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# Property Sector Transformation Charter Framework

## 1. Preamble

1.1. The property sector commits itself to the implementation of a Transformation Charter. This commitment was made noting that:

- Despite significant progress since the establishment of a democratic government in 1994, South African society remains characterised by racially based income and social services inequalities;
- The vast majority of South Africans remain excluded from ownership and control of productive assets and the possession of strategic skills;
- This is not only unjust, but inhibits South Africa's ability to achieve its full economic potential;
- BEE is a mechanism aimed at addressing inequalities and mobilising the energy of all South Africans. It will contribute towards sustained economic growth, development and social transformation in South Africa;
- Inequalities also manifest themselves in the country's property sector;
- A positive and proactive response from the sector through the implementation of BEE would address inequalities and unlock the sector's potential;
- The Constitution of the Republic of South Africa, in inter alia section 9 on equality (and unfair discrimination) in the Bill of Rights states the imperative of redressing historical and social inequalities; and that
- South Africa's BEE policy as articulated in the 2003 "Strategy for Broad-based Black Economic Empowerment" (BBBEE Strategy) and given effect in the Broad-Based Black Economic Empowerment Act (No. 53 of 2003) (BBBEE Act), defines broad-based BEE, outlines government's instruments for achieving BEE and provides for the gazetting of transformation charters,

1.2. We, the parties to this charter, commit ourselves to actively promote a vibrant, transformed, and growing *property sector* that provides adequate services to the

domestic economy, reflects the South African nation as a whole, and contributes to the establishment of an equitable society.

### 1.3. The property charter:

- Constitutes a framework and establishes the principles upon which BEE will be implemented in the sector;
- Is a transformation charter as contemplated in the Broad-Based BEE Act;
- Establishes targets and *unquantified responsibilities* in respect of each BEE indicator; and
- Outlines processes for implementing the charter, as well as mechanisms to monitor and report on progress.

## 2. The challenges facing the property sector

2.1. Property ownership and the complex system that has evolved around it is the foundation of wealth creation in the world today. Historically, property has been viewed as a right. In South Africa however, *black people* were denied access to productive land through the Native Land Act of 1913 and subsequent policy and legislation.

2.2. Black people could not own property nor could they effectively trade on properties. In many cases land was held by Tribal Trusts, which precluded people living on tribal land from obtaining title deeds. These laws affected the ability of *black people* to create or accumulate wealth.

2.3. Consequently significant numbers of South Africans have never in the history of their families experienced formal property ownership and its wealth creation benefits. This has had a fundamental impact on the economic potential of South Africa and *black people* in particular.

2.4. Despite legislative and policy interventions to eradicate these inequalities, in practice skewed patterns of ownership, participation and benefit remain.

2.5. *Black people* continue to be significantly under-represented in ownership of property, whilst administrative, legal and financial constraints restrict the ability of

*black people*, particularly in *underdeveloped areas*, to participate in the secondary property market.

- 2.6. Commercially, property ownership is dominated by collective investment schemes, property loan stocks and listed property companies. There is limited participation of *black people*, women and black women in particular, in ownership and *control* of these companies. The commercially driven activities surrounding property, including development, management and sales, rests largely in white-owned hands.
- 2.7. Companies in the sector have inadequately addressed employment equity with the result that the sector continues to be under represented in terms of race and gender.
- 2.8. There is little investment in skills development and limited commitment to workplace training.
- 2.9. Preferential procurement has in general not been implemented at all, with few companies being able to demonstrate any progress in increasing spend from targeted suppliers.
- 2.10. Furthermore, the sector does little to promote the growth of sustainable enterprises and there is almost no enterprise development support.
- 2.11. At tertiary education level, property is inadequately supported as a profession, combined with limited appreciation of property as a career.
- 2.12. There is a lack of investment and property development in *underdeveloped areas*, perpetuating service inequalities and exacerbating the limited tradability of properties in these areas.

### 3. Objectives of the charter

3.1. The charter aims to:

- Unlock blockages to property ownership and participation in the property market by *black people*;
- Promote property development in *underdeveloped areas*;

- Achieve a substantial change in the racial and gender composition of *ownership, control and management* in the sector;
- Promote improved employment conditions and encourage diverse organisational cultures;
- Enhance the participation of *black people, disabled people, youth, workers, cooperatives and women* in the property industry and in its growth;
- Promote *employment equity* in the sector;
- Increase the pool of intellectual capital in the sector by focusing on attracting new entrants and developing appropriate curricula;
- Contribute towards increased investment in the skills development and training of existing and new *black* professionals and *black* women leadership;
- Enhance entrepreneurial development and increase the number and expertise of *black* firms and *SMEs* providing services and products to the sector;
- Increase the procurement of goods and services from suppliers who subscribe to BEE and the number and quality of BEE companies providing services and products to the sector.
- Contribute to sustainable development in underdeveloped areas;
- Encourage good corporate citizenship amongst companies in the sector, including participation in corporate social investment projects and adherence to triple bottom-line accountability.

## 4. Application and reporting

4.1. This charter applies to the South African *property sector*.

4.2. Each entity will submit an annual BEE report, which has been independently verified by an accredited rating agency. The report will contain the company's scorecard and an account of progress in achieving the qualitative undertakings of the charter.

- 4.3. Each company's report will be made publicly available.
- 4.4. The targets in this Charter will be applied from the "effective date" until the date as outlined in the parameters of the scorecard.
- 4.5. The targets and other mechanisms contained in the charter will be reviewed every three years;
- 4.6. A comprehensive review of impact and targets will be undertaken after five years;
- 4.7. All the provisions of the charter are to be achieved in a manner consistent with sound business practice;
- 4.8. Certain of the provisions of the charter may not apply in the same manner to all *property sector* institutions. Specific variations will be an outcome of the charter process.
- 4.9. Companies, who fall within a group that is bound by another charter, will be bound by the requirements of this charter, if the primary business of the company within the group is in property.
- 4.10. All *property sector* institutions claiming exemptions in terms of this paragraph would have to submit a return to a relevant oversight structure providing motivation and evidence supporting the exemption.

## 5. Employment Equity

- 5.1. Each property sector institution undertakes to:
  - Promote a non-racial, non-sexist environment and to enhance cultural diversity and gender sensitivity within the sector;
  - Comply with the Employment Equity Act and to this end produce a comprehensive employment equity plan.
- 5.2. In addition to obligations in terms of Employment Equity, specific minimum targets have been identified as follows:
  - Achieve a minimum target of x% black people in senior management in X years;

- Achieve a minimum target of x% of the above target of black women in senior management in X years;
- Achieve a minimum target of x% black people in middle management in X years;
- Achieve a minimum target of x% of the above target of black women in middle management in X years;
- Achieve a minimum target of x% black people in junior management in X years;
- Achieve a minimum target of x% of the above target of black women in junior management in X years;

## 6. Skills development

- 6.1. The parties commit to invest in human resource development across the full spectrum of skills, with special emphasis on increasing the participation of black people in skilled, strategic and operational leadership in the sector.
- 6.2. Each company within the property sector undertakes to implement the following programmes as a means to create access for black people and accelerate black people within the sector. The programmes include:
- Learnership programmes
  - Internship programmes
  - Accredited Industry related training programmes
  - Bursary programmes
- 6.3. Each company will submit, in compliance with the Skills Development Act, a workplace skills development plan, which will include:
- A commitment from all companies to spend X% of total basic payroll per annum on accredited skills development;
  - A commitment that at least half of that should be spent on skills development of black people;

- An indication of what career-pathing, mentorship and learnership programmes will be developed; and
- X% of staff to be enrolled in matriculant or youth-focused learnerships over a period of x years.

## 7. Procurement

7.1. Procurement is defined as all expenditure to acquire goods and services;

7.2. Disposal strategies are also closely connected to procurement especially in respect of Government;

7.3. The parties commit to target a significant portion of spend on BEE-accredited companies;

7.4. Within this overall procurement target, each company will target certain types of property sector specific suppliers.

7.5. Each company in the sector will implement targeted procurement policies which will facilitate:

- The use of suppliers who are BEE-accredited, with emphasis on black-owned, black-empowered and black women-owned suppliers. All suppliers will be evaluated on BEE and rated by accredited rating agencies;
- The use of SMEs;
- The development of targeted procurement methods, including greater accessibility and early payment cycles; and
- Targeting of labour and SMEs from local communities to ensure benefit to these communities.

7.6. Companies where there is no gazetted charter should be rated against the dti generic BEE scorecard, a draft of which was released in December 2004.

7.7. Targeted procurement will only achieve a score in the agreed categories (e.g. spend on companies that are black women-owned, black-owned or companies rated 'A' in terms of a charter and spend on black-empowered companies or companies rated 'B' in terms of a charter).

7.8. It is proposed that the DTI methodology is utilised to calculate spend.

- All supplier spend according to this methodology will be aggregated and used to calculate the percentage spend on targeted suppliers of total procurement spend.
- Spend is defined as: previous 12 months orders placed at the time of measurement. All expenditure should be counted at the time of placing the order.

## 8. Enterprise Development

8.1. The property sector commits itself to support, facilitate and foster new and existing *BEE companies* as sustainable enterprises in the property sector through skills development, infrastructure support, technical support, financing or any other business enabler, which promotes the sustainable enterprises.

8.2. Enterprise development qualifies by complying with specific inputs and will be measured in relation to outputs/sustainability.

8.3. Disposal strategies could form part of company enterprise development initiatives.

8.4. Recognition for enterprise development in the scorecard will be given to companies that comply with the following:

- Enterprises that are developed fall within the target group.
- Encourage continued development of a specific enterprise over a longer period rather than undertaking development of a different enterprise every year.
- The development programme must comply with charter ED guidelines; evidence of development having taken place must be provided.
- To be compliant, an enterprise development programme must include at least one of the following components:
  - Management, planning, business development and technical skills transfer;

- Establishment of administrative systems and cost control systems;
- Development of entity credit resources with suppliers;
- Development of entity financial capacity and/or financial assistance;
- Each company claiming enterprise development points, must provide an enterprise development strategy and plan.

## 9. Ownership

9.1. The charter aims to address the skewed ownership patterns that currently exist in the commercially driven property sector.

9.2. It also aims to unlock obstacles to ownership by *black people* of property assets, especially participation in the secondary property market.

9.3. Each property owning company commits to achieve a X% direct black ownership target within X years.

9.4. Each property services company commits to achieve a X% direct black ownership target within X years.

9.5. This target should be achieved either at subsidiary or group level. However reporting will happen at company level, therefore ownership would be measured on a see-through basis.

9.6. Initiatives aimed at achieving broad-based empowerment will be promoted. This would include employee ownership, community and collective ownership, and disposal of property assets targeted at designated groups. The scoring approach for broad-based ownership will be differentiated in the scorecard.

9.7. Principles of BEE transactions:

- BEE ownership initiatives should be aimed at promoting the productive and sustainable participation of black companies and black people in all sectors of the economy;
- Ownership will be particularly encouraged if it adds value to the companies involved and includes meaningful participation in management and control;

- Black people already involved in the sector should be preferenced in case of any competing bids for equity and ownership opportunities.
- The funding structures should facilitate the transfer of full economic interest to the BEE partner and longer-term shareholder-type relationships, as opposed to short-term portfolio investments (especially where the transaction has been facilitated);
- If the acquisition of equity by the BEE company is facilitated in terms of the provisions of this charter or through Government assistance, the retention of the shareholding as a BEE share should be promoted to the greatest extent possible;
- If BEE equity is sold, companies will not be able to claim points for that equity.
- Any transaction which involves BEE parties acquiring equity on a conditional, deferred basis, with no issue of equity carrying upfront, economic interest and/or benefit, shall, for the avoidance of doubt, not be counted as direct ownership until such time as the equity is actually transferred.

9.8. All assets disposed by Government will be offered to companies who achieve a good rating in terms of a BEE charter for the property sector.

9.9. Government agrees to a target of x% of all asset disposals to targeted companies.

## 10. Control

10.1. The sector agrees to increase black participation in controlling levels in companies in the following manner:

- To achieve an X % target at board level for black people over x years
- Of the above target X % should be black women over x years (OR X% target at board level for black women over x years)
- X % target for black people in executive management over x years
- Of that target X % should be black women over x years (OR X% target in senior management for black women over x years)

## 11. Development

- 11.1. Local government (municipalities) should promote office and industrial zoning rights in *underdeveloped areas* and combine this with high quality social housing stock.
- 11.2. For every square metre awarded for commercial development, the owner and/or developer will contribute and commit a certain amount towards development in *underdeveloped areas*. Local government will detail the specifications that should be met in *underdeveloped areas* through the *IDPs*.

## 12. Corporate social investment (CSI)

- 12.1. Parties to this charter will have a target of directing x% per annum of post-tax (or pre-tax) operating profits (or turnover) to CSI between the effective date of the charter and XX years.
- 12.2. CSI means projects aimed primarily at black groups, communities and individuals that have a strong developmental approach and contribute towards transformation. CSI projects may include, but will not be limited to:
- Education: support for community education facilities; programmes at secondary and tertiary education level aimed at promoting the sector; bursaries and scholarships, which are oriented towards the property professions;
  - Training: community training; skills development for unemployed; adult basic education and training in communities;
  - Development Programmes for youth and other target groups;
  - Environment: support of conservation projects; community clean up projects; food garden initiatives;
  - Arts & Culture: support of development programmes; development of new talent;

- Health: support of community clinics; health programmes in the community;
- Sport: support of developmental programmes;
- Job creation and
- HIV and AIDS.

12.3. In addition, to general CSI initiatives, property related CSI initiatives will include the following:

- Infrastructure development such as parks, clinics, schools, hospices and libraries in *underdeveloped areas*
- Environment preservation in areas where the biodiversity is put at risk due to property development

12.4. Property-related CSI initiatives will carry a heavier weighting than general CSI.

## 13. Regulatory issues

13.1. Government has a key role in ensuring that there is greater accessibility to property ownership by black people. Through land disposal, property management and zoning rights, the government is able to influence the transformation of the sector without infringing on people's constitutional rights.

13.2. The charter will be published as a Transformation Charter in terms of Broad-Based BEE legislation. Once the charter has been ratified by the Minister of Public Works, the Minister of Trade and Industry will be requested to publish a Code of Practice which will give effect to the scorecard and ensure public sector procurers of goods and services utilise this scorecard when measuring suppliers from the sector.

13.3. The parties undertake and commit to make the provisions of this charter part of government's regulatory framework in respect of property transactions where and whenever they have to apply for rights or ask for consent from

government. This will extend to but not limited to development rights, zoning rights and transactions subject to the approval of the Competition Commission.

## 14. The scorecard

14.1. The scorecard, which will form an integral part of the Property Sector Charter, will provide an objective and broad-based set of measurement indicators for purposes of measuring BEE progress in and between property companies, in different sub-sectors and in the property sector as a whole. The criteria measured in the scorecard will include the following:

- Ownership
- Control
- Employment Equity
- HR Development
- Procurement
- Enterprise Development
- CSI

## 15. Interpretations/Definitions

BEE-Accredited enterprises	Companies accredited in terms of a gazetted charter or, where there is no official charter, companies that are black-owned, black-empowered or black women-owned.
BEE Transactions	All transactions for the acquisition by black people of direct ownership in an existing or new entity.
Black people / Blacks	South African Africans, Coloureds and Indians
Black-empowered Companies	Companies, which are more than 25%, owned by black people and with substantial participation in control by black people.
Black-owned companies	Companies, which are more than 50% owned and controlled by black people.
Black women-empowered enterprise	Companies that are more than 30% owned by black women, and where substantial participation in control is vested in black women.
Broad-based Black Economic Empowerment	<p>The economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to –</p> <ul style="list-style-type: none"> <li>○ Increasing the number of black people that manage, own and control enterprises and productive assets;</li> <li>○ Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;</li> <li>○ Targeted procurement; and investment in enterprises that are owned or managed by black people</li> <li>○ Human resources and skills development;</li> <li>○ Achieving equitable representation in all occupational categories and levels in the workforce;</li> <li>○ Facilitating the provision of additional skills to black employees at all levels in the workforce.</li> </ul>
Broad-based Ownership	An empowerment shareholder represents a broad base of members such as employees (to the extent that the options have actually been exercised), collectives and/or communities, or where the benefits support a target group, for example black women, workers, people living with disabilities and the youth. Shares are held directly or indirectly through non-profit organisations and trusts. At the same time, directors and management of the groups should predominantly comprise black people.

Control	<p>Centres on the authority and power to manage assets, the determination of policies and the direction of business operations. Indicators of control may include:</p> <p>Participation in control of a business unit or of the company (such as shareholder meetings, the Board of Directors, board subcommittees, and divisional boards);</p> <p>The exercises of voting rights on the board of directors and committees thereof, and controlling equity; and</p> <p>Participation in executive management.</p>
Community or broad-based enterprise	See broad-based ownership
Construction Sector	<p>The South African operations, at subsidiary and holding company level, of all enterprises that are directly involved in the maintenance and expansion of residential, non-residential and construction works related to fixed capital stock. This includes the broad conglomeration of industries which add value in the creation and maintenance of fixed assets within the built environment, including, but not limited to, residential and non-residential building contractors, built environment professionals, and civil and structural engineers.</p> <p>[Still to be determined: Inclusion of mechanical and electrical engineers and materials suppliers]</p>
Co-operative or collective enterprise	An autonomous association of persons who voluntarily join together to meet their economic, social and cultural needs and aspirations through the formation of a jointly owned enterprise and democratically controlled enterprise
Direct Ownership	Ownership of an equity interest together with control over all of the voting rights attaching to that equity interest.
Disabled person	An individual who has a disability and as a result suffers from loss or limitation of opportunity to take part equally with others or to contribute in equivalent measure to such opportunity, in the context of any activity relating to the execution of a Contract or the services to be provided there under. A permanent or prolonged impairment of physical, intellectual or sensory structure or function, which results in a restricted or lack of ability within an objectively determined range of productivity measurement or equivalent productivity criteria considered normal for a human being.

Employment Equity	As defined in the Employment Equity Act 1998 means to promote equal opportunity and fair treatment in employment through the elimination of unfair discrimination and the implementation of affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels of the workforce. It obliges employers with over 50 employees to prepare Employment Equity plans and report on a yearly or bi-yearly basis to the Department of Labour (DoL).
Empowerment Financing	Provision of finance for or investment in BEE transactions, and targeted investments
Enterprise Development	The establishment of and/or support for existing and new BEE accredited enterprises through investment, skills development or infrastructure support.
Entity	Refers to a business entity and includes companies, close corporations, partnerships and sole proprietorships.
Formal contract	A written contract, all the terms of which are embodied in a single or composite document signed by all the parties thereto and duly witnessed.
Historically Disadvantaged Individuals (HDI's)	[In terms of Government's BEE strategy and the Broad-Based BEE Act, the preferred terminology is "black" as per definition above.] South African citizens who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the constitution of the Republic of South Africa, 1983 Act No. 110 of 1983 or the constitution of the Republic of South Africa, 1993 Act No. 200 of 1993; and/or Who is a female; and/or Who has a disability; Provided that a person, who obtained South African citizenship on or after the coming to effect of the interim constitution, is deemed not to be an HDI.
Joint venture	Normally, unincorporated bodies, regarded in law as partnerships in which the partners are jointly and severally liable for the acts, neglects and omissions of the partnership. A joint venture is a venture normally formed ad-hoc for a specific project, in which two or more parties share obligations, risks and rewards. Joint ventures in the procurement context are formed to realise commercial opportunities made available through the award of contracts
Learnership	As defined in the Skills Development Act and as a result of the Growth and Development Summit, it refers to unemployed matriculants or youth

Local Preference/Local Value Add (LVA)	Local Preference/Local Value Add as a percentage is awarded to suppliers based on the amount of local content included in the product being procured by a company. Endorsement by Proudly South African to be used as a criterion.
Management	In relation to an enterprise or business, means an activity inclusive of control and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director. (Preferential Procurement Regulations, 2001). The financial sector charter uses income bands and breaks management categories down into junior, middle and senior management, with executive management being defined as part of control. The ICT charter is similar, but does not use income bands.
Executive Management <sup>1</sup>	Managers who have a significant leadership role in the enterprises, have control over day to day operations, have decision making powers and report directly to the Chief Executive Officer and /or equivalent or the board of directors. NOTE: Define management levels; agree to include temp and commission based workers define the percentage of the commission which is relevant
Senior Management <sup>1</sup>	Managers who plan, direct and co-ordinate the activities of a business and who have the authority to hire, discipline and dismiss employees and have a cost to company package (excluding bonuses) to the employer of R400 000 per annum or more, but excludes all employees who fall within the definition of executive management
Middle Management <sup>1</sup>	The level of management below senior management and includes people who possess a high level of professional knowledge and experience in their chosen field with a cost to company package (excluding bonuses) to the employer of between R399 000 and R200 000 per annum
Junior Management <sup>1</sup>	The level of management below middle management and includes academically qualified workers who possess technical knowledge and experience in their chosen field and have a cost to company package (excluding bonuses) to the employer of between R199 000 and R150 000 per annum

<sup>1</sup> The salary bands used are based on a property sector reward survey of 2003. ~~The definitions were based on the Information Communication Technology Sector Charter definitions. The financial sector charter uses income bands & breaks management categories down into junior, middle and senior management, with executive management being defined as part of control.~~

Procurement	All expenditure for goods and or services including capital expenditure excluding expenditure classes covered elsewhere in the charter e.g. salaries and wages. excluding goods which cannot be sourced locally and state owned monopoly enterprises, which are not yet subject to a charter.
Property	Refers to real rights to land and buildings
Property ownership	Refers to ownership of a title either in the form of a unit, land or building and the owner has to derive economic benefit.
Property sector	Refers to all entities that participate in commercial activities that include property owning companies and property services companies.
Public Private Partnerships (PPPs)	Widely used to implement national and provincial government's infrastructure and service delivery commitments. Regulated by the relevant Treasury (currently, the National Treasury) in terms of Treasury Regulation 16 to the Public Finance Management Act (PFMA).
Services	The provision of labour and/or work or professional services, including advisory services not necessarily remunerated on a unit of time basis, i.e. transaction basis as a commission, retainer or other instrument of compensation of any kind carried out by hand, or with the assistance of equipment and plant and including the input, as necessary, of knowledge-based expertise;
SETA	Means a Sector Education and Training Authority established in terms of section 9(1) of the Skills Development Act 97 of 1998.
Skills Development	The process of enhancing individuals' specialised capabilities in order to provide them with career advancement opportunities;
SOE	State owned enterprise, an enterprise, often a corporation, owned by government.
Small, and Medium Enterprise (SME):	A sole trader, partnership or legal entity which adhere to statutory labour practices, is registered with the South Africa Revenue Services and is a Separate and Distinct Business Entity, Including co-operative enterprises and non-governmental organisations, Managed by one Owner or more which, including its branches or subsidiaries, if any is predominantly carried out in any sector or sub sector of the economy mentioned in column 1 of the Schedule to the Small Business Act (Act 102 Of 1996). A small or medium enterprise with a turnover ranging from R500, 000 per annum to R20 million per annum.
Underdeveloped areas	Areas, which never received any infrastructure development investment or attention from the previous dispensation or the private sector. Includes rural areas and those areas that were previously referred to as "homelands", and "black townships".

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