0.0
Realisation			8	
Net Value	10%	Time-based	8	8
Total			25	16



2. 25% - 15% Black Industrialist & 10% Broad-based Ownership Scheme

(Industrialist - Male; not New Entrant; year 1 Net Value target achieved)

(BBOS - 100% Female; New Entrant; year 1 Net Value target achieved)

	Achieved	Target	Max Score	Actual Score
Voting Rights			6	
Black	25%	25% + 1 vote	4	4
Black Women	13%	10%	2	2
Economic Interest			11	
Black	25%	25%	4	4.0
Black Women	13%	10%	2	2.0
Specified Black Groups	25%	3%	3	3.0
Black New Entrants	25%	2%	2	2.0
Realisation			8	
Net Value	10%	Time-based	8	8
Total			25	25

Arguably it is more likely that Black industrialists will be established via Broad-based Ownership Schemes which have an Enterprise Development objective than the traditional model of introducing Black minority shareholders to existing businesses.

Fronting includes but is not limited to practices in connection with a BBEE Transaction

(a) in terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise

WINDOW DRESSING

(b) in terms of which the economic benefits received as a result of the B-BBEE status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation;

BENEFIT DIVERSION

(c) involving the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of B-BBEE compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person;

(d) involving the conclusion of an agreement with another enterprise in order to achieve and enhance B-BBEE status in circumstances in which -

- (i) there are significant limitations on the identity of suppliers. service providers. clients or customers;
- (ii) the maintenance of business operations in a context reasonably considered to be improbable having regard to resources:
- (iii) the terms and conditions were not negotiated at arms length on a fair and reasonable basis;

OPPORTUNISTIC INTERMEDIARIES

BROAD BASED BLACK ECONOMIC EMPOWERMENT AMENDMENT BILL 2011

Section 20

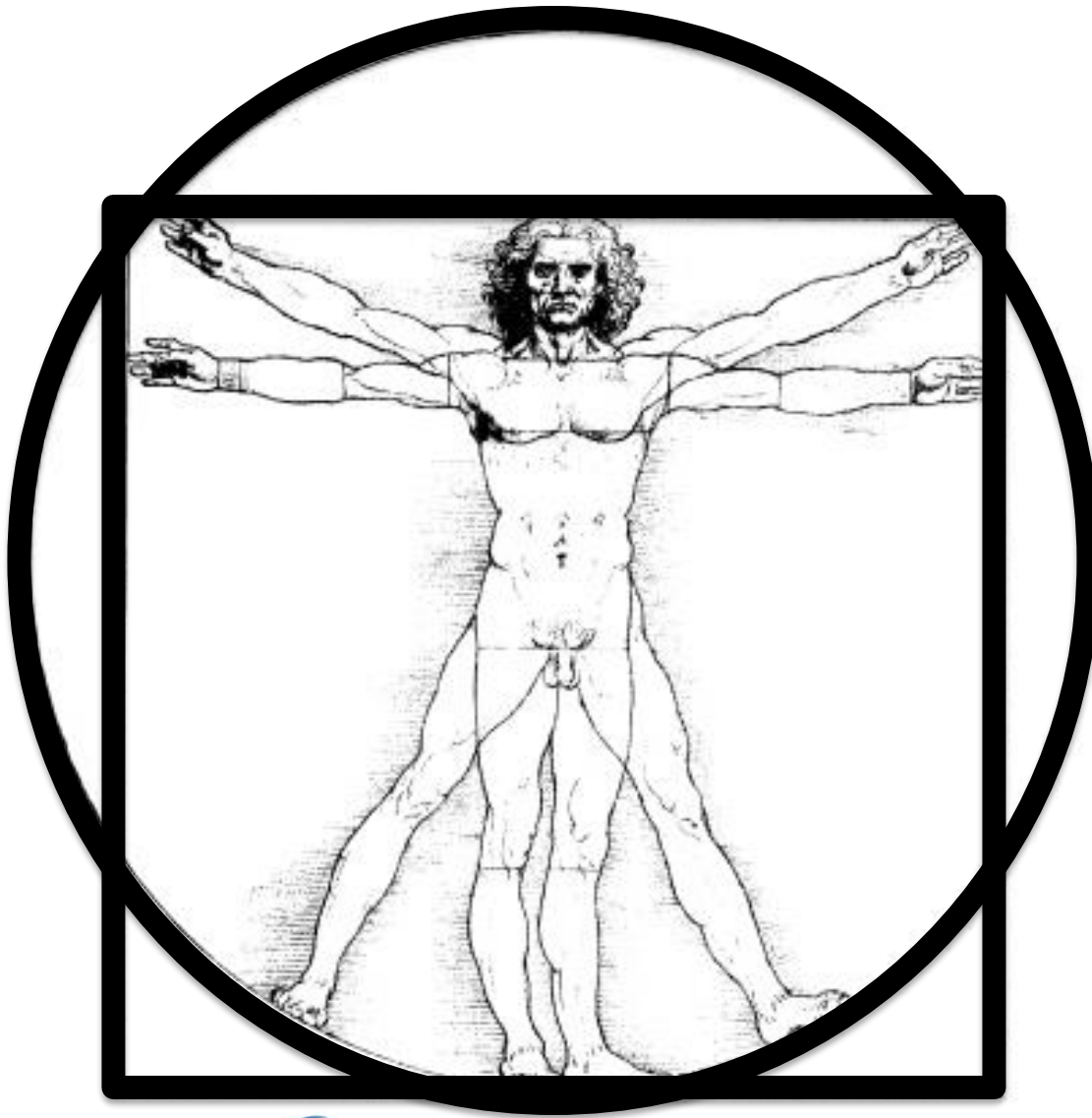
(3) Any person convicted of an offence in terms of this Act is liable

- (a) In case of contravention of subsection (1) to a fine or to imprisonment per a period not exceeding 10 years...;or
- (b) (b) in any other case to a fine or imprisonment for a period not exceeding 12 months or both...;
- (c) In the case of an enterprise, to a fine of 10% of that enterprise's annual turnover.

Section 20

(4) In addition, any person and/or entity convicted of an offence under subsections (1) or (3) of section 20, shall be banned from contracting or transacting any business with any organ of state and/or public entity, and shall be entered into the National treasury register of Tender defaulters.

FRONTING VS. COMPLAINTS DRIVEN TRANSFORMATION. THE LATTER IS THE REAL PROBLEM



- South Africa needs more “Meaningful” Transformation and must move beyond a mere compliance driven approach
- Transformation should be seen as an investment opportunity into the growth of the company and a commercial enable as opposed to an additional Tax
- The increased targets and new requirements will put the focus back on scorecard requirements
- This should not stop us from looking beyond the scorecard