

THE CO-OPERATIVE AS AN APPROPRIATE FORM OF ENTERPRISE FOR
BLACK ECONOMIC EMPOWERMENT

by

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FOREWORD

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Please note that extracts from this dissertation were used in conjunction with statements and commentaries from the Agricultural Business Chamber in a report which was submitted to the NEDLAC Task Team for Co-operative Development in South Africa during July 2006.

LIST OF DEFINITIONS

Co-operative's dual function – the co-operative has both an economic and a social function, in that it uplifts its members economically through their membership in the co-operative, while it also empowers the members socially by acting together in an economic unit for their mutual good, therefore raising individual and collective human dignity.

Patronage proportion - means the proportion which the value of the transactions conducted by a member of a co-operative during a specified period bears to the value of the transactions conducted by all members with a co-operative during the same period.

Economies of scale - the extra cost savings that occur when a higher volume of production allows unit costs to be reduced. This cost saving can also occur when smaller enterprises act collectively in activities such as bulk buying and other collective actions, in order to increase the profit-making potential of these smaller enterprises.

Informal co-operative – refers to a co-operative that is not necessarily registered in terms of any legislation, but which exists within a community and is based on the seven international co-operative principles and values.

Black people - “black” people refers to “generic black” people that include Africans, Coloureds and Indians in accordance with section 1 of the Broad-based Black Economic Empowerment Act 53 of 2003, unless dictated otherwise.

CHAPTER 1

THE SCOPE AND PURPOSE OF THE STUDY

1.1 Topic

This study aims to investigate the structure of co-operatives in general as well as the co-operative as a suitable vehicle to implement Black Economic Empowerment (hereafter referred to as BEE). The conclusions reached by this study include the possible social and economic impacts that co-operatives may have on communities and on the country as a whole; the current shortcomings in terms of co-operative legislation and regulation, as well as recommendations to rectify these shortcomings.

1.2 Purpose of the study

South African culture often dictates a need for a social basis in business, not only because of the traditional family and community ties which are often found in business dealings among South Africans, but also because of the generally more socialist approach followed by government. In this context, the social and economic aspects already found in business influence the transformation process, which in turn requires the application of (economic) empowerment (upliftment) and involvement, wherein social aspects must then naturally be satisfied. However, these seemingly conflicting ideas are often very difficult to reconcile in practice and pose a great risk to the economic success of the business enterprise. This risk of a failed or unsuccessful business enterprise is often realized when social elements take precedence over the economic needs and aspirations of the business enterprise. Moreover, in terms of the co-operative's social elements within its business enterprise, Van Niekerk,¹ describes the co-operative as having a dual function, in that it is an economic vehicle that not only ensures the social empowerment of its members, but also that of the community within which it exists. One of the greatest challenges to the South African entrepreneur wishing to utilise the co-operative as a BEE vehicle, is to successfully reconcile both the social and economic aspects of business, which are often embedded within the community culture itself, and also to ensure that the co-operative venture is economically successful.

¹ Van Niekerk 1988: 122 – 123.

In terms of transformation policies as mentioned above, the BEE policies and regulations facilitate empowerment in general, serve as motivation to empower the previously disadvantaged and also empower through self-help. In terms of practical vehicles to implement BEE, this study aims to prove that the co-operative in itself is a practical and viable vehicle to implement BEE. The advantages of the co-operative include the membership structure, practical aspects such as the possibility of bulk buying, and government's open support of this type of enterprise as an ideal vehicle to implement BEE. These are all indications of its possible success in the field of economic empowerment.

Moreover, as the co-operative is both a vehicle of social empowerment and a business enterprise (and is well established in South Africa), the concept is not foreign and people from all income groups and from all economic and social backgrounds can become members, thereby facilitating the further creation of opportunities and widening the economic sphere, which is one of the objectives of BEE. Furthermore, the Co-operatives Act 14 of 2005 illustrates the similarity of the co-operative to other entities which have been included under the definition of a co-operative, namely the stokvel in the form of burial, financial and consumer co-operatives, which according to section 4 of the Co-operatives Act 14 of 2005 are included as possible types and forms of co-operatives. Thus, under the aforementioned Co-operatives Act 14 of 2005, a co-operative includes all business enterprises that satisfy the seven international co-operative principles as set by the International Co-operative Alliance,² namely: first, voluntary and open membership; second, democratic member control; third, member economic participation; fourth, autonomy and independence; fifth, education, training and information; sixth, cooperation among co-operatives and lastly, concern for the community. The effect hereof is that more business enterprises will be classified as co-operatives than those merely complying with some legislative definition, as was the situation under the Co-operative Societies Act 91 of 1981. This is a great improvement from the narrow and often restrictive provisions set by the latter Act. Much legislative development has therefore taken place with the introduction of the Co-operatives bill 4483 of 2000, then the Co-operatives bill 4 of 2005 and finally the Co-operatives Act 14 of 2005, hereby opening the playing field to (successful) co-operatives in South Africa.

² Founded in 1895, the International Co-operative Alliance is an independent, non-governmental organisation which unites, represents and serves co-operatives worldwide. <http://ica.coop/ica/>: accessed 8 November 2006.

1.3 Scope of the study

There is currently a vacuum in academic literature regarding the nature and functions of the co-operative as a business enterprise. As a result, many people are uninformed or even misinformed about what constitutes a co-operative, and what its economic application entails. In addition, many South Africans are not fully aware, or are misinformed, of what exactly BEE is, and what it entails. Many people therefore immediately assume a negative attitude towards BEE, without considering the available information. This study aims to create a better understanding of co-operatives and to enlighten academics about BEE. This will also exemplify the co-operative as an ideal vehicle to successfully implement BEE in South Africa.

CHAPTER 2 forms the background to this study and provides a brief introduction to the aspects that will be discussed, namely the nature, origin and functions of BEE, the differences in public opinion regarding BEE, what a co-operative is and how co-operatives can function practically to implement BEE. This chapter puts the broad rationale behind BEE, its nature and functions, into perspective. The nature and concept of co-operatives and the co-operative's function in the implementation of BEE will also be explained.

CHAPTER 3 provides a brief exposition of what the co-operative is by definition, and how co-operatives have developed historically.

CHAPTER 4 distinguishes a co-operative from a company in aspects ranging from membership interest to the dissolution of the enterprise. This chapter will explain the characteristics of the co-operative. The nature, structure and function of the co-operative is further illustrated by means of diagrammatic representation, courtesy of Van Niekerk.³

CHAPTER 5 investigates the tendency in the mid-1990s of co-operatives to convert into companies. It investigates the causes of these conversions, i.e. the lack of a tax advantage for co-operatives, the legal restrictions that were previously placed on co-operatives, the financing possibilities of co-operatives, the function of co-operatives as agents of control boards and the challenges faced in the acquisition of financial assistance in order to organise agriculture and avoid conversions of co-operatives (based on economic reasons, for example where the profit-making objectives become increasingly important within the structure of the co-operative and proportional voting rights become an imperative). The advantages

³ Van Niekerk 1988: 130 – 131.

and disadvantages of converting into companies are also considered. This chapter aims to illustrate the differences between companies and co-operatives in their purpose and application.

CHAPTER 6 investigates the historical development of co-operative legislation and regulation, from the Co-operative Societies Act 91 of 1981 to the two Co-operative draft bills (Co-operatives bill 4483 of 2000 and Co-operatives bill 4 of 2005) and finally the enactment of the Co-operatives Act 14 of 2005. This chapter aims to illustrate the development in terms of co-operative regulation and marks the improvement in these developments, which led to the enactment of the Co-operatives Act 14 of 2005. Although this Act has not come into operation yet, it constitutes a great legislative improvement from the Co-operative Societies Act 91 of 1981. Chapter 7 investigates the general nature of and provisions set out by the Co-operatives Act 14 of 2005 in detail.

CHAPTER 7 investigates the purpose, objectives, provisions and general nature of the Co-operatives Act 14 of 2005, in order to gain a better understanding of the co-operative structure in South Africa. It also compares the Co-operatives Act 14 of 2005 to previous legislation and legislative developments. The shortcomings of the preceding Co-operative Societies Act 91 of 1981, the Co-operatives bill 4483 of 2000 and the Co-operatives bill 4 of 2005 are highlighted. The Co-operatives Act 14 of 2005 is a great improvement on its predecessor, because it is the first South African co-operative legislation that recognizes the application of the seven international co-operative principles. It further recognizes any enterprise which complies with these seven international co-operative principles. A wider variety of enterprises therefore qualify as co-operatives and also provide a much less stringent framework for the management of co-operatives, for example by making the auditing of the accounting records of co-operatives discretionary.

CHAPTER 8 investigates the growth in numbers of co-operatives and suggests possible reasons for this increase, like the enactment of the new, improved Co-operatives Act 14 of 2005 and the promotion of co-operatives by government as BEE compliant enterprises. In turn, the increase in the number of new registrations of co-operatives illustrates the increasing interest in – and popularity of – co-operatives as business enterprises among entrepreneurs in South Africa.

CHAPTER 9 discusses the co-operative movement and policy which functions in addition to co-operative legislation and regulation, and aims to stipulate the policy considerations and values to be followed by all co-operative enterprises in South Africa. A successful co-operative movement and development policy aims to be a practical guide for co-operatives in conducting their business with better skill and

understanding of the co-operative concepts and will then further business in accordance therewith. Moreover, it aims to make co-operatives more accessible to people in South Africa. The possibility of success is also increased.

CHAPTER 10 provides a brief (introductory) historical background to the legislative, political and social aspects resulting in the implementation of BEE. This chapter provides the historical background of BEE and places the legislature in perspective regarding the enactment of BEE legislation and policies as established by government.

CHAPTER 11 investigates BEE in a general manner in order to apply the applicable provisions therein to the co-operative structure. It discusses and describes the concept of BEE in South Africa in order to gain a better understanding of the functions, rights and duties placed on all the role players, to implement BEE successfully. It investigates the historical and legislative developments that led to the enactment of the Broad-Based Black Empowerment Act 53 of 2003. This chapter marks the legislative developments that have taken place since 1994 and aims to create a better understanding of the rationale behind the enactment of the Broad-Based Black Economic Empowerment Act 53 of 2003. It also investigates the practical document used in the measurement of BEE compliance, namely the BEE generic scorecard, as well as the interpretive document used to fully complete the BEE scorecard, namely the Codes of Good Practice issued by the Department of Trade and Industry.

CHAPTER 12 theoretically and academically proves how the co-operative can function as a practical vehicle of implementation of BEE. This chapter considers the differences between the co-operative and the company, showing how the co-operative structure functions. It also links cultural values like that of ubuntu, the values enshrined in the Constitution, and the provisions of the BEE generic scorecard, to the co-operative structure.

CHAPTER 13 discusses the Yebo Co-operative Limited case study which illustrates the successful practical application of the provisions of the BEE generic scorecard (as discussed in Chapter 12) to the co-operative structure. This case study proves the co-operative a successful vehicle to implement and promote BEE.

CHAPTER 14 contains the conclusions drawn from this study and highlights the improvement in legislative provisions. It also provides suitable recommendations in terms of the shortcomings in existing

co-operative legislation and regulations. This chapter therefore highlights the academic and practical value of the study.

CHAPTER 2

BACKGROUND

Organisational transformation is not a new term to South Africans and there are many contrasting perceptions in this regard. On the one hand, the concept creates hope and excitement in the minds of previously disadvantaged people while on the other, it creates a negative impression for those who see it as:

“The black civil servant or manager - that does not work and cannot be fired.”¹

According to Van der Vent, the above statement is synonymous with thought patterns that are sentimentally inclined, based on ignorance rather than fact.² In order for transformation to be seen as something positive by more South Africans, the general public must become more informed. This can be achieved through the work of researchers thereby providing relevant information in the field. In the opinion of the author, negative feelings towards the transformation movement embarked upon in SA, and specifically BEE as stated above, probably stem from ignorance and fear of change. Change should rather be seen as a step towards development and growth. According to Charles Darwin:

“It is not the strongest species that survive, nor the most intelligent, but the one most responsive to change.”³

Transformation policies are governmental initiatives based on both social and economic factors that generally aim to change, rectify, unify and build South Africa as a whole. According to the National Association of Automotive Component and Allied Manufacturers (hereafter referred to as NAACAM):

“Our country requires an economy that can meet the needs of all our economic citizens – our people and their enterprises – in a sustainable manner. This will only be possible if our economy builds on the full potential of all persons and communities across the

¹ Madi 1997: 1

² Van der Vent 2005: 6.

³ Balshaw and Goldberg 2005: 16.

length and breadth of this country. Government's objective is to achieve this vision of an adaptive economy characterised by growth, employment and equity by 2014."⁴

BEE presents a new frontier and is filled with opportunities; but is also filled with risk. The earliest forms of socio-economic empowerment predate 1994 and ranged from loose associations like the stokvel to women's prayer associations in (traditionally black) townships, which brought hope and opportunity to people living in a country deprived of these things by a discriminatory political system.⁵ However, the objectives of BEE are not selfish or unilateral in application; in fact they aim at widening the economic sphere through increased opportunities and spreading of wealth in general.

BEE is not an option or a regulation enforced through prohibition. Rather, it is a moral, social and legislative imperative to improve the distribution of wealth, income and opportunities in general and a means of providing specific opportunities that aim to deepen ownership control and management of productive capital. BEE means to effect proper economic transformation together with the proper transfer of skills and the establishment of new business enterprises.⁶ Moreover, in the light of the advancement of sections 2 and 9 of the Constitution of the Republic of South Africa (hereafter referred to as the Constitution) and the aim of creating unity among South Africans, it is imperative for government to look for broad-based ownership groupings in (BEE) empowerment deals.⁷ These could include employee-based ownership schemes, community-based investors and co-operatives.⁸ Furthermore, according to sources in the press, empowerment will occur rapidly in mining, tourism, agriculture, procurement services and co-operatives.⁹

The above illustrates government's support and recognition of co-operatives as a potential vehicle for the implementation of BEE. Moreover, the co-operative has proven to be a very successful vehicle of empowerment, even in developed countries like Canada.¹⁰ The Canadian state departments furthermore

⁴ NAACAM 2003: 3 http://www.naacam.co.za/B-B_BEEstratac170303exgmeyerapro3.doc: accessed 4 March 2005.

⁵ "Black" people in this sense refers to African black people.

⁶ Van der Vent 2005: 6.

⁷ Constitution of the Republic of South Africa of 1996, Act 106 of 1996.

⁸ Paton 2003: 34.

⁹ Naidoo 2003: 18.

¹⁰ Canadian co-operative statistics:

- "Home to over 10,000 co-operatives and credit unions, with combined assets of approximately \$167 billion
- Employ over 160,000 people
- 43 percent of adult Canadians belong to at least one co-operative

take an interest and assist in the establishment and promotion of co-operatives, because they have proven to be effective vehicles of empowerment. Co-operatives have also been successful in South Africa and in some instances have developed into powerful businesses while others developed into powerful monopolies during the apartheid era. Therefore, co-operatives can find application in both developed and developing countries.¹¹ Furthermore, when referring to the attributes of the co-operative, it is clear that society functions on similar co-operative principles.¹² Therefore the co-operative should be a very natural and familiar business enterprise to engage in.

Internationally co-operatives function as an important economic tool as stated by Kofi Annan, the Secretary-General of the United Nations:

-
- In Quebec, between 1995 and 2000, the rate at which new co-operatives were being established doubled, while the number of jobs these enterprises provided jumped by 46 percent. Quebec accounts for almost 40 percent of all co-operatives in Canada, and nearly 50 percent of co-op jobs
 - In Saskatchewan, 25 of the province's top 100 businesses are co-operatives. In 1998, there were more than 1,300 co-operatives with over one million registered members. More than 15,000 people were employed by a co-operative (3.5 percent of labour force) and revenues reached almost \$7 billion with assets exceeding \$10 billion (2)
 - In the Maritimes, co-ops account for over 12 percent of the grocery sector
 - In Nova Scotia, more than 400 co-op and credit union businesses hold assets of more than \$2.5 billion. They employ over 7,000 people and more than 6,000 Nova Scotians live in co-operative housing (3)
 - Newfoundland also has many co-operative success stories. Over 57,000 co-op members in Newfoundland and Labrador belong to 73 co-operatives which employ 1400 people and had sales in excess of \$132 million dollars in 1998. There are fish plant workers on the Labrador coast; fishermen and women on Fogo Island; vegetable farmers in central Newfoundland; egg producers on the Avalon Peninsula; retail co-op members, film makers, taxi drivers, photographers, goat farmers, carpenters and IT workers (4)
 - There are 137 Aboriginal co-operatives in Canada. Those reporting to the federal Co-operative Secretariat have over 23,000 members and pay salaries and wages of almost \$40 million. Northern Aboriginal co-operatives remain competitive in the retail sector, out-pacing average Canadian retail growth by almost 50 percent in the mid-1990s." http://www.ontario.coop/pages/index.php?main_id=302: accessed 18 September 2006. The International Co-operative Alliance published the following information regarding statistics: "The Co-operative Movement brings together over 800 million people around the world. The United Nations estimated in 1994 that the livelihood of nearly 3 billion people, or half of the world's population, was made secure by co-operative enterprise. These enterprises continue to play significant economic and social roles in their communities. Below are some facts about the Movement that demonstrate their relevance and contribution to economic and social development...." <http://www.ica.coop/coop/istatistics.html>: accessed 18 September 2006.

¹¹ Instituut vir Kooperasiewese 1968: 1.

¹² All members of society contribute to the government's revenue fund ("the co-operative structure") in the form of payment of taxes ("shares in the co-operative") thereby enabling the use of government funded goods and services where it is chosen to do so.

“Founded on the principles of private initiative, entrepreneurship and self-employment, underpinned by the values of democracy, equality and solidarity, the co-operative movement can help pave the way to a more just and inclusive economic order”.¹³

In May 2004, the South African financial sector employed the Financial Sector Charter to commit R70 billion in development-orientated investments, including low income housing, small enterprises, co-operatives, agriculture, infrastructure, as well as access to financial services and empowerment financing.¹⁴ According to Sizwe, an upcoming black businessperson:

“...the co-operative venture is so far the most flexible and ideal business enterprise through which black consumers together with the white private sector can work together as partners.”¹⁵

According to Roelf:

“...The promotion of co-operatives is seen by the government as a means of alleviating poverty, and promoting equity and greater participation of black people, especially residents of rural areas, in the country's economy....”¹⁶

Van der Walt adds that:

“Co-operatives are about people doing good work to benefit themselves. But more basic it is people working with other people to make themselves better off.”¹⁷

The International Co-operative Alliance (hereafter referred to as the ICA) summarises the co-operative's possible role in BEE and poverty alleviation in South Africa perfectly as follows:

“Self-help, not “charity” empowerment, not “aid” and “...Co-operatives an option for the disadvantaged in the era of globalisation.”¹⁸

¹³ <http://www.ica.coop/index.html>: accessed 27 March 2006.

¹⁴ Milazi 2004: 18. This is an international trend, ICA 2003: 5, also available on <http://www.ica.coop/coop/history.html>: accessed 25 July 2005.

¹⁵ Greenblo1987: 637.

¹⁶ Roelf 2005:

http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

¹⁷ Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

This study will prove co-operatives to be suitable and in cases very successful, vehicles to implement BEE. The co-operative is an ideal vehicle, because of its low initial capital requirement, open and free membership principles, limited liability and general versatility in application. Furthermore, membership in a co-operative is based on principles of democracy, openness, freedom and thus equality. This will satisfy the preamble, section 9 and section 10 of the Constitution. Its compliance is further inferred by the ICA, in stating:

“Unity regardless of ethnic and social origins.”¹⁹

Moreover, both the co-operative and BEE are based on an underlying ubuntu culture, which entails community cooperation and assistance in order to create a better standard of living for all, which is also indirectly protected under section 10 of the Constitution. According to the ICA:

“What we can’t do alone we can do together.”²⁰

This further infers the existence of both economic elements and social aspects within the co-operative structure. Furthermore, by complying with the provisions set by the highest law in the country, as well as satisfying the need for a social basis in business, the co-operative is ideal for South African application.

According to section 2 and section 9(2) of the Constitution, legislation must be enacted to further and facilitate transformation in South Africa. The Broad-Based Black Economic Empowerment Act 53 of 2003 (hereafter referred to as the B-B BEE Act) is an example of such legislation. As will be proven by the contents of this study, a co-operative could satisfy the elements tested by the BEE generic scorecard (hereafter referred to as scorecard or BEE scorecard), if proper business planning and management is in place, in order to produce a good BEE compliance score.

¹⁸ <http://www.ica.coop/activities/idc/2001-quotes.pdf#search=%22Co-operatives%20an%20option%20for%20the%20disadvantaged%20in%20the%20era%20of%20globalisation%202>: accessed 18 September 2006.

¹⁹ <http://www.ica.coop/activities/idc/2001-quotes.pdf#search=%22Co-operatives%20an%20option%20for%20the%20disadvantaged%20in%20the%20era%20of%20globalisation%202>: accessed 18 September 2006.

²⁰ <http://www.ica.coop/activities/idc/2001-quotes.pdf#search=%22Co-operatives%20an%20option%20for%20the%20disadvantaged%20in%20the%20era%20of%20globalisation%202>: accessed 18 September 2006.

Lastly, in addition to the above, this study will also identify the shortcomings in co-operative regulation and legislation, as well as the implementation of the co-operative as a suitable vehicle for BEE and make appropriate recommendations as to the addressing of all these shortcomings.

PART 1: THE CO-OPERATIVE AS A BUSINESS ENTERPRISE

CHAPTER 3

THE CO-OPERATIVE: ITS ORIGIN AND DEFINITION

3.1 Introduction

This chapter aims to investigate the historical development of the co-operative in South Africa, from informal co-operatives such as the stokvel and others, into more formal, regulated forms of co-operatives. It investigates the link between the so-called informal co-operatives, like stokvels, and the formal forms of co-operatives. Furthermore, it investigates the definition and description of co-operatives, found in legislation and in international guidelines, in general. The international guidelines, together with the seven international co-operative principles often present in the definitions of co-operatives, have been widely recognised as fundamental to the existence of any co-operative enterprise and have even been included in the requirements for a co-operative enterprise in the Co-operatives Act 14 of 2005, thereby gaining local legislative authority as well.

3.2. Historical development of the co-operative in South Africa

3.2.1 Historical background

Unlike BEE, which is the latest development in government transformation policies, the co-operative is not a new frontier, as it has been utilised in South Africa since the 1800s,¹ in one form or another. Furthermore, though familiar to most South Africans, its theory and general structure have stimulated academics to investigate it since the late 1800s. Further investigation has now become appropriate, because the co-operative has undergone immense legislative and regulative development since its origin, making it one of the most community-friendly and empowering business enterprises in South African today.²

¹ Van Niekerk 1988: 10, co-operative ventures are as old as man himself.

² Roelf 2005:
http://www.mg.co.za/articlePage.aspx?articleid=236898&area=/breaking_news/breaking_news__business/:
accessed 16 Aug 2005.

Since their origin, co-operatives have been noted as enterprises unique and distinguishable from any other as they aim to further both the economic and social interests of their members, while most other business enterprises generally focus on the creation and sustenance of wealth.³ Co-operatives may even extend their mandate and could aim to develop and improve the community within which they exist. Therefore, in order to fully understand this form of enterprise within its proper context, it is necessary to investigate the historical development of the stokvel, as well as that of the co-operative.

Van Niekerk, the first (modern) South African academic who made an attempt to investigate co-operative theory and practice, notes the following historic developments:

”The Rochdale co-operative of 1844 co-incident with poverty, misery, lack of schools and housing but also economic individualism and the industrial revolution.”⁴

According to Van Niekerk, Robert Owen⁵ strove to create so-called closed societies in which people could act as both producers and consumers, which he referred to as “Village Co-operations”, which were a kind of communal society, while in South Africa, people began to embark upon the development of stokvel societies. This implies that as the “Village Co-operation” developed as a first step towards developing formal co-operatives in other countries,⁶ the stokvel was the first step towards the development of formal co-operatives in South Africa. Stokvels and similar associations based on cooperation are still very much a part of many communities in South Africa,⁷ especially in cases where people find it difficult to obtain financing such as loans from registered (large) financial institutions. Furthermore, the legislature has deemed it necessary to attempt the implementation of formal regulations pertaining to stokvels.⁸

³ Van Niekerk 1988: 124.

⁴ Van Niekerk 1988: 122.

⁵ Robert Owen was born on 17 November 1858, Wales. http://en.wikipedia.org/wiki/robert_owen: accessed 12 June 2007 and van Niekerk 1988: 122.

⁶ Van Niekerk 1988: 122 – 124.

⁷ Phlilip 2003: 23 and NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 14 November 2006.

⁸ Stokvels are currently regulated by the Co-operatives Act 14/2005, but will be regulated by the Co-operative Banks bill of 2004, as soon as such is promulgated.

3.2.2 The stokvel as the predecessor of the co-operative

3.2.2.1 The stokvel described and defined

Van der Merwe defines the stokvel as follows:

“It is a rotating credit union formed by a group of participants who agree to make regular contributions to a common pool on a specified regular period (monthly, weekly or fortnightly). Money in this pool is then paid out in full or partially to every participant, either on a rotation basis or in times of financial need.”⁹

Stokvel associations are therefore community-based saving schemes, aimed at improving the lives of their members both economically and socially, by providing them with financial support within a social or community-based grouping.¹⁰ Establishing a stokvel is very simple and becoming a member is generally based on the recommendation of another existing member.¹¹ Therefore, it is usually established between people who work together or who belong to the same church, family etc., who come together to form a

⁹ Van der Merwe 1996: 5. <http://www.gal.co.za/newsitem.php?id=438>: accessed 12 April 2006 and Ministry of Finance 1996: <http://www.info.gov.za/speeches/1996/j170w881.htm>: accessed 12 April 2006 describes a stokvel as having entertainment, social and economic functions.

While GN 2173 Government Gazette 1994: (16167) defines a stokvel as:

- “(b) members of a specific group that may be described by the term or concept known as "stokvel", which-
- (i) is a formal or informal rotating credit scheme with entertainment, social and economic functions;
 - (ii) fundamentally consists of members who have pledged mutual support to each other towards the attainment of specific objectives,
 - (iii) establishes a continuous pool of capital by raising funds by means of the subscriptions of members;
 - (iv) grants credit to and on behalf of members;
 - (v) provides for members to share in profits and to nominate management; and
 - (vi) relies on self-imposed regulation to protect the interest of its members; or
- (c) members of a specific group, governed in terms of rules agreed to and signed by the group's founders, exclusively established for the purpose of raising funds and applying or holding available such funds for housing advances to members, irrespective of whether or not such group is bound by its rules to terminate upon the expiration of a fixed period or upon the occurrence of an event specified in its rules; or
- (d) members of a specific group that chooses to identify itself by use of the name Credit Union or Savings and Credit Cooperative-
- (i) which group consists of persons of similar occupation or profession or who are employed by a common employer or who are employed within the same business district; or
 - (ii) which group has common membership in an association or organisation, including religious, social, co-operative, labour or educational groups- or
 - (iii) which group resides within the same defined community, rural or urban district, and which group receives funds from members against the issue of stock or by means of the subscriptions of members ...”

¹⁰ <http://www.designindaba.com/advocacy/index.htm>: accessed 14 November 2006.

¹¹ Van der Merwe 1996: 50.

stokvel.¹² Stokvels are established informally, with no limit on the number of members.¹³ Furthermore, the members can impose their own regulations on the stokvel.¹⁴ It also has legal personality through conduct,¹⁵ as well as limited liability of the members in as far as a member will not be held liable for an amount exceeding his contribution during the existence of the stokvel. The following are some types and variations of stokvels: Makgotlas,¹⁶ Umgalelo clubs,¹⁷ Youth stokvels, Istoki,¹⁸ Gooi-goois,¹⁹ and Investment clubs.²⁰

The characteristics of a stokvel can be summarised as follows:

- A rotating credit scheme
- Informal establishment
- Association of persons making regular contributions to the capital pool
- Limited liability by conduct
- Money is paid out periodically in rotation to each member, either fully or in part.

3.2.2.2 The connection between the stokvel and the co-operative

Although the stokvel predates the co-operative, the social aspect of the stokvel is the very aspect which also distinguishes the co-operative.²¹ This aspect also distinguishes the co-operative from any other business enterprise. Moreover, some stokvels have coincidentally even been referred to as savings and credit co-operatives, burial co-operatives, and financial services co-operatives, and have been called credit unions, mutual building societies and friendly societies.²² Furthermore, according to Philip, savings and credit co-operatives are the more formal and registered versions of a stokvel.²³ These similarities support the view that the stokvel was the precursor of the co-operative and that this was the first kind of co-operative known to South Africans. However, the stokvel is certainly not as refined and regulated as

¹² Van der Merwe 1996: 50.

¹³ Van der Merwe 1996: 50.

¹⁴ Van der Merwe 1996: 50.

¹⁵ Van der Merwe 1996: 19, 24, 54 and 55; read with the Companies Act 61/1973: sec 31.

¹⁶ These stokvels are also known as funeral services. Maluleke 2006: 10.

¹⁷ These stokvels are also known as stokvels of a religious nature.

¹⁸ These stokvels are those where a meeting is held and the food and drinks are sold at a profit for the benefit of the stokvel.

¹⁹ Maluleke 2006: 10. These stokvels are also known as savings schemes.

²⁰ Van der Merwe 1996: 26 – 34.

²¹ Mashalaba 2006: 1 and Matthews 2003: 2.

²² Butterworths lexis nexis:

[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:101048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:101048/Enu) : accessed 7 Feb 2006.

²³ Philip 2003: 14.

the co-operative has always been, therefore it should be seen as the father of the modern co-operative, rather than something strictly synonymous with this kind of organisation.

As stated above, the informal-sector schemes (or informal co-operatives) have not become dormant; they are however forced to function outside the legislative and regulatory regime of banks and specifically the Reserve Bank in South Africa, so that the stokvel is often referred to as an informal co-operative.²⁴ The fact that information regarding stokvels in South Africa has proven to be elusive and very hard to come by, does not however undermine their functions or existence within society.²⁵

3.2.2.3 Historical background and development of the stokvel

The stokvel originated from the rotating cattle auctions of the English settlers in the Cape Colony during the early 1800s.²⁶ During these auctions a head of cattle would be purchased by a group of people and later divided among them.²⁷ Later, when gold was discovered on the Witwatersrand, many of the settlers flocked to the goldfields, taking the concept with them. Because of the difficult circumstances under which the people had to work and live, many of them became ill and died of cholera, smallpox, tuberculosis and typhoid. Funerals were very important in traditionally poor and rural societies: they were very costly, however, and as a result these people started to participate in burial schemes which were also types of stokvels.²⁸ Van der Merwe is of the opinion, however, that the stokvel might even have had its origins in the customary law of the black people of Africa.²⁹

In 1983, the use of stokvels as vehicles to put emerging black entrepreneurs on the road to economic success was implemented, funded by foreign grants.³⁰ The “Get Ahead Foundation” was basically a scheme that granted loans to existing stokvels.³¹ It functioned by building trust and granting more

²⁴ Ndaba 2006: 7 and Mpahlwa 2005: 2.

²⁵ Philip 2003: 14. Statistics published by the Finmark Trust – <http://www.finmark.co.za>: accessed 12 April 2006.

²⁶ Cattle auctions were also known as “stock-fairs”. <http://www.gal.co.za/newsitem.php?id=438>: accessed 12 April 2006.

²⁷ Van der Merwe 1996: 21 – 22.

²⁸ Van der Merwe 1996: 13.

²⁹ Van der Merwe 1996: 13. The term “black” in this sense refers to African black people.

³⁰ Butterworths lexis nexis:
[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=myInb:10.1048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=myInb:10.1048/Enu) : accessed 7 Feb 2006.

³¹ Butterworths lexis nexis:
[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=myInb:10.1048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=myInb:10.1048/Enu) : accessed 7 Feb 2006.

advantages to those paying their first loan duly and timeously.³² Thereafter the stokvel would be allowed to apply for a larger loan on more favourable terms.³³ Moreover, employment of black people had become a priority, and in 1990 the idea of creating non-racial co-operatives was taking shape, thus giving a more official recognition to the need for formal co-operatives, especially for the sake of empowerment and upliftment of black people.³⁴

According to the South African Communist Party (hereafter referred to as the SACP), co-operatives in informal forms have always been in the hands of black people in South Africa.³⁵ Furthermore, it has been inferred that at least a quarter of all black South Africans belong to a stokvel of some kind.³⁶ Apartheid was the *raison d'être* of many informal co-operative ventures which formed an integral part of rural, poor and traditionally black communities.³⁷ This was because many black people were excluded from sharing in the country's wealth and were denied financial services, based on race or social standing. Even today, many people do not have sufficient financial resources, and as a result cannot be part of the formal banking system. In such cases, stokvels are a viable alternative.³⁸ Thus, a possible function of co-operatives today could be to eradicate poverty and to empower people, especially in the rural, traditionally poor areas of South Africa. Stokvels are however not a phenomenon currently based only in black society; they have become a phenomenon familiar to all the cultural spheres of South Africa.³⁹ Proof of this lies in the fact that stokvels are increasingly being debated on and even advertised in multi-cultural media.⁴⁰ People from all professions and backgrounds use the stokvel as an alternative means of affording necessities, or in some cases, life's little luxuries.

During the 1970s – 1980s the community-based co-operative wave was prevalent in South Africa and these co-operatives posed serious opposition to the apartheid government's (white) co-operatives.⁴¹ The

³² Butterworths lexis nexis:
[http://www.mylexisnexus.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:10.1048/Enu](http://www.mylexisnexus.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:10.1048/Enu) : accessed 7 Feb 2006.

³³ Butterworths lexis nexis:
[http://www.mylexisnexus.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:10.1048/Enu](http://www.mylexisnexus.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:10.1048/Enu) : accessed 7 Feb 2006.

³⁴ Finansies en Tegniek (unknown) 1990: 43.

³⁵ Stokvels, burial societies, co-operative taxi ventures in Kwazulu Natal and churches later linked with co-operatives. www.sacp.org.za/docs/stratconf/co-ops.html: Accessed 25 December 2003.

³⁶ Sunday Independent (unknown) 1996: 12.

³⁷ The term "black" in this sense refers to African black people.

³⁸ Naidoo 2001: 9.

³⁹ Maluleke 2006: 10.

⁴⁰ Clark 2004: 206.

⁴¹ Wentzel 1992: 57.

founders of these white co-operatives however, were very eager to provide financial assistance as proof of supporting black empowerment.⁴²

The National Stokvel Association of South Africa (hereafter referred to as NSASA) was established in 1988, with the following objectives: to serve as spokesperson for its affiliated schemes, to assist in an acceptable legislative framework for the regulation of these schemes, and to perform a public relations function for the industry.⁴³ Another smaller association, focused mainly on some 2 000 burial societies, is the National Association of Co-operative Societies of South Africa (hereafter referred to as the NCSSA) is an association that recognises the link between stokvel associations and co-operative enterprises.

Consequently, the authorities recognised that it is better to build on, rather than to supplant, the existing stokvel infra-structure.⁴⁴ This led to the enactment of the Mutual Banks Act⁴⁵ which gave recognition to the informal banking schemes and also permitted the registration of these institutions that had mutual participation by members, rather than equity shareholding.⁴⁶ However, this Act⁴⁷ is not intended to provide a regulatory framework for stokvels, credit unions or burial societies, since these merely strive towards the improvement of the lives of their members.⁴⁸ Nevertheless, this was the first attempt to create a regulatory framework for these organisations.⁴⁹ The next attempt was an implicit endeavour to include the stokvel under legislative regulation in the form of the Co-operatives Act 14 of 2005.⁵⁰ However, this is only a temporary arrangement until the enactment of the Co-operative Banks draft bill of 2004 (hereafter referred to as the Co-operative Banks bill of 2004 or the bill), which will formally regulate stokvel enterprises. The Co-operative Banks bill of 2004, which is currently open to public comment, has incorporated stokvels in a more direct way than the Co-operatives Act 14 of 2005 does.⁵¹ The ambit and

⁴² Wentzel 1992: 57.

⁴³ Butterworths lexis nexis:
[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:101048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:101048/Enu) : accessed 7 Feb 2006.

⁴⁴ Butterworths lexis nexis:
[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:101048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:101048/Enu) : accessed 7 Feb 2006.

⁴⁵ Act 124/1993.

⁴⁶ Butterworths lexis nexis:
[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:10.1048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:10.1048/Enu) : accessed 7 Feb 2006.

⁴⁷ Act 124/1993.

⁴⁸ Butterworths lexis nexis:
[http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates\\$fn=default.htm\\$vid=mylnb:10.1048/Enu](http://www.mylexisnexis.co.za/nxt/gateway.dll?f=templates$fn=default.htm$vid=mylnb:10.1048/Enu) : accessed 7 Feb 2006.

⁴⁹ Davies 2003: <http://www.sacp.org.za/docs/banks/rdavies/0725.html>: accessed 25 December 2003.

⁵⁰ Report submitted to author: Doyer 2006.

⁵¹ Co-operative Banks draft bill of 10 November 2004.

application of this bill include “burial schemes”⁵² and “rotating savings schemes”⁵³ and aim to provide some formal regulation to these informal structures. According to the definition of a rotating savings scheme, it is quite clear that the legislator intends to include stokvels under the ambit of this bill. Furthermore, this bill includes the requirement of registration as a co-operative under the Co-operatives Act 14 of 2005⁵⁴ as well as receipt of a co-operative bank licence in order to conduct business as a co-operative bank.⁵⁵ This implies that the legislator further intends the acknowledgement of a stokvel institution as a co-operative. The bill goes a step further and prescribes formalities to be adhered to in the case of “burial schemes” and “rotating savings schemes”,⁵⁶ which is a better attempt than that made by the Mutual Banks Act of 1993.⁵⁷

Thus, there is a strong probability that people living in poor rural areas, and the black people in South Africa, have historically preferred the informal institutions incorporating co-operative principles like stokvels, as opposed to registered and formal co-operatives, mainly because of the lack of financial resources and opportunities.⁵⁸ This can also partly be attributed to the hostility of the decisions of the so-called Bantu authorities in or around 1930 to make these societies subject to more strict provisions, like the dispossession of land under the Natives Land Acts of 1913 and 1926,⁵⁹ respectively.⁶⁰ However, a separate Co-operative (Societies) Act, specifically for black people, was never enacted during the apartheid era, and while some authors do mention the existence of such separate legislation, there is no authoritative evidence in support of it.⁶¹ In the opinion of the author, the apartheid government did this in an indirect way, by providing barren land to the agricultural co-operatives in the Bantustans.⁶² By using barren land, the co-operative’s profit-making ability would be minimised, which would consequently cause the co-operative to fail. Therefore, these co-operatives were never given a chance at economic

⁵² Co-operative Banks draft bill of 10 November 2004: sec 1 defines a burial scheme as “... that provides benefits to contribute towards meeting funeral expenses at time of death.”

⁵³ Co-operative Banks draft bill of 10 November 2004: sec 1 defines a rotating savings scheme as “... scheme – which is conducted by persons who have committed themselves to support to each other to meet certain objectives, where the persons take turns to receive the collected savings of the group, which is self governing.” Act 14/2005.

⁵⁴ Co-operative Banks draft bill of 10 November 2004: sec 14.

⁵⁵ Co-operative Banks draft bill of 10 November 2004: schedule 2.

⁵⁶ Act 124/1993.

⁵⁷ “Black” people in this sense refers to African black people. Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 10.

⁵⁸ Native Land Act 27/1913 and the Land Act 14/1926.

⁵⁹ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 11 and NCASA at <http://www.seda.org.za/siteimgs/documents/coops/HISTOR2.PDF>: accessed 14 November 2006: 8 - 9, black people were dispossessed of their land, resulting in people not being self-sufficient anymore.

⁶⁰ For example www.sacp.org.za/docs/stratconf/co-ops.html: Accessed 25 December 2003.

⁶¹ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

sustainability. However, not all of these co-operatives failed or were economically unsustainable. According to the Steenkamp Commission of Enquiry (hereafter referred to as the Steenkamp Commission or the Commission), a lot of development took place among non-white co-operatives during the period up to 1967.⁶³ Furthermore, many “black co-operatives” were successful, especially in the urban areas, between 1930 and 1950, and again in terms of community-based co-operatives in general.⁶⁴

A great deal of development has since taken place in the field of co-operatives, specifically with the enactment of the Co-operatives Act 14 of 2005, as well as the tabling of the Co-operative Banks bill of 2004. According to NCASA, this development has many advantages:

“...the ushering in of a democratic South Africa in 1994, the provision of the right to association and the right to social and economic development in the Constitution provided, for the first time, a framework through which all South Africans can pursue collective and co-operative forms of organisation and enterprise as equals.”⁶⁵

3.3 The co-operative described and defined

There is not a single country or economy in the world that does not use the co-operative in some form or other.⁶⁶ As early as 1844, the Statute of the Rochdale Pioneers contained sections on the following: a democratic control system; open membership to all persons; and the nature and management of the co-operative, etc.⁶⁷ These Rochdale Pioneers are considered by many, including the ICA, to have been the first prototype of a modern co-operative.⁶⁸

Since the early part of the previous century, the co-operative has been used as a vehicle of economic empowerment, especially in rural areas. The fact that legislative development took place so early, establishing regulations that ensured the co-operative juristic personality and making formal registration

⁶³ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 11.

⁶⁴ NCASA at <http://www.seda.org.za/siteimgs/documents/coops/HISTOR2.PDF>: accessed 14 November 2006: 12 – 39.

⁶⁵ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

⁶⁶ Van Niekerk 1988: 119.

⁶⁷ The Rochdale pioneers were a group formed in England, Van Niekerk 1988: 120 and <http://www.ica.coop/coop/history.html>: accessed 27 March 2006.

⁶⁸ <http://www.ica.coop/coop/history.html>: accessed 27 March 2006.

of co-operatives possible, constitutes a huge contribution to the development and success of co-operatives in South Africa today.⁶⁹

However, the ICA published seven international co-operative principles that are based on the principles of first, self-help; second, self-responsibility; third, democracy; fourth, equality; fifth, equity and sixth, solidarity.⁷⁰ Thus the co-operative is based on a unique set of principles that sets it apart from any other business enterprise.⁷¹ According to Philip, like the founders, co-operative members still believe in the ethical values of honesty, openness, social responsibility and caring for others, which again make it a very unique form of business enterprise.⁷² According to Dr Tobias Doyer (CEO of the Agricultural Business Chamber, hereafter referred to as Doyer), the co-operative is a very interesting form of business enterprise to develop and / or empower people through self-help.⁷³

The seven international co-operative principles developed by the ICA are:⁷⁴

1. Voluntary and open membership

Membership in a co-operative is free from gender, social, racial, political and religious discrimination.

2. Democratic member control

Members actively participate in establishing policies and making decisions democratically.⁷⁵

3. Member economic participation

Members contribute equitably and democratically control the capital of their co-operative. At least a part of the co-operative's capital is the common property of the co-operative, while members receive limited compensation based on capital contributed as a prerequisite of membership.⁷⁶

4. Autonomy and independence

⁶⁹ Memorandum to the Co-operatives bill of 2005: GN 4/2005: sec 41.

⁷⁰ 1995 congress and general assembly of ICA at <http://www.ica.coop/coop/principles.html>: 27 March 2006, also Memorandum to the Co-operatives bill of 2005: GN 4/2005: sec 41.

⁷¹ Von Pischke and Rouse 2004: preface.

⁷² Philip 2003: 5.

⁷³ De Waal 26 Augustus 2005: 92 and Department of Trade and Industry 2004: 8 – 9.

⁷⁴ Memorandum to the Co-operatives bill of 2005: GN 4/2005: sec 41 and Philip 2003: 5 – 6.

⁷⁵ According to Philip, in the case of primary co-operatives members have equal voting rights while co-operatives on other levels are also organised in a democratic manner (Philip 2003: 5).

⁷⁶ According to Philip, members of the co-operative can allocate surpluses for all or some of the following reasons: purposes of development of the co-operative; setting up reserves, part of which is indivisible; benefiting the members in proportion to their transactions with the co-operative and supporting other activities approved by the co-operative. Philip 2003: 5.

The organisation is controlled by its members and not by organisations or persons outside the structure of the co-operative, or who are not members of the co-operative.⁷⁷

5. Education, training and information

Co-operatives provide training, education and information in order to facilitate development of the co-operative itself.⁷⁸

6. Cooperation among co-operatives

Co-operatives serve their members best by working together locally, regionally, nationally and internationally.

7. Concern for the community

Co-operatives work for development of the communities they find themselves in, through the policies adopted and accepted by their members.

Some writers even call the Rochdale Pioneer's principles the basic principles in relation to the co-operative structure.⁷⁹ Moreover, the seven co-operative principles have been modified and expanded a number of times, but the Rochdale Pioneers are nonetheless considered the fathers of these principles.⁸⁰

The international co-operative principles, as illustrated above, are universally accepted guidelines that aim to enable co-operatives to put their values into practice.⁸¹ Furthermore, these principles are often embedded in the legislative definitions of co-operatives. These principles do not serve as mechanisms to draw distinctions between the different forms of co-operatives, especially between the worker co-operative and the user co-operative; rather, they aim to find a balance between the competing pressures faced by co-operatives as organisations in general.⁸² Therefore, these principles are so fundamental to the definition, core and function of the co-operative that they cannot be anything other than the basic principles that identify the very existence and nature of the co-operative. Moreover, the seven co-operative principles create a universal way of distinguishing the co-operative enterprise from any other;

⁷⁷ According to Philip, co-operatives can raise capital externally or enter into agreements with other organisations etc. They do so on terms that will secure and maintain democratic control by its members and thus co-operative autonomy. Philip 2003: 6.

⁷⁸ In addition thereto, information can be provided to opinion leaders, and to the general public, as well as to illustrate the benefits of cooperation.

⁷⁹ Van Niekerk 1988: 120.

⁸⁰ <http://www.ica.coop/coop/history.html>: accessed 27 March 2006.

⁸¹ Department of Trade and Industry 2004: 8 – 9 and Department of Trade and Industry 2006: 5.

⁸² Philip 2003: 6.

consequently pushing legislative regulations and provisions into the measurement of secondary importance.⁸³ Thus, if these principles are not upheld in a co-operative, there is no co-operative.⁸⁴ However, this does not imply that co-operatives registered in terms of co-operative legislation are not co-operatives, but that there is a presumption that such legislation inherently complies with the above-mentioned international co-operative principles.

Therefore the following definitions serve a secondary function to describe a co-operative:

Evans defines the co-operative as:

“an organization *sui generis* acting for the benefit for its shareholders and producing members.”⁸⁵

The Co-operative Act 91 of 1981 defines the co-operative as:

“a co-operative incorporated in terms of this Act and includes a co-operative society or co-operative company....”⁸⁶

The Co-operative bill of 2000 defines a co-operative as:

“an autonomous association of persons united voluntarily to meet their common economic and social needs through a jointly owned and democratically controlled enterprise....”⁸⁷

The new Co-operative Act of 2005 on the other hand, defines a co-operative as:

“an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles....”⁸⁸

⁸³ Contra *Farmer's Co-operative Meat Industries, Ltd. v Minister of Agriculture and Another* (1924) 45NPD 397: 403 and *Instituut vir Kooperasiewese* 1968: 38.

⁸⁴ Act 14/2005: sec 7.

⁸⁵ Evans 1994: 305.

⁸⁶ Co-operative Societies Act 91/1981: sec1.

⁸⁷ GN 4483 Government Gazette 2000: 425(21794): sec 1.

Thus, the co-operative can be defined as a *sui generis* association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise.

The characteristics of a co-operative can be summarised as follows:⁸⁹

- An association of persons,
- acting voluntarily,
- to meet their respective and joint economic and social needs, and
- a jointly owned and democratically controlled enterprise,
- organised and operated on co-operative principles.

3.4 Conclusion

The co-operative has existed since the 1800s in South Africa in some form or another. The earliest co-operatives were the so-called informal co-operatives, like stokvels and burial societies. These enterprises fulfilled both a social and an economic function in respect of their members, even though they were never registered under the ambit of formal legislation. Stokvel ventures were specifically applied during the apartheid era when the discriminatory political system excluded persons and classes of persons from taking part in the economic mainstream. Formal co-operatives on the other hand (the more formal variation of the stokvel movement), have also been applied in South Africa for quite some time and these enterprises have proven quite successful. In some instances they have even grown to become very successful businesses, especially in the field of agriculture. Even though the co-operative and the stokvel are traditionally linked to rural, poor and traditionally black communities, they have found their application in a wide range of communities and have grown into successful business ventures and even powerful monopolies.

The co-operative is further a unique, *sui generis* business enterprise and it cannot simply be defined by legislative definition; rather, it is defined and characterised by the seven international co-operative principles. These guidelines are fundamental principles that distinguish co-operatives from any other business enterprise.

⁸⁸ Co-operatives Act 14/2005: sec 1 which is synonymous with the provisions of Co-operatives bill of 2005: GN 4/2005: sec 1.

⁸⁹ Under the guidance of the Co-operatives Act 14/2005 and the seven international co-operative principles.

The co-operative is certainly a familiar enterprise in South Africa. This makes it a very accessible vehicle for the implementation of transformation movements and policies such as the latest government initiative, BEE.

CHAPTER 4

A COMPARISON BETWEEN A COMPANY AND A CO-OPERATIVE

4.1 Introduction

This chapter aims to draw a brief comparison between a co-operative and a company. This comparison is drawn for two main reasons: firstly, the company is generally an enterprise which finds its application more regularly in the economy, therefore the aim of this chapter is to familiarise the reader with the basic concepts which are embodied in company law and to compare those to the basic concepts relating to co-operatives. Secondly, it also aims to compare briefly and to distinguish between the two aspects embodied within the BEE policy, which are firstly the creation and sustenance of wealth which is embodied within the company's structure, and secondly the creation of opportunities within the economic mainstream, which are in turn better embodied within the co-operative structure. The aspects of comparison relating to BEE specifically will be discussed, in depth, in Chapter 13.

4.2 Initial capital

In a company, initial capital is obtained from various entrepreneurs who pool capital.¹ In a company with share capital, capital is acquired by issuing shares to persons.² In contrast, a company "Limited by Guarantee" has no share capital and raises capital from other sources than its members and shares, for example from loans.³ Generally, much more initial capital is needed by a company than is the case with a co-operative, mainly because the company structure, by its nature and purpose, is much more demanding in terms of functioning properly than the co-operative is.⁴

In a co-operative, initial capital is always obtained from the members, the amount of which is determined by the constitution of the co-operative.⁵ Capital may comprise either entrance fees, membership fees or

¹ Cilliers ea 2000: 4.

² Cilliers ea 2000: 31.

³ Companies Act 63/1971: sec 32.

⁴ The company structure functions for the purpose of investment value of the capital invested by the shareholders, while the co-operative structure aims at negotiating lower interest rates, engages in bulk buying, negotiates lower insurance premiums etc. on behalf of its members and not for investment value. Therefore, the entrance fees (initial capital needed) for co-operatives will always be at a minimum so as merely to render the co-operative operational, while this is not always the case in terms of companies.

⁵ Evans 1994: 326.

subscriptions, the consideration for membership shares or additional shares, member loans and funds of a member.⁶ Any additional membership shares after the co-operative is already incorporated or in business, are sold only to existing members of the co-operative.⁷ However, outside persons can also provide support to the co-operative as associate members of the co-operative.⁸ As stated above, generally very little initial capital is needed compared to that of a company.⁹

4.3 Main purpose of the enterprise and the co-operative enterprise structure

The main purpose of a company is to maximise the profits of the company and its owners (members),¹⁰ through the creation and sustenance of a specific group's wealth. The company focuses on its own business and the sustenance of the members' wealth. Therefore, upon selling shares in a company, the value of these shares represents the underlying value of the company: in other words, the growth of the capital investment of the members.

The main purpose of the co-operative however, is to provide services to its members,¹¹ thereby promoting the interests of its members through economic and later social upliftment.¹² The co-operative therefore, focuses on the interests of its members. Upon selling shares in a co-operative, the values of these shares do not represent the underlying value of the co-operative; in other words there is no investment value in holding shares in a co-operative.

⁶ Co-operatives Act 14/2005: sec 40 and as is provided for by the constitution of the co-operative.

⁷ In accordance with the provisions of the constitution of the co-operative.

⁸ Co-operatives Act 14/2005: sec 14(2)(e).

⁹ Department of Trade and Industry 2006: 20.

¹⁰ <http://www.seda.org.za/content.asp?subId=559#A>; accessed 14 November 2006.

¹¹ <http://www.seda.org.za/content.asp?subId=559#A>; accessed 14 November 2006.

¹² Co-operatives Act 14/2005: preamble.

FIGURE 1: THE CO-OPERATIVE FLOW OF PRODUCTS

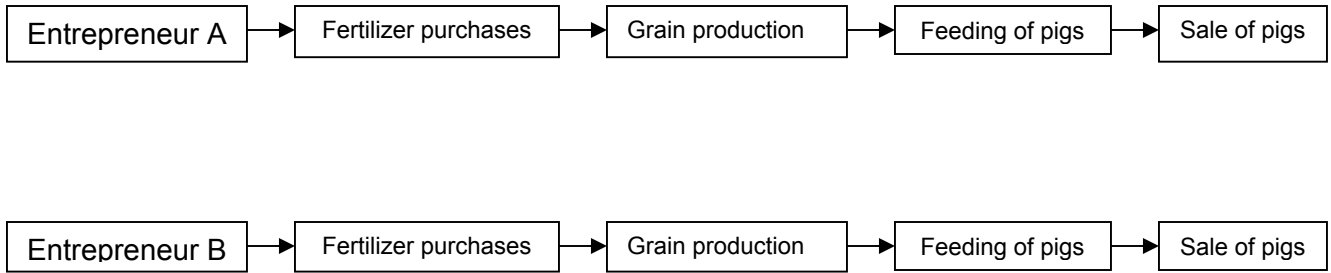


FIGURE 2: CO-OPERATIVES FOR THE SALE, SLAUGHTER AND MARKETING OF PIGS

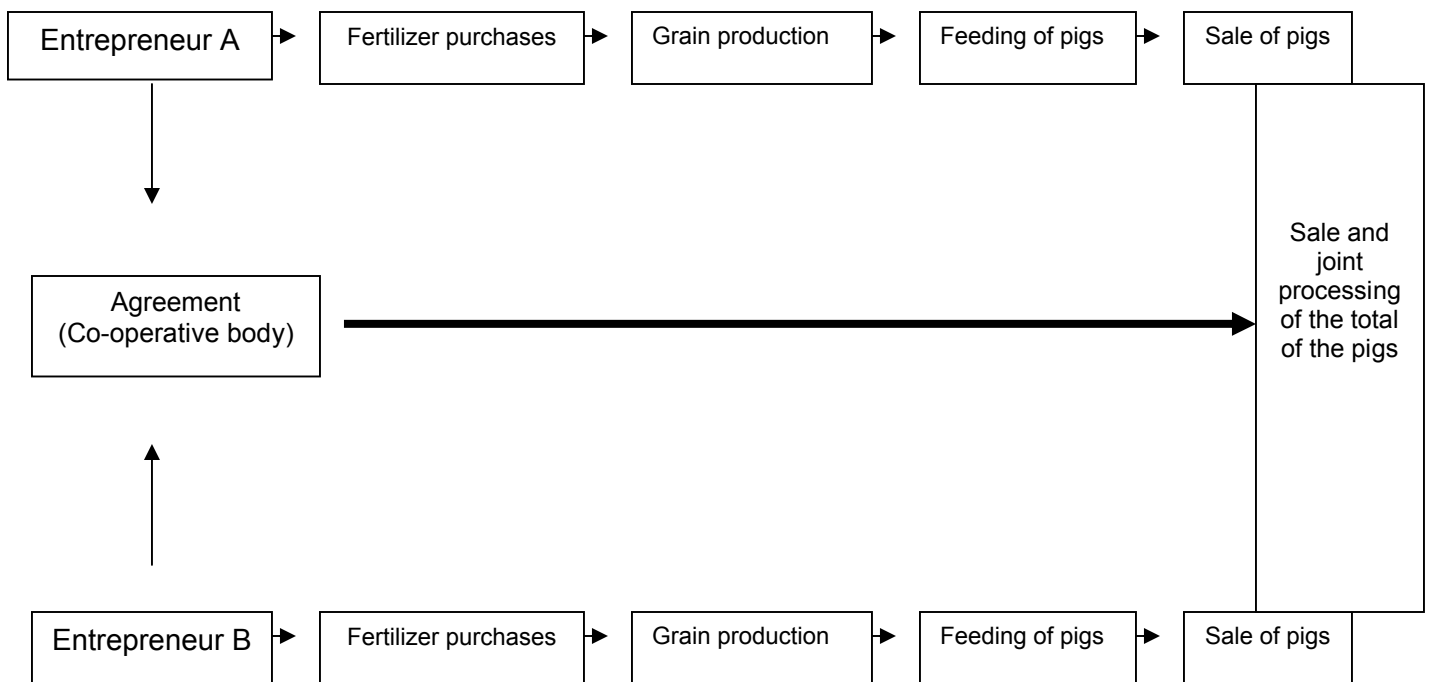


Figure 1 and Figure 2¹³

Figure 1 depicts two entrepreneurs: entrepreneur A and entrepreneur B, each acting individually in order to facilitate the sale of their pigs. These entrepreneurs act individually and independently of one another to sell their pigs. However, in Figure 2, entrepreneurs A and B act together as members of a co-operative body, purchasing their fertilizer and other feeding materials for the pigs from the co-operative, and then selling their pigs through the co-operative as well. Therefore, the co-operative body acts as a mechanism for the marketing of their pigs, while entrepreneurs A and B also benefit from purchasing the fertilizer and other grains for feeding the pigs at a more competitive price, through the co-operative. Entrepreneurs A and B are both producers as well as consumers of the co-operative, and are rewarded accordingly. This implies a relationship of cooperation between these entrepreneurs, in contrast to Figure 1.

4.4 Membership

Even though a company's membership is free and open to anyone who wishes to become a member, only people with sufficient funds to contribute the required capital contribution can become members of the company. Therefore, this excludes a number of potential members, who may have the will, but lack the funds to become members.

A co-operative's membership on the other hand is voluntary and open to any person, in accordance with the seven international co-operative principles, and because of lower operational costs and initial capital requirements in a co-operative, more people can therefore afford to become members of a co-operative.¹⁴

4.5 Management

The board of directors of a company exercises management powers, while shareholders exercise their decision-making powers at the general and representative meetings.¹⁵ However, the democratic principle does not extend to decision-making on the basic level of the enterprise, but only to top management, and therefore the members of the company determine policy and exercise other decision-making powers, while the basic level of the enterprise only implements such policies and decisions.¹⁶

¹³ Van Niekerk 1988: 130 – 131.

¹⁴ Memorandum to the Co-operatives bill of 2005: GN 4/2005: sec 41 and Philip 2003: 5 – 6.

¹⁵ Cilliers ea 2000: 4.

¹⁶ <http://www.seda.org.za/content.asp?subId=559#A>; accessed 14 November 2006.

As in the case of the company, the board of directors of a co-operative exercise management powers.¹⁷ The board is appointed democratically and in accordance with the constitution of the co-operative.¹⁸ However, members also exercise their decision-making powers at the general and representative meetings, as in the case of the company, but these differ from the decision-making powers exercised in companies in that they are generally based on a one-person-one-vote system.¹⁹ Another difference in the approach of the company, is the fact that true democratic principles are upheld in the decision-making process of the enterprise, therefore the basic level of the enterprise that implements these decisions, is involved in the decision-making process as well.²⁰

¹⁷ Evans 1994: 335.

¹⁸ Biyela 2006: Report submitted to author. Pretoria and Co-operatives Act 14/2005: sec 32.

¹⁹ Co-operatives Act 14/2005: sec 3.

²⁰ <http://www.seda.org.za/content.asp?subId=559#A>; accessed 14 November 2006.

FIGURE 3: CO-OPERATIVE ORGANISATION

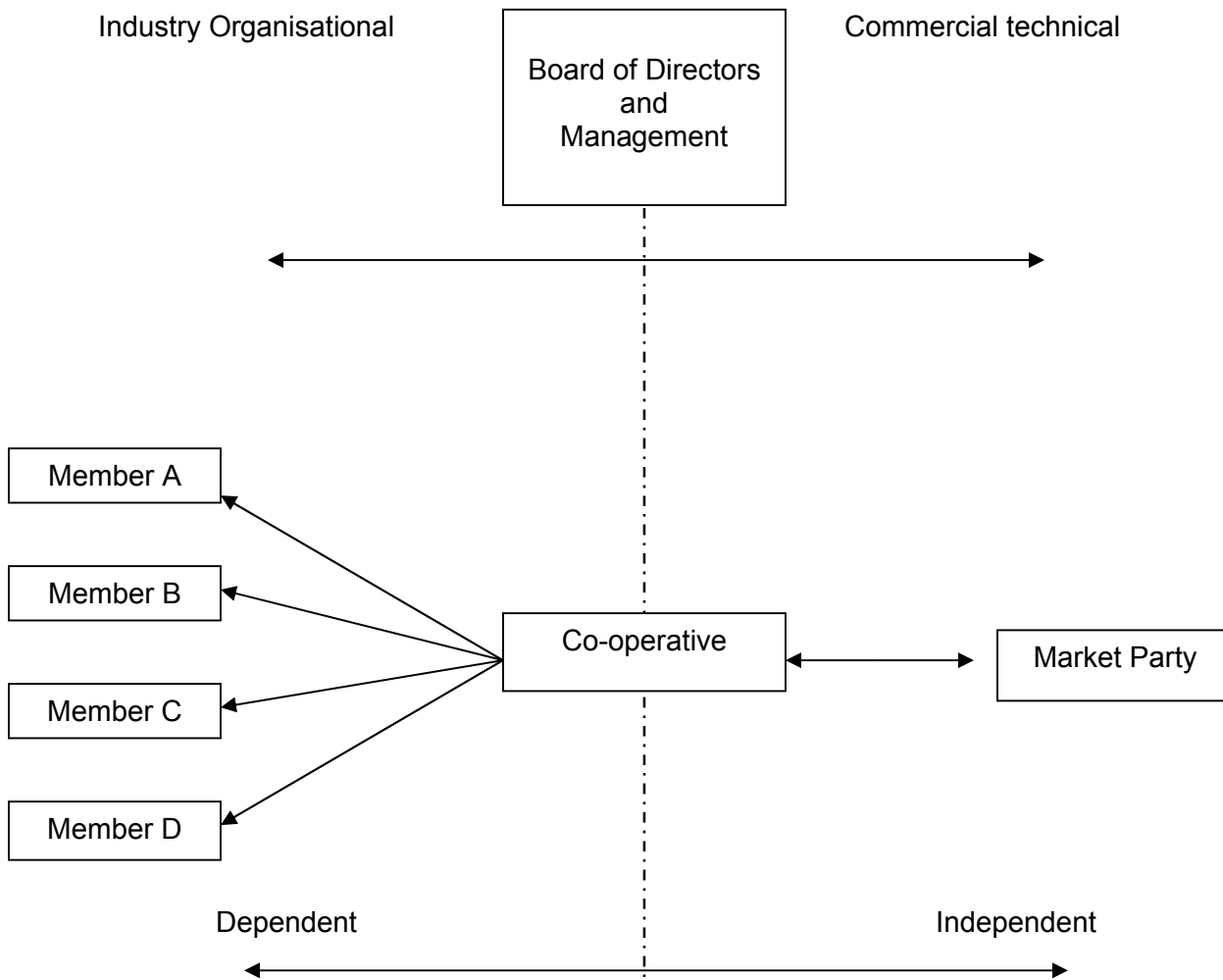


Figure 3²¹

Figure 3 illustrates the co-operative enterprise structure. The board of directors and management are appointed from either the members or non-members of the co-operative. Their purpose and function is to manage the co-operative on a day-to-day basis. The board of directors deals with both the industry organisational part of the enterprise, in other words the internal relations of the co-operative, as well as marketing to the public, which resorts under the commercial technical aspect (external relations) of the co-operative. It is also clearly illustrated that the co-operative serves both the members and independent third parties as customers. However, it must be kept in mind that the co-operative creates dependence in

²¹ Van Niekerk 1988: 130 – 131.

terms of its members' patronage (customer support), which is not created in terms of an independent third party. The members are thus both producers as well as consumers and are rewarded on the basis of a patronage proportion, in other words, profits are divided in terms of their support of the co-operative. Therefore each member is rewarded in terms of his or her patronage of the co-operative and in this sense, each member and the co-operative are co-dependent on one another for the co-operative's continued economic viability and existence.

4.6 Division of profits

In the case of a company, every member receives a dividend declared from profits.²² In other words, the profits are divided in relation to each member's shareholding in the company.

In co-operatives the division of profits is determined as follows:

- At the division of profits the "patronage proportion" is used to divide profits amongst the members in relation to their individual support or patronage in the co-operative itself.²³ Furthermore the rate of patronage proportion is agreed upon in the constitution of the co-operative. In addition hereto, any surplus may also be divided in accordance with this patronage proportion.²⁴
- The co-operative may also provide for a fund for members in which the member of the co-operative may be credited with any monies due to him. Such funds serve as members' loan accounts or members' fund accounts.²⁵
- A portion of the surplus is transferred to a reserve fund, the proceeds of which may not be divided amongst the members prior to the winding-up of the co-operative.²⁶

4.7 Main objectives of the enabling legislation

The company is designed for the protection and sustenance of group wealth. Therefore the company structure is such to protect the shareholders' interests from the potential abuses of management.²⁷

²² Cohen v Segal 1970 3 SA 702 W: 702 A to C.

²³ Co-operatives Act 14/2005: sec 44.

²⁴ Co-operatives Act 14/2005: sec 44.

²⁵ Co-operatives Act 14/2005: sec 43.

²⁶ Co-operatives Act 14/2005: sec 14(1)(m) and 46.

The co-operative structure aims at social and economic empowerment of members through the co-operative structure.²⁸

However, the co-operative and the company has shown a number of similarities in their respective historical legislative frameworks.²⁹

4.8 Liabilities of the business enterprise

Juristic personality is endowed upon the enterprise in both the company and the co-operative upon registration, therefore the enterprise is generally liable for its own debts.³⁰

In companies, the liability will fall on the contributors of the capital to the extent of the loss of the amount which they have contributed. Personal estates are usually not at risk, and thus it can be concluded that companies are generally subject to the limited liability principle.³¹

Generally, the co-operative is liable for its own debts, as it has legal personality.³² The members of the co-operative share ownership, management, risk and responsibilities equitably, therefore it is definitely in line with the limited liability provided by other enterprises, such as public and private companies.³³ In terms of the co-operative, the risk is carried by the members, but is limited to the nominal value of the shares they own in as far as these have been paid up, or limited to any contingent liability of the members' shares as so determined by the constitution of the co-operative.³⁴ Therefore, the personal

²⁷ Roelf 2005:
http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

²⁸ Roelf 2005:
http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

²⁹ Chapter 6 paragraph 6.2 below.

³⁰ In terms of companies Cilliers ea 2000: 7 and in terms of co-operatives, Co-operatives Act 14/2005: sec 8, Evans 1994: 315 and Franschoekse wynkelder (Ko-operatief) BPK v South African Railways and Harbours 1981 3 SA 36 C: F and Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 50 – 51 for reasoning which is contra the belief of the existence of juristic personality.

³¹ Cilliers ea 2000: 4.

³² Act 13/2005: sec 8, Evans 1994: 315, Franschoekse wynkelder (Ko-operatief) BPK v South African Railways and Harbours 1981 3 SA 36 C: F and Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 50 – 51 which is contra the belief of the existence of juristic personality.

³³ Government of the Republic of South Africa 2005:
<http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006.

³⁴ Act 14/2005: sec 23 and Evans 1994: 323.

estates of the members of the co-operative are generally not at risk, and thus it can also be concluded that the principle of limited liability is also applicable in co-operatives.

4.9 Termination of membership

In the company, membership can be terminated through firstly, the transfer of all shares to another person and the deletion of the name from the register of members; secondly, through repurchase of shares by the company; and thirdly, through the dissolution of the company after liquidation.³⁵

In the co-operative membership can be terminated through the sales and transfer of shares by the co-operative,³⁶ the dissolution of the co-operative after liquidation, the withdrawal of membership, the deregistration of co-operative by the Registrar of co-operatives.³⁷ The membership of a member of a primary housing co-operative may also be terminated if the member is in arrears with payments, due in terms of a use agreement and the board of directors of a worker co-operative may also terminate the membership of a member if there is good reason to do so.³⁸

4.10 Conclusion

As illustrated above, there are certain fundamental differences between a company and a co-operative. A co-operative has the advantage of requiring less initial capital to start the enterprise than in the case of the company. It also has the purpose of social as well as economic upliftment, while the company's main purpose and function is to create and protect a specific group's wealth. The co-operative applies true democratic decision-making principles at the basic level of the enterprise, while decisions are only implemented at the basic level in companies. There is also a marked difference between the way that profits are divided, as the division of profits of a company is based on dividends declared, while the co-operative bases its division of profits on the patronage proportion. In terms of termination of membership, the co-operative sale of shares is much more difficult to dispose of than shares held in a company. Nevertheless, there are also some similarities between the two enterprises, such as a free and open membership, a democratic selection of the board of directors, with juristic personality and having limited liability. However in the opinion of the author, the differences between the co-operative and the company

³⁵ Cilliers ea 2000: 241. The provisions as set out in the Articles of Association must be adhered to.

³⁶ Evans 1994: 319-320. The constitution of the co-operative's provisions must be adhered to, Schulze 1997: 184.

³⁷ Co-operatives Act 14/2005: sec 24.

³⁸ Co-operatives Act 14/2005: Schedule 1 Part 1 sec 5 and Schedule 1 Part 2 sec 4.

characterise the co-operative as more accessible and also more suitable for the application in terms of BEE in the creation of opportunities; while the similarities between the two enterprises contribute to the creation of trust in a co-operative.

Furthermore, the majority of South Africans are not always in a position to be able to obtain a membership interest in a company, because of the high level of poverty and low income of the majority of people. Co-operatives can therefore be very useful to improve the lives of these people. As stated above, membership in a co-operative does not have any investment value per se but has value in the advantages of bulk buying, negotiation of better insurance premiums and bank charges, and the provision of certain services to its members at a more competitive price, which can still benefit the members of the co-operative very favourably. Furthermore the co-operative, unlike the company, has the social element which not only distinguishes it from the company, but also makes the co-operative ideal in the South African context where many people prefer businesses with an inherent social component.

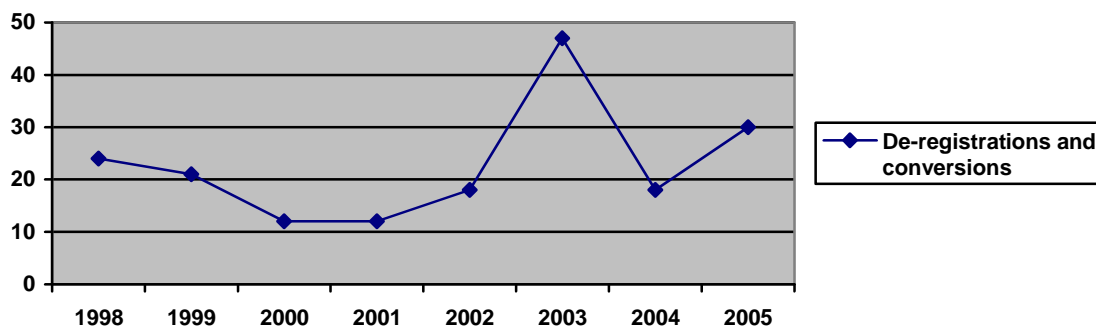
CHAPTER 5

REASONS FOR THE CONVERSION OF CO-OPERATIVES INTO COMPANIES

5.1 Introduction

This chapter investigates the fluctuation in numbers of registered co-operatives, caused by the number of de-registrations and conversions of co-operatives into public and private companies, which took place in the late 1990s. This era was marked by a large number of de-registrations and conversions of co-operatives into companies for a number of reasons, such as the lack of a tax advantage for co-operatives, the legal restrictions that were previously placed on co-operatives, and conversions based on economic reasons where the profit-making objective had become increasingly important within the co-operative structure. Whatever the reason for the large number of de-registrations and conversions, this has certainly been one of the most prominent factors reflecting negatively on co-operatives as business enterprises.

5.2 The number of co-operative de-registrations and conversions between 1998 and 2005¹



Between 1998 and 2000 there was a sharp decrease in the number of de-registrations and conversions. Between 2000 and 2001 a constant number of de-registrations and conversions took place, but between 2001 and 2002 there was a steady increase in the number of de-registrations and conversions of co-operatives. Between 2002 and 2003 a drastic increase in the number of de-registrations and conversions occurred, while a drastic decrease occurred in the number de-registrations and conversions in 2003 and

¹ Statistics applied in the graph have been supplied by the registrar of co-operatives and are attached hereto as annexure 6.

2004. Between 2004 and 2005 there was once again a steady increase in the numbers of de-registrations and conversions of co-operatives.

5.3 The reasons for de-registrations and conversions of co-operatives (into companies)

In the late 1990s many co-operatives, and especially those of an agricultural nature, converted into (limited liability) companies. A very prominent example of such a conversion was the conversion of the KWV.² This was a very unpopular move for government, and the minister of agriculture at the time, Derrick Hanekom, even took legal action against KWV in an attempt to stop them from converting into a company. He held that government's continued support of the co-operative had enabled the co-operative to acquire a certain number of assets and therefore, if the co-operative was allowed to convert into a company, it would result in asset-grabbing by the co-operative. Regardless of this attempt, KWV still converted into a company after a settlement in terms of which KWV undertook to donate a substantial amount to a public development trust.

While many co-operatives converted into companies, a select few existing co-operatives merely refused new membership of certain persons and classes of persons, thereby furthering the previous government's discriminatory political ideals of exclusion and preventing the creation of opportunities and the widening of the economic sphere.³ On the other hand, some established co-operatives neither converted into companies nor refused new membership; in fact a select few embarked upon the challenge of looking after the interests of emerging farmers.⁴ According to Botha, many members of co-operatives remain under the impression that it is far more beneficial to obtain products at a more competitive or cost-effective price through a co-operative than to convert the enterprise into a company.⁵ Therefore in this sense, conversion into companies, based on the political reasons set out above, and not because such a conversion is the most economically feasible option, prevents growth and political change or transformation, while the continued existence of the co-operative free from discrimination in any sense, actually facilitates transformation and the creation of opportunities in the economic mainstream in general.

² Kobokoane 1997: <http://www.btimes.co.za/97/0720/stbt.htm>: accessed 14 November 2006.

³ Philip 2003: 15 and <http://www.seda.org.za/siteimgs/documents/coops/HISTOR2.PDF>: accessed 14 November 2006. White co-operatives (during apartheid) enjoyed much support from the government of the time. The government provided generous subsidies, incentives, advice, availability of resources etc. in order to gain increased support from the white members of co-operative in the support of their governmental policies and ideologies.

⁴ Goedecke 1994: 122 and Finance Week (unknown) 1998: 8.

⁵ Botha 2005: 83.

Whatever the reasons for the large number of conversions, whether they were based on political ideals or economic factors, the large number of de-registrations and conversions of co-operatives, in the view of the author, contributed greatly to the negative stigma currently associated with co-operatives. The fact of the matter is that when the general public perceives the tendency to de-register or convert among co-operatives, they immediately assume co-operatives to be outdated enterprises, unable to keep up with the changing needs of society, or simply as economically unviable enterprises.

There are a few justified reasons for de-registrations and conversions of co-operatives, which in the opinion of the author, should be investigated to eradicate the above mentioned negative stigma. A number of reasons have already been inferred, namely first and foremost the lack of a tax advantage for co-operatives, and secondly the legal restrictions that were previously placed on co-operatives and conversions based on economic reasons where the profit-making objectives were becoming increasingly important within the structure of the co-operative.

5.3.1 Tax liability

Prior to 1977, co-operatives were taxed on non-member transactions.⁶ The motivation for this was that the co-operative is an extension of its members; therefore tax should only be levied on the members of the co-operative.⁷ This differs markedly from the approach followed by companies. However, on 1 April 1997 the Income Tax Act was amended whereby co-operatives became liable for tax in the same way as the company.⁸ In addition to this, the Co-operative Societies Act 91 of 1981 also placed additional restrictions on co-operatives, for example: the regulation of acquisition of shares by the co-operative in other juristic persons, the acquisition of shares in the co-operative itself, and the fact that co-operatives were restricted from selling shares directly to the public while restrictions were placed on loans granted by the co-operative.⁹ The question now arises as to whether the co-operative can still be justified as a *sui generis* enterprise in comparison to the company.¹⁰

This amendment to the tax legislation indicates that both the co-operative and the members of the co-operative are now taxable. Bonuses paid out to members are tax- deductible, according to section 27 of

⁶ Hamman and Lambrecht 1987: 5.

⁷ Hamman and Lambrecht 1987: 5.

⁸ Hamman and Lambrecht 1987: 5.

⁹ Act 91/1981: sec 49, 52 and 57 to 62.

¹⁰ Hamman and Lambrecht 1987: 9.

the Income Tax Act of 1977, which implies that it is much more beneficial for the co-operative to pay out these bonuses in cash than to retain them within the co-operative structure and as a result pay tax on them.¹¹ According to Steenkamp, the bonuses payable to members can be deducted from tax as these bonuses serve as a reward to every member for his or her patronage in favour of the co-operative.¹² It is quite clear that the method of dividing profits between the members of the co-operatives differs markedly from the division of profits between the members of a company.¹³ This, in the opinion of the author, implies that the co-operatives are in fact justified *sui generis* enterprises in comparison with companies.¹⁴

In the opinion of the author, a tax advantage is one of the most decisive considerations for an individual regarding whether to enter into a business enterprise or not. Currently, co-operatives do not really have tax advantages over companies, and therefore it is of the utmost importance for the legislature to review tax advantages for co-operatives.

5.3.2 Legal restrictions previously placed on co-operatives

There are a number of legal restrictions placed on co-operatives which make companies and close corporations more viable and flexible as business enterprises. This might even be one of the main reasons why so many co-operatives convert into other juristic entities. There are a number of restrictions on the shares in a co-operative as well as the shares the co-operative can acquire in other juristic persons. Previously, a co-operative had to obtain ministerial permission to invest in a company except where it fell within the ambit and objectives of the co-operative.¹⁵ The Co-operatives Act 14 of 2005 however, does not make any provisions for ministerial permission for the co-operative in order to purchase shares in other juristic persons or to invest in a company.

Generally speaking, there have always been restrictions on the acquisition of membership shares within a co-operative.¹⁶ Co-operatives are prohibited from selling shares directly to the public. Furthermore, no share may be issued unless at least a tenth of the nominal value of such share has been paid to the co-operative.¹⁷ In addition, no member has a claim on the reserves of the co-operative.¹⁸ However, with the

¹¹ Act 113/1977.

¹² Steenkamp 1994: 26.

¹³ Steenkamp 1994: 26.

¹⁴ Hamman and Lambrecht 1987: 6.

¹⁵ Hamman and Lambrecht 1987: 6.

¹⁶ Act 91/1981: sec 57 and Act 14/2005: sec 3.

¹⁷ Act 91/1981 sec 73(2)(a), however this provision was omitted from the 2005 Act: here the determining factor is the provisions set out by the constitution of the Co-operative. Act 14./2005: sec 15.

enactment of the Co-operatives Act 14 of 2005, profits may only be divided among the members in accordance with the patronage proportion.¹⁹

Previously, in accordance with section 153 of the Co-operatives Societies Act 91 of 1981, loans to members were restricted to 50% of the share capital, and the reserves of the co-operative; however this could be amended by special resolution. This provision was omitted from the Co-operatives Act 14 of 2005, which implies that the granting of a loan, as well as the proportion of the shareholding and the reserve of the co-operative that will be affected will be done at the discretion of the members.²⁰ From the above it is clear that the legal restrictions in respect of co-operatives have become less stringent since the enactment of the 2005 Co-operatives Act.²¹ This amendment makes co-operatives more accessible as business enterprises.

5.3.3 The growing need for increased profit-making as the main objective of the enterprise

It is important to note that the membership interest in co-operatives is not regarded as an investment. The co-operative rather offers other benefits than investment value, such as bulk buying, the negotiation of lower interest rates and insurance premiums and the provision of better quality and lower priced services. However, the value of membership does sometimes require the conversion into a company or alternatively proportional voting rights to be implemented within a co-operative structure.²² This occurs when one member compared to another member has a sufficiently higher capital interest combined with an increased risk element. In such a situation it is sometimes advisable to convert the co-operative into a company so that increased management control and voting rights can be obtained.²³ On the other hand, it may sometimes be more beneficial for the co-operative to grant proportional voting rights in terms of amending the constitution of the co-operative from the traditional one-member-one-vote system in order to ensure the continued existence of the co-operative.²⁴ A decision to convert the co-operative into a company or to allow proportional voting rights should be made to best accommodate both the economic interest of the member with a higher risk element as well as the interest of the members that do not.

¹⁸ Act 14/2005: sec 46.

¹⁹ Act 14/2005: sec 44.

²⁰ Hamman and Lambrecht 1987: 7.

²¹ Act 14/2005.

²² Doyer 2006: Report submitted to author. Bloemfontein.

²³ Doyer 2006: Report submitted to author. Bloemfontein.

²⁴ Doyer 2006: Report submitted to author. Bloemfontein.

5.4 Advantages and disadvantages of the conversions of co-operatives (into companies)

The advantages of conversion are as follows:²⁵

1. Declaring dividends or bonuses for tax purposes instead of retaining them
2. The accounting of investment allowances and grants (as a short term advantage)
3. Increased voting power in terms of control and management of the enterprise in general
4. Unlocking of value to members as shareholding in company is an investment
5. Easier to raise capital.

The disadvantages of conversion are as follows:²⁶

1. Negotiating loans and opportunities for loans at better rates through institutions like the Landbank and similar institutions
2. Certain groups of persons who wish to start a business enterprise, may not have the funds to start a company, therefore the conversion into a company which requires the purchase of shares, might exclude such persons from membership therein. Such persons will often be able to engage in a co-operative business enterprise. When an existing co-operative converts into a company, this means that certain members of the co-operative will not be able to buy the required shares in order to become members of the company. This excludes a number of people from the business enterprise and will certainly have both an economic and social impact on the individual members excluded, as well as the community within which the co-operative existed, prior to conversion.

5.5 Conclusion

As stated above, there are many reasons for co-operatives to convert into companies. Some of these reasons are surely justified and should not result in a negative stigma in a co-operative structure as a whole. Therefore the advantages and the disadvantages of conversion should be considered in each and every case of de-registration or conversion. There is no general rule, and decisions in this regard should rather be based on the specific factual situation and interest involved in the case at hand. However, this does not imply that co-operatives are something from the past or that the concept of the co-operative is

²⁵ Hamman and Lambrecht 1987: 9.

²⁶ Hamman and Lambrecht 1987: 9.

dead.²⁷ In 2004 there were 511 new co-operative registrations and in 2005 a staggering 2829 new registrations.²⁸

²⁷ Ortmann and King 2006: 19.

²⁸ Statistics provided by the Registrar of co-operatives and are attached hereto as annexure 5.

CHAPTER 6

THE HISTORICAL DEVELOPMENT OF CO-OPERATIVE LEGISLATION

6.1 Introduction

This chapter investigates the general historical legislative development of the co-operative that eventually led to the enactment of the Co-operative Societies Act 91 of 1981 (hereafter referred to as the 1981 Act). The provisions of the 1981 Act later became out-dated, forcing the legislator to reconsider and present two bills before parliament since 2000. The Co-operatives bill 4483 of 2000 (hereafter referred to as the 2000 bill) was surely a slight improvement on the stringent provisions of the 1981 Act, but had certain fundamental flaws that were improved by the Co-operatives bill 4 of 2005 (hereafter referred to as the 2005 bill), which in turn led to the enactment of the Co-operatives Act 14 of 2005 (hereafter referred to as the 2005 Act). Fundamentally, the 2005 Act is the enactment of the 2005 bill. An investigation into the above is therefore essential to understand the change in paradigm shift towards co-operative legislation in general.

6.2 General historical legislative development of the co-operative up to the enactment of the Co-operative Societies Act 91 of 1981

The most fundamental improvement brought about by the legislative developments, as well as the enactment of the Co-operatives Act 14 of 2005, is that co-operative enterprises are not limited to enterprises that only comply with a legislative definition, as was the case previous legislation; but rather any enterprise that complies with the seven international co-operative principles.¹ In addition, a wider variety of co-operatives are promoted under the new legislative developments than what materialised under the 1981 Act.² More enterprises can now trade as co-operatives, and in a wider range of industries, provided that they comply with the seven international co-operative principles, thereby empowering more people through self-help.³

¹ Chapter 3 above and Act 14/2005: sec 3.

² Under the Co-operative Societies Act 91 of 1981, trade co-operatives could be utilised in any industry, provided that the co-operative complied with the definition and provisions as set out in the 1981 Act.

³ De Waal 26 Augustus 2005: 92 and Department of Trade and Industry 2004: 8 – 9.

As previously stated, the co-operative is a more sophisticated or formal form of stokvel, which meant that legislative regulation was much more eminent than it was in the case of stokvels. The first formal agricultural co-operative was established under the Companies Act in Natal in 1892,⁴ although the Steenkamp Commission concluded that the co-operative movement only started after the Anglo-Boer war.⁵ This view may be justified, because the co-operative was recorded as a powerful tool in the provision of bargaining powers to farmers between 1900 and 1925 (just after the Anglo-Boer war).⁶ Moreover, only a few co-operatives existed at the time and co-operatives had not yet become the successful businesses or powerful monopolies that would later pose a threat to the principles of fair competition in South Africa.⁷ Coincidentally, government did not see the need for legislation to regulate co-operatives specifically and was content with applying the regulations established by the Companies Act.⁸ Farmers joining or forming co-operative enterprises, therefore, were forced either to look towards the Companies Act of Natal, Cape Province or the Orange Free State.⁹

This situation persisted until the first Act that regulated the establishment, regulation and control of co-operatives was enacted in the Transvaal in 1908¹⁰ and in the Orange Free State in 1909.¹¹ The Cape Province and Natal followed the Orange Free State and Transvaal in 1922, when their own Acts were enacted.¹²

During the period 1925 to 1963, the Marketing Act was enacted;¹³ an Act supplementary to the existing co-operative and agricultural structure.¹⁴ During the early 1950s, this resulted in the establishment and development of central co-operatives.¹⁵ As the co-operatives grew and became increasingly more

⁴ Act 25/ 1892.

⁵ Agricultural Co-operatives were the first type of co-operative established in SA, van Niekerk 1988: 12 – 18 and Ortmann and King 2006:15 (the agricultural co-operative was the first consumer co-operative in South Africa as well) and Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 3.

⁶ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 3.

⁷ Co-operatives would later dominate competitive business and would compete unfairly while not contributing to the treasury. Van Niekerk 1988: 125.

⁸ Van Niekerk 1988: 125 (no Co-operatives Act existed at that time) and van Niekerk 1988: 19.

⁹ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 4.

¹⁰ Co-operative Societies Act of 1908.

¹¹ Registration of Co-operative Societies Act 28/1909.

¹² The Co-operative Societies Act 28 of 1922, Van Niekerk 1988: 27 – 28 and Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 4.

¹³ Act 26/1937.

¹⁴ Van Niekerk 1988: 125.

¹⁵ Van Niekerk 1988: 125.

successful, competitors started to feel threatened and as a result opposed governmental favouritism.¹⁶ This period was concluded with the appointment of the Steenkamp Commission.¹⁷

The Steenkamp Commission concluded that the co-operative was a distinctive form of undertaking that was dependent upon its members and consumers for its survival, but independent in respect of its marketing action.¹⁸ Furthermore, the Commission also concluded that co-operatives had reached such a measure of maturity that they were not in need of encouragement from their authorities (government) and should therefore not be subject to tax as long as they complied with the character and substance of co-operative enterprises.¹⁹

All these preceding Acts codified the legal nature, requirements and objectives to be met by co-operatives and included those established under the ambit of the various company Acts.²⁰ Moreover, the report compiled by the Steenkamp commission remained a public debate for a period of ten years.²¹ However, an improvement was made in 1966 when the International Labour Organisation (hereafter referred to as the ILO), adopted a recommendation that acknowledged the role of co-operatives in the economic and social development of developing countries and gave co-operatives more legal force as well as international recognition.²² The resulting influence of the above mentioned Acts, the recognition of co-operatives both globally and in the context of developing countries, as well as the conclusions reached by the Steenkamp Commission, culminated in the development and enactment of the Co-operative Societies Act 91 of 1981.

6.3 The Co-operative Societies Act 91 of 1981

Under the 1981 Act, three types of co-operatives could be established, namely:²³

agricultural co-operatives,²⁴

¹⁶ Van Niekerk 1988: 125.

¹⁷ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967, Van Niekerk 1988: 126.

¹⁸ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967, Van Niekerk 1988: 126.

¹⁹ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967, Van Niekerk 1988: 126.

²⁰ As mentioned above.

²¹ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967 and Van Niekerk 1988: 126.

²² Memorandum to the co-operatives bill of 2005: GN 4/2005: sec 41.

²³ Evans 1994: 305.

special farmers' co-operatives,

trading co-operatives, and

in accordance with some sources, another type can be added i.e., the co-operatives found in the Bantustans and regulated by separate legislation.²⁵ However, the latter type seems to be unfounded and not supported by academically viable proof.

A primary agricultural or primary special farmers' co-operative could be formed by two or more persons, provided that they qualified for membership, while a primary trade co-operative could be formed by two or more persons, provided that it was formed for the purpose of manufacturing or disposing of any article.²⁶ For any other purpose there had be at least eleven persons or more interested in forming such an enterprise.²⁷ Two or more primary agricultural, primary special farmers' or primary trade co-operatives could form the central agricultural, central special farmers' or central trade co-operative. The federal agricultural, two or more central agricultural, central special farmers' or central trade co-operatives on the other hand could form federal special farmers' or federal trade co-operatives.²⁸

The objectives of primary agricultural co-operatives were:²⁹

First, to market, dispose, process or manufacture any agricultural product or anything derived therefrom;

second, to hire, buy, otherwise acquire, produce or manufacture and let or sell or supply materials necessary or used in connection with farming operations;

third, to hire, buy, otherwise acquire, produce or manufacture and let or sell or supply any article for consumption;

²⁴ According to Philip these functioned on the input of supplies and joint marketing of production. They became a powerful monopoly in key agricultural sectors. They were further supported in their dealings by the Land Bank and prices were strictly regulated by the marketing boards, until the system collapsed post-1994. Today agricultural co-operatives are organised under the Department of Trade and Industry. Philip 2003: 15.

²⁵ www.sacp.org.za/docs/stratconf/co-ops.html: accessed 25 December 2003. These co-operatives made a huge economic impact but quickly collapsed at the end of the apartheid era. According to LAPC, 214 of these still existed in 2003, however other than these statements there is no further evidence of their existence.

²⁶ Evans: 1994: 308. Reference is made only to the people that started the enterprise. Co-operative Act 91/1981: sec 57 and 58 respectively, regulate the acquisition and prerequisites for membership of agricultural and special farmers' co-operatives. Department of Trade and Industry 2004: 6.

²⁷ Co-operative Societies Act 91/1981: sec 59 regulates the acquisition and prerequisites for membership of trading co-operatives.

²⁸ Evans 1994: 308 – 309.

²⁹ Evans 1994: 309.

fourth, to hire, establish, erect and to use or make available the usage of facilities in connection with farming activities;

fifth, to render services for farming operations;

sixth, to render any other services, inclusive of those related to buying, selling and leasing of immovable agricultural property;

seventh, to carry on farming operations and dispose of the products thereof or the products into which such were converted into or manufactured;

eighth, to undertake insurance business in respect of farming risks; and to act as an agent in terms of the Marketing Act,³⁰ or in connection of the insurance business (also to act as an intermediary in the latter case).

The central or federal agricultural co-operative could be formed for one or more of the above objectives, to undertake insurance in accordance with the Insurance Act,³¹ and could establish and administer a pension fund or scheme, a provident fund or a medical scheme. A primary special farmers' co-operative could be established for the same objective as the primary agricultural co-operative, or could be a business dealer of agricultural products and anything derived therefrom.³² Essentially, a special farmers' co-operative encompassed a wider meaning and interpretation than the agricultural co-operative did, and could therefore deal in any related agricultural product. One or more of the above could establish a central or special farmers' co-operative, while a trading co-operative could carry out any objective.³³

The 1981 Act did not recognise the so-called informal co-operatives like stokvels and burial societies, or any co-operative that complied with the seven international co-operative principles, but not with the definition thereof that was required by the Co-operative Societies Act of 1981. However, this period of development did mark some positive improvements, as many of the stringent provisions had been relaxed and many co-operative societies had been allowed to incorporate.³⁴ For example, in 1993 an

³⁰ Act 59/1968.

³¹ Act 27/1943.

³² Act 91/1981: sec 22.

³³ Act 91/1981: sec 22 and 23.

³⁴ www.sacp.org.za/docs/banks/tnhadu0726.html: accessed 25 December 2003.

amendment was made to the existing legislation that permitted co-operatives to do 49% of their business with non-members, thereby expanding the business of the co-operative.³⁵

Some criticism of the 1981 Act however, is justified:

- The 1981 Act defines a co-operative as:

“...a co-operative incorporated in terms of this Act...”³⁶

This is clearly not an adequate definition of a co-operative, as there is no description or definition as to what a co-operative is exactly and no mention is made of co-operative values and principles.

- The attention of the Act was focused on agricultural co-operatives and made no detailed or specific mention of any other type or possible type of co-operative as the 2005 Act does and co-operatives under the 1981 Act were incidentally very limited in their application.³⁷
- No reference is made to the seven international co-operative principles as set out by the ICA.³⁸
- Registered co-operatives are not explicitly required to conform to the seven international co-operative principles, and therefore the 1981 Act deviates from international standards.³⁹
- The Act permits a member to hold additional votes, which is a negative aspect, because the provision of additional votes to certain members undermines the democratic structure of co-operatives.⁴⁰
- The protection of membership interest is poorly regulated.⁴¹

³⁵ De Villiers 1993: 53.

³⁶ Co-operative Societies Act 91/1981: sec 1 and Ortmann and King 2006: 15.

³⁷ More proof of the main focus resting on agricultural co-operatives is the fact that co-operative affairs and the registrar of co-operatives were included under the authority of the Department of Agriculture instead of being placed under the authority of the Department of Trade and Industry, which has now rightfully been done. Contra Act 91/1981: sec 4 and Ortmann and King 2006: 15.

³⁸ Contra Act 14/2005: sec 1 and 3.

³⁹ Ortmann and King 2006: 15.

⁴⁰ Co-operative Societies Act 91/1981: sec 128 and Theron 2005: 60.

⁴¹ According to Co-operative Societies Act 91/1981: sec 57 – 68 membership acquisition and general regulation thereof was over-regulated and restrictive; in that it made provision for fines in the case of omissions and even for suspension or expulsion of members. While Co-operatives Act 14/2005: sec 23-26 is very wide and non-restrictive; as it merely regulates the liability of members, withdrawal of membership and transfer of members’

- There is an onerous requirement of registration.⁴²
- Co-operative banking was subject to very stringent provisions under the 1981 Act, even though members' funds could be established.⁴³

In the period of 1984 to 1989, the first wave of worker co-operation occurred, where the creation of worker co-operatives was founded by trade unions, churches and community organisations.⁴⁴ The next wave of worker co-operation was characterised by more initiatives: for example, new start up initiatives that originated locally, conversions or worker buy-outs in the manufacturing or agricultural sectors, and employee-ownership schemes.⁴⁵

6.4 The Co-operatives bill 4483 of 2000⁴⁶

Chapters 17 to 22 of the 2000 bill make provision for a wider application of co-operative enterprise and therefore the main focus on agricultural co-operatives will be a thing of the past. Generally three types of co-operatives are described namely, primary, secondary (the central co-operative has been replaced by a "secondary co-operative") and tertiary co-operatives (the federal co-operative has been replaced by the tertiary co-operative).⁴⁷

According to the bill, the emphasis will be much wider and will include the following types of co-operatives:⁴⁸

shares. Furthermore, the 2005 Act makes no provision for expulsion, suspension or fines in punishment; the structure is much simpler and in that protects members' interests to a larger extent than the 1981 Act did.

⁴² Ortmann and King 2006: 16 and the Co-operative Societies Act 91/1981: sec 25 – 27, 30 and 31. The registration process is very time-consuming and the legislator does not really motivate potential entrepreneurs to register a co-operative, as they do not really provide any assistance or information before a steering committee has been elected. This is contra the 2005 Act, as the 2005 Act provides that any interested party must first speak to the registrar of co-operatives. <http://www.brain.org.za/coopc/registering.html>: accessed 23 March 2006.

⁴³ By making use of trading co-operatives this could be achieved, but it is not as simple as the provisions of the Co-operatives Act 14 of 2005 deem it to be. Co-operative Societies Act 91/1981: sec 85.

⁴⁴ Department of Trade and Industry 2006: 13 and Philip 2003: 13.

⁴⁵ Department of Trade and Industry 2006: 13.

⁴⁶ Co-operative bill 2000: GN 4483/2000.

⁴⁷ Co-operative bill 2000: GN 4483/2000: Sec 1 defines Secondary Co-operatives as: "Two or more primary co-operatives joining together to form a secondary co-operative." Co-operative bill 2000: GN 4483/2000: Sec 1.

⁴⁸ Co-operative bill 2000:GN 4483/2000.

- Agricultural and farmers' co-operatives,⁴⁹
- Financial services co-operatives,⁵⁰
- Housing co-operatives,⁵¹
- Worker co-operatives,⁵²
- Transport co-operatives, and⁵³
- Medical co-operatives.⁵⁴

However, the above-mentioned co-operatives do not exclude any other types of co-operatives incorporated in terms of co-operative values and principles.⁵⁵

The co-operative, according to the 2000 bill preamble, is an independent, self-reliant, self-responsible, self-managing and financially viable entity which can be a catalyst for government to achieve its objectives.⁵⁶

The co-operative started to enjoy its recognition as a legitimate business with a few co-operative principles making it unique from other undertakings. According to the South African Communist Party, taxing co-operatives is not in line with general international practice, as co-operatives are seen as social

⁴⁹ Co-operative bill 2000: GN 4483/2000: Chapter 17. Agricultural and farmers co-operatives' objectives have not been altered in comparison to those provided by the Act and will now be regulated by the mentioned sections. Sec 275 of the 2000 bill defines the agricultural co-operative as: "... this chapter is an additional requirement applicable to co-operatives which carry on business in agriculture or farming activities ...".

⁵⁰ Co-operative bill 2000: GN 4483/2000: sec 1 read with Chapter 18. The financial services co-operative is defined as: " a co-operative referred to in Chapter 18 which co-operative provides banking services and other related services to its members which deal mainly in finance or such as: credit unions, co-operative banks, savings and credit co-operatives, village banks."

⁵¹ Co-operative bill 2000: GN 4483/2000: Chapter 19. Sec 290 of the 2000 bill defines the housing co-operative as: "... an additional requirement applicable to co-operatives which carry on business of building houses, providing housing, hiring houses, selling houses, and materials or products that relate to housing to their members.."

⁵² Co-operative bill 2000: GN 4483/2000: Chapter 20. Sec 294 of the 2000 bill defines the worker co-operative as: "... an additional requirement applicable to co-operatives which carry on business of providing work to their members."

⁵³ Co-operative bill 2000: GN 4483/2000: Chapter 21. Sec 301 of the 2000 bill defines the transport co-operative as: "... an additional requirement applicable to co-operatives which carry on business of taxis or other land transport and acquisition of vehicle parts, fuel and related products used in transportation".

⁵⁴ Co-operative bill 2000: GN 4483/2000: Chapter 22. Sec 307 of the 2000 bill defines the medical co-operative as: "... an additional requirement applicable to co-operatives which carry on business of medical practitioners or any other medical profession including a medical specialist, medical doctors, nurses, radiographers, psychologists, medical technologists, physiotherapists and other related services of medical care in addition to the provisions of this Act".

⁵⁵ Co-operative bill 2000: GN 4483/2000: sec 17, however sec 5 prohibits co-operatives carrying on business in tertiary education.

⁵⁶ Co-operative bill 2000: GN 4483/2000.

empowerment institutions and have therefore been excluded from paying taxes and certain fees.⁵⁷ This, in the view of the author, needs urgent attention from the legislature, as tax advantages are one of the main determining factors when deciding which business enterprise to engage in.

Some criticism of the 2000 bill is justified:⁵⁸

- The Co-operative bill of 2000 defines a co-operative as:

“an autonomous association of persons united voluntarily to meet their common economic and social needs through a jointly owned and democratically controlled enterprise....”⁵⁹

The definition surely complies with the seven international co-operative principles as well as international standards. No mention is made in the definitions as to whether the so-called informal co-operatives are recognised in terms of this bill. Furthermore “co-operatives” as defined are restricted to those registered in terms of the Act.⁶⁰

However, a co-operative entity is described as a “...body corporate that is organised and operated on co-operative principles.”⁶¹ Moreover, section 1 and Chapter 18 of the bill makes provision for financial services co-operatives such as credit unions, savings and credit co-operatives and village banks; which is definitely synonymous with the requirements of the stokvel and other informal co-operatives. Nevertheless, the definitions above remain inadequate because (as stated above), the co-operative principles are not incorporated therein; in addition the definition of the ‘co-operative entity’ only includes bodies corporate which are somewhat uncertain in definition and scope.

- According to the SACP, the requirement of membership does not meet international standards. It does not stipulate a minimum or a maximum number of members while enterprises such as partnerships clearly stipulate a maximum and minimum number in membership.⁶²

⁵⁷ www.sacp.org.za/docs/banks/tnhadu0726.html: accessed 25 December 2003.

⁵⁸ Co-operative bill 2000: GN 4483/2000.

⁵⁹ Co-operative bill 2000: GN 4483/2000: sec 1.

⁶⁰ According to the Co-operative bill 2000: GN 4483/2000.

⁶¹ Co-operative bill 2000: GN 4483/2000: sec 1.

⁶² www.sacp.org.za/docs/banks/tnhadu0726.html: accessed 25 December 2003, Co-operative bill 2000: GN 4483/2000: Chapters 4 and 5. This is also contra the provisions set out in sec 57 – 60 of the Co-operative societies Act 91/1981 and partnerships are limited to members between 2 and 20. Benade ea 2003: 10.

- The provision of investment shares may be a noble idea, but may undermine the principle of democratic member control.⁶³ This is because any member or non-member can buy his/her way into the co-operative structure.⁶⁴ These shares may even entitle the holder to one vote at the representative meetings of the members of the co-operative, if provision is made in the constitution of the co-operative.⁶⁵ The very name of this share refers to a share other than a membership share and could even be synonymous with the ordinary share in a public or private company.⁶⁶

Therefore this concept is completely contradictory to the co-operative structure, as the co-operative is not a vehicle for outside investment like a public company. It is a vehicle where entrepreneurs work together to obtain goods and services at a more competitive price.

- Furthermore, the 2000 bill is a close replication of the Companies Act,⁶⁷ in the inclusion of certain provisions such as corporate governance, discussion of capital structure, financial disclosure and so forth.⁶⁸ In the opinion of the author, this is unsatisfactory, as the co-operative is not similar either in character or purpose to the company structure.⁶⁹ Furthermore, the bill resembles the Companies Act,⁷⁰ which is a very complex piece of legislation and understanding and applying the bill could prove onerous for unsophisticated entrepreneurs.
- The inclusion of medical co-operatives may be interpreted positively as well as negatively: on the positive side this opens the door for professionals to participate in establishing and being part of co-operatives. However, it could also be interpreted as being exclusionary and even discriminatory towards other professions. The question arises as to why the medical profession is specifically included and other professions not.

The 2005 Act does not make provision for the inclusion of professional persons trading as such in a co-operative and does not limit the types of co-operatives either, although some of the legislative

⁶³ Co-operative bill 2000: GN 4483/2000: sec 104 – 107.

⁶⁴ Generally holders of investment shares do not have voting rights except if so elected by the directors of the supervisory board, but are entitled to elect a certain percentage of the directors automatically, Co-operative bill 2000: GN 4483/2000: sec 104.

⁶⁵ Co-operative bill 2000: GN 4483/2000: sec 104.

⁶⁶ Co-operative bill 2000: GN 4483/2000: sec 1 – the definition only establishes that an investment share is not a membership share.

⁶⁷ Act 61/1973.

⁶⁸ Co-operative bill 2000: GN 4483/2000: Chapter 5, 7 and 8.

⁶⁹ Chapter 4 above for a full comparison between the SA company and the co-operative.

⁷⁰ Act 61/1973.

provisions specifically regulating the professions do not allow for practitioners to practise in co-operative enterprise.⁷¹

In conclusion, the 2000 bill⁷² is an improvement on the 1981 Act,⁷³ but is still too narrow to adequately serve the needs of both the informal and formal industries of South Africa. It was not perfect, but will definitely be recognised as the start of a new and improved co-operative movement in South Africa.

6.5 The Co-operatives bill 4 of 2005 (hereafter referred to as the 2005 bill)⁷⁴

Further developments have however taken place since the 2000 bill, which have given rise to the tabling of the 2005 bill.⁷⁵

The developments are much wider and the new bill aims to include many business forms based on co-operative principles as co-operatives, which its predecessors did not. Further, the new bill explicitly requires compliance with the seven international co-operative principles, which is an improvement.⁷⁶

Like the 2000 bill, the 2005 bill also identifies the following forms of co-operatives:⁷⁷

Primary,⁷⁸ secondary⁷⁹ and tertiary co-operatives.⁸⁰

Neither bill limits the number or variety of the different kinds of co-operative, but both give an indication of the possible kinds that could come into existence:⁸¹

⁷¹ Attorneys Act 53/1979: sec 23, which provides that attorneys may only engage in practice in the case of juristic persons in the form of a private company. Therefore, attorneys may not organise themselves within the co-operative structure.

⁷² Co-operative bill 2000: GN 4483/2000.

⁷³ Act 91/1981.

⁷⁴ Co-operatives bill 2005: GN 4/2005.

⁷⁵ Co-operatives bill 2005: GN 4/2005.

⁷⁶ Co-operatives bill 2005: GN 4/2005: sec 3.

⁷⁷ Co-operatives bill 2005: GN 4/2005 sec 4(1).

⁷⁸ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a primary co-operative as "a co-operative formed by a minimum of five persons whose object is to provide employment or services to its members." Ortmann and King 2006: 1.

⁷⁹ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a secondary co-operative as "a co-operative formed by two or more primary co-operatives to provide services to its members and may also include federal co-operative associations." Ortmann and King 2006: 16.

⁸⁰ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a tertiary co-operative as "a co-operative whose members are secondary co-operatives or both primary and secondary co-operatives and whose object is to provide services to its members and may include sectoral associations or organisations and co-operative apices." Ortmann and King 2006: 16.

- Housing co-operatives⁸²
- Worker co-operatives⁸³
- Social co-operatives⁸⁴
- Agricultural co-operatives⁸⁵
- Burial co-operatives
- Financial services co-operatives⁸⁶
- Consumer co-operatives⁸⁷
- Market and supply co-operatives⁸⁸
- Services co-operatives.⁸⁹

Evans points out the objectives of co-operatives, as listed on page 55 above.⁹⁰

According to the 2005 bill, the following objectives may be added to the list provided above.⁹¹

Any surplus arising from a co-operative's operations may be used:

- a) to develop its business;

⁸¹ Co-operatives bill 2005: GN 4/2005: sec 4(2).

⁸² Co-operatives bill 2005: GN 4/2005: sec 1(1) defines housing co-operative as "a primary co-operative which provides housing to its members, or a secondary co-operative that provides services to primary housing co-operatives.", regulations in Schedule 1 of Co-operatives bill 2005: GN 4/2005: part 1.

⁸³ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a worker co-operative as "a primary co-operative whose main objectives are to provide employment to its members, or secondary co-operative providing services to primary worker co-operatives.", regulations in Co-operatives bill 2005: GN 4/2005: Schedule 1.

⁸⁴ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a social co-operative as "a non-profit co-operative which engages in the provision of social services to its members, such as care for the elderly, children and the sick."

⁸⁵ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines an agricultural co-operative as "a co-operative that produces, processes or markets agricultural products and supplies agricultural inputs and services to its members.", regulations in Co-operatives bill 2005: GN 4/2005: Schedule 1.

⁸⁶ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines financial services co-operative as "a primary co-operative whose main objective is to provide financial services to its members or a secondary co-operative that provides financial services to a primary co-operative.", regulations in Co-operatives bill 2005: GN 4/2005: Schedule 1.

⁸⁷ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a consumer co-operative as "a co-operative that procures and distributes goods or commodities to its members and non-members and provides services to its members."

⁸⁸ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a marketing and supply co-operative as "a co-operative that engages in the supply of production inputs to members and markets or processes their products, and also includes an agricultural marketing and supply co-operative."

⁸⁹ Co-operatives bill 2005: GN 4/2005: sec 1(1) defines a services co-operative as "a co-operative that engages in housing, health care, child care, transportation, communication and other services."

⁹⁰ Evans 1994: 309, it needs to be customised since the objects identified by Evans only catered for an agricultural co-operative.

⁹¹ Co-operatives bill 2005: GN 4/2005: sec 3(1).

- b) to provide or improve services to members;
- c) to provide for reserves to be set aside in a reserve fund, a part of which must not be divisible amongst the members;
- d) to provide for the payment of interest on member loans or on membership shares;
- e) for community welfare or the promotion of co-operative enterprises;
- f) as a distribution amongst its members as a patronage return.

It must provide education and training to its members and employees in the principles and methods of cooperation and in all fields relevant to the operation of the co-operative.

Some criticism of the 2005 bill is justified:⁹²

- According to Roelf, “the bill, while providing detailed regulatory provisions, is ‘inadequately enabling’ when it comes to minimum support measures to be provided by the state.”⁹³ In the opinion of the author, this should not be a criticism, as minimum legislative framework has been provided, and moreover government has made provision for an “accountable” advisory board to assist co-operatives in their development.⁹⁴
- According to Congress of South African Trade Unions (hereafter referred to as COSATU), “...there is also a lack of clarity on the role of micro-credit organisations in providing financial support for emerging and existing co-operatives...”⁹⁵ Some clarity on this issue is definitely required.
- Sec 3(2) of the 2005 bill requires the surplus to be applied in clearly stipulated ways. No matter how limited these regulations are, they still have the effect of limiting the co-operative’s independence to run and manage its own affairs.

⁹² Co-operatives bill 2005: GN 4/2005.

⁹³ Roelf 2005:
http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

⁹⁴ Co-operatives bill 2005: GN 4/2005: Chapter 12. The following chapter will investigate the nature, functions and duties of the co-operative advisory board, since these provisions remained the same from the 2005 bill into the enactment of the 2005 Act.

⁹⁵ Roelf 2005:
http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

6.6 Conclusion

The above clearly illustrates the legislative development the co-operative structure has undergone since 1981. It is clear that the main focus of the 1981 Act was linked to the agricultural sector only. As a consequence, co-operatives have been linked to the application in the agricultural sector only. However, since the dawn of the new constitutional order in South Africa, whereby a transformation movement became necessary to eradicate the injustices of the past, both on economic and social level, practical vehicles have been investigated to implement the central government transformation policies, and in terms of which government has subsequently recognised co-operatives as being such a vehicle of implementing transformation practically. Legislative amendment and improvement was necessary in order to facilitate a successful regulatory system within which the co-operative could function, and within which further transformation could be practically carried out. Thus, as illustrated above, the 2000 bill differs markedly from the 1981 Act, and the 2005 bill differs markedly from the 2000 bill. The 2005 Co-operatives bill led to the enactment of the Co-operatives Act 14 of 2005.

CHAPTER 7

THE CO-OPERATIVES ACT 14 OF 2005

7.1 Introduction

This chapter aims to investigate the end result of all the legislative developments that have taken place to date, namely the Co-operatives Act of 2005. Furthermore, this chapter will also investigate the nature and objectives of the 2005 Act and will illustrate the differences between the Co-operatives Act of 2005 and the Co-operative Societies Act of 1981. Finally it will highlight the shortcomings of the 2005 Act.

7.2 The objectives of the 2005 Act

The Co-operatives Act of 2005 aims at achieving the following: to create an effective regulatory framework for co-operatives in South Africa, to facilitate the acquisition of legal status for co-operative enterprises, to establish the co-operative advisory council, to force compliance with the seven international co-operative principles rather than forcing legislative compliance and to successfully implement the co-operative as a vehicle to achieve BEE.¹

7.3 A comparison between the Co-operatives Act of 2005, the Co-operative Societies Act of 1981 and the Co-operatives bill of 2005

As previously stated, the Co-operatives Act 14 of 2005 basically constituted the enactment of the 2005 bill.² However, there are some minor differences between the 2005 bill and the 2005 Act.

Firstly, section 46 of the 2005 Act has been added to it.³ This section compels the co-operative to keep 5% of its surplus in the reserve fund. Furthermore, this is indivisible among its members and must be applied in accordance with its constitution. The registrar must monitor compliance with this section through the audited financial statements of the co-operative. However, there is no clarity on the possibility of a penalty provision in the case of non-compliance with this provision.

¹ Co-operatives Act 14/2005: preamble.

² Co-operatives bill 2005: GN 4/2005 enacted into Act 14/2005.

³ Act 14/2005: sec 46. This section refers to the “reserve fund of members.”

Secondly, sections 66 to 70 of the 2005 Act have been added.⁴ The contents of these provisions, as well as the procedures set out by them, are similar to the provisions of sections 157 to 161 of the 1981 Act. In fact, these provisions are almost identical.

Thirdly, section 91 of the 2005 Act has been added.⁵ In terms of this, an onus is placed on all national governmental departments and their agencies that provide co-operative development support programmes to report to parliament regarding such design and implementation.

Fourthly, there have been a few definitions and provisions that have been refined and amended.

In the fifth place, the 2005 Act recognises the following aspects, which the 1981 Act did not: first, recognition and provision for the application of co-operative values; and second, in facilitating support for co-operatives established by members from targeted groups, co-operatives can play a major role in the employment, even distribution of wealth, eradicating poverty and effect BEE.⁶ The other amendment to the Co-operatives Act of 2005, which was not included in the 1981 Act, relates to the provision of proportional voting rights. Proportional voting rights are now subject to very stringent provisions, must be provided for in the constitution of the co-operative, and are only available to secondary and tertiary co-operatives.⁷ Practically speaking, secondary and tertiary co-operatives are permitted to have proportional voting rights, provided that in the case of a secondary co-operative, no member shall have more than 15% of the total votes of members of the co-operative.

Lastly, according to the 2005 bill, objectives regarding the utilisation of surpluses may be added to the list provided by Evans, as stated on pages 62 to 63 above. These have, however, been totally omitted from the 2005 Act.

⁴ Act 14/2005: sec 66 - 70. These sections all make reference to the conversion of a company into a co-operative.

⁵ Act 14/2005: sec 91.

⁶ The Memorandum to the Co-operatives bill of 2005: GN 4/2005: sec 41, Ortmann and King 2006: 17, Co-operatives Act 14/2005: sec 86. More so, the Co-operatives Advisory Board which is established in terms of Chapter 8 of the Co-operatives Act 14/2005 aims to advise the minister regarding co-operative development and aims to create support systems for co-operatives owned by targeted groups and Co-operatives Act 14/2005: preamble.

⁷ Act 14/2005: sec 3(3).

7.4 General provisions of the 2005 Act

Like the 2005 bill, the 2005 Co-operatives Act also identifies the following forms of co-operatives:⁸

Primary,⁹ Secondary¹⁰ and Tertiary co-operatives.¹¹

Furthermore, according to Philip, after the enactment of the 2005 Act, co-operatives can now be divided roughly into two groups, namely so-called worker co-operatives and user co-operatives:¹²

Worker co-operatives are co-operatives that are linked to trade unions or, more specifically, are existing businesses that are purchased in order to save and secure jobs for the employees. In such cases the employees will receive out-sourced contracts for providing services or membership in the converted co-operative.¹³ Therefore these are co-operatives where the employees are both workers and employers (owners).¹⁴

User co-operatives include financial, agricultural, housing (including social housing initiatives) and consumer co-operatives.¹⁵ User co-operatives can be used to reduce poverty in a widespread spectrum of activities in poor communities.¹⁶ The members of user co-operatives use the economic services of the co-operative rather than being workers therein.¹⁷ Worldwide user co-operatives have proven to be more successful in the mobilisation of the widest participation and provide an important framework for the functioning of the worker co-operative.¹⁸ However, user co-operatives have not been as successful in

⁸ Act 14/2005: sec 4(1).

⁹ Act 14/2005: sec 1(1) defines a primary co-operative as “a co-operative formed by a minimum of five persons whose object is to provide employment or services to its members.” Ortmann and King 2006: 1. The co-operatives Act 14/2005: sec 1(1) however added to the definition of a primary co-operative by stating that: “...and to facilitate community development.”

¹⁰ Co-operatives Act 14/2005: sec 1(1) defines a secondary co-operative as “a co-operative formed by two or more primary co-operatives to provide services to its members and may also include federal co-operative associations.” Ortmann and King 2006: 16.

¹¹ The Co-operatives Act 14/2005: sec 1(1) however changed the definition of a tertiary co-operative as defined by Co-operatives bill of 2005: GN 4/2005 in the following way: “a co-operative whose members are secondary co-operatives and whose object is to advocate and engage organs of state, the private sector shareholders on behalf of its members and may also be referred to as a co-operative apex.”

¹² Philip 2003: 1 and van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

¹³ Philip 2003: 13 – 16.

¹⁴ Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

¹⁵ Philip 2003: 14 – 16.

¹⁶ Matavire 2005: 8.

¹⁷ Philip 2003: 4.

¹⁸ Philip 2003: 22.

South Africa as they have abroad.¹⁹ It is not seen as a more successful alternative to the worker co-operative, where jobs and a democratic working environment are created, as opposed to the ordinary environment.²⁰ Therefore these are co-operatives where the members are members with their own households and enterprises and aim to obtain goods at more favourable prices or to use the co-operative in marketing their products.²¹

In addition, neither variation limits the number and variety of the different kinds of co-operative, but both give an indication as to the possible kinds that can come into existence.²²

- Housing co-operatives²³
- Worker co-operatives²⁴
- Social co-operatives²⁵
- Agricultural co-operatives²⁶
- Burial co-operatives
- Financial services co-operatives²⁷
- Consumer co-operatives²⁸
- Market and supply co-operatives²⁹

¹⁹ Philip 2003: 22.

²⁰ Philip 2003: 22.

²¹ Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

²² This differs slightly from the position of the Co-operatives bill of 2005. Co-operatives Act 14/2005: sec 4(2).

²³ Co-operatives Act 14/2005: sec 1(1) however has changed the definition slightly: “a primary co-operative which provides housing to its members, or a secondary co-operative that provides technical sectoral services to primary housing co-operatives” and regulations in Co-operatives Act 14/2005: part 1.

²⁴ Co-operatives Act 14/2005: sec 1(1) defines a worker co-operative as “means a primary co-operative whose main objectives are to provide employment to its members, or a secondary co-operative providing services to primary worker co-operatives. According to Theron 2005: 60 - Labour legislation will not apply to worker co-operatives as their members are not employees as defined in the Basic Conditions of Employment Act 75/1997 and the Labour Relations Act 66/1995. However in terms of the Unemployment Insurance Fund Act 63/2001, the Occupational Health and Diseases Act 85/1993 and the Skills Development Act 97/1998 these members are seen as employees in order to benefit from the provisions of these Acts. Department of Trade and Industry 2004: 6 – 7.

²⁵ Co-operatives Act 14/2005: sec1 (1) defines a social co-operative as “a non-profit co-operative which engages in the provision of social services to its members, such as care for the elderly, children and the sick.”

²⁶ Co-operatives Act 14/2005: sec 1(1) defines an agricultural co-operative as “a co-operative that produces processes or markets agricultural products and supplies agricultural inputs and services to its members” and regulations in Co-operatives Act 14/2005: part 4.

²⁷ Co-operatives Act 14/2005: sec 1(1) defines financial services co-operative as “a primary co-operative whose main objective is to provide financial services to its members or a secondary co-operative that provides financial services to a primary co-operative” and regulations in Co-operatives Act 14/2005: part 3.

²⁸ Co-operatives Act 14/2005: sec 1(1) defines a consumer co-operative as “a co-operative that procures and distributes goods or commodities to its members and non-members and provides services to its members.”

- Services co-operatives.³⁰

7.5 The Co-operative Advisory Board

The Co-operative Advisory Board is established under section 85 of the co-operatives Act of 2005. This is a completely new concept in South African co-operative law. The Co-operative Advisory Board aims to assist the Minister of Trade and Industry with aspects that affect co-operatives specifically and to assist the minister in improving co-operative policies.³¹ Furthermore, the appointment of the members of the Co-operative Advisory Board is done by the minister, subject to the provisions of section 87 and 88 of the Co-operatives Act of 2005.³²

7.6 Criticism of the 2005 Act³³

- The 2005 Co-operatives Act is certainly different and much less stringent in its provisions in comparison with the 1981 Co-operative Societies Act, making starting and registering a co-operative much easier than in the past.³⁴ This is positive in that the co-operative is now much more accessible than it was in the past, although negative in the sense that the easy registration makes it a potential vehicle for unlawful activity and a front to hide such activities. Moreover, co-

²⁹ Co-operatives Act 14/2005: sec 1(1) defines a marketing and supply co-operative as “a co-operative that engages in the supply of production inputs to members and markets or processes their products, and also includes an agricultural marketing and supply co-operative.”

³⁰ Co-operatives Act 14/2005: sec 1(1) defines a services co-operative as “a co-operative that engages in housing, health care, child care, transportation, communication and other services.”

³¹ Sec 86 of the Co-operatives Act 14/2005.

“The functions of the Advisory Board are to advise the Minister generally, and to make recommendations, with regard to-

- (a) policy for the development of co-operatives in the Republic;
- (b) the application of any of the provisions of this Act or any other law on matters affecting co-operatives;
- (c) the publication of any regulations in terms of this Act that may be necessary;
- (d) the provision of support programmes that target co-operatives, especially Those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas and promote equity and greater participation by its members;
- (e) the establishment of guidelines for audits of co-operatives;
- (f) any matter referred to the Advisory Board by a co-operative, proposed co-operative or member of a co-operative that relates to promoting the development of co-operatives; and
- (g) any decision the Minister is required to take in terms of this Act.”

³² Act 14/2005.

³³ Act 14/2005.

³⁴ Van Zyl 2004: 59.

operatives can be registered based on unsound business considerations and become the embodiment of failed or redundant business enterprises.

- Transfer of shares is not allowed unless transfer occurs after the death of a member and is subject to sec 25 of the Act. This makes potential members doubtful in obtaining membership in a co-operative, again negatively affecting the enterprise potential.
- The exclusion of membership of juristic persons in primary co-operatives does not conform to international standards and moreover, many of the rural SMMEs or close corporations cannot survive on their own and therefore will also be unable to become members of a primary co-operative.³⁵ This is a problem, because these enterprises will not be able to organise themselves within the primary co-operative structure, because of the definitions of primary, secondary and tertiary co-operatives included in the 2005 Co-operatives Act.
- The 2005 Act does not make regulative provision for controlling state ownership in co-operatives, which may present a dangerous situation, as this can result in co-operatives becoming bureaucratic instruments of government. This presents a risk, because of the co-operative's historic connection with the promotion of (the apartheid) government policies and ideals.
- The functions, rights and duties of the supervisory committee are not properly stipulated and are too vague for proper implementation.³⁶ The only provisions in the 2005 Act are that the supervisory committee is appointed at the first annual general meeting of the co-operative and that its powers are determined by the constitution of the co-operative.³⁷ The supervisory committee is a new concept in South African law and must be described more comprehensively.

7.7 Conclusion

The 2005 Act constitutes a marked improvement on the 1981 Act and brings South Africa into line with international standards. Although the 2005 Act is a much less restrictive and gives co-operatives much more freedom in which to operate, it contains stringent provisions regarding aspects relating to

³⁵ Act 14/2005: sec 1.

³⁶ Act 14/2005: sec 1 defines the supervisory committee as "a committee of members that may be constituted in terms of the constitution of a primary co-operative to exercise supervision over 20 the board of directors." Act 14 /2005: sec 1, 14(f), 22(3), 27(3)(b) and 29(1)(e).

³⁷ Act 14/2005: sec 29(1)(e) and 14(f).

proportional voting rights. The 2005 Act still has shortcomings in its provisions specifically relating to the exposition of the rights, duties and powers of the supervisory committee, control in state ownership of co-operatives and restrictions on membership of juristic persons, which require legislative amendment.

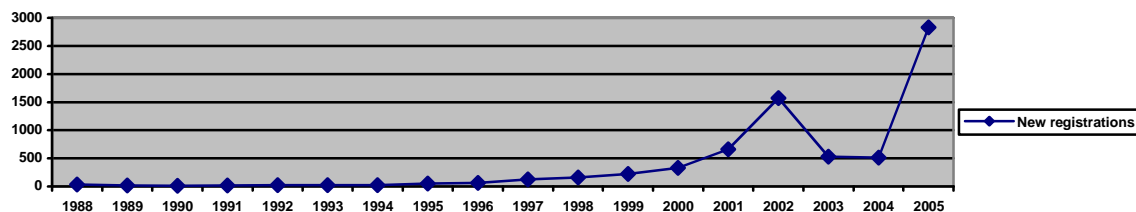
CHAPTER 8

THE REBIRTH OF CO-OPERATIVES IN SOUTH AFRICA

8.1 Introduction

This chapter focuses on the increase of new co-operative registrations during the period 1988 to 2005, substantiated by official statistics. Through this illustration of the increase of co-operative numbers, the author aims to prove the fact that co-operatives are not enterprises of the past, but rather enterprises that deserve increasing attention, investigation and support. Furthermore, the author also aims to investigate and suggest possible reasons for the sudden increase in co-operative registrations in the period between 2002 and 2005.

8.2 The number of new co-operative registrations between 1988 and 2005



In the period between 1988 and 1993 very few new co-operatives were registered. Referring to the graph illustrated above and comparing it to the graph illustrating the number of co-operative de-registrations and conversions in Chapter 5, it is clear that many co-operative de-registrations or conversions took place simultaneously with the low rate of new registrations.¹ However, the above graph indicates that the number of new registrations started to increase steadily in the period from 1994 to 2002.² This increase was surely more positive than the number of new registrations in the preceding period. However, the most dramatic increase in the number of new registrations occurred in the period between 2004 and 2005, when a staggering 2829 new co-operatives were registered. This number of new registrations is almost as high as the sum total of all the new registrations in the preceding ten years.

¹ Statistics from the Registrar of Co-operatives as appended at annexure 5 provided the conclusion that this was the poorest figure of growth in a period of 6 years; there were only 120 new co-operatives that registered with the Registrar of Co-operatives.

² Statistics from the Registrar of Co-operatives as appended at annexure 5 provided the conclusion that in this period 4242 new co-operatives registered with the Registrar of co-operatives.

8.3. Possible reasons for the increase in the number of new co-operative registrations

As stated above there was a steady increase in the new registrations of co-operatives from 1994 which boomed between 2004 and 2005. A number of reasons can be suggested to explain the phenomenon evident in the graph above.

One of the possible reasons is surely the change in political dispensation in South Africa in 1994.³ With the change in political system, the existence of a Supreme Constitution ensured a society ruled by democracy, freedom and equality; thereby creating opportunities for more people to have access to basic services and to enter into the economic mainstream as well.⁴ More specifically, all legal and business dealings by individuals as well as the state are bound by the Constitution and must conform to the values enshrined therein.⁵ Therefore, participation in the economic mainstream and membership in co-operatives are currently not just dominated by a select class of persons, but are open to all persons and classes of persons eager and willing to take part. Furthermore, as illustrated in the preceding chapters, the co-operative is a very accessible business enterprise, thereby opening the door for more co-operatives to be registered.

Another reason is possibly the fact that, since 2000, two co-operative draft bills have been tabled by government. Therefore, as illustrated in Chapter 6 above, a change in government policy regarding views of co-operatives had already started in 2000. With the enactment of the 2005 Co-operatives Act, the legislature succeeded in dramatically changing co-operative legislation.⁶ The new legislation is less stringent in its application, thereby making co-operatives much more accessible business enterprises to many persons and classes of persons.⁷ Moreover, co-operatives are no longer bound to (mainly) one industry only, namely agriculture, as was the case under the Co-operative Societies Act 91 of 1981, but include in their application all industries, for example housing, procurement services, the provision of services in the construction industry and so forth, and have now even been promoted by government for

³ As previously stated, co-operatives have been linked to the apartheid government's ideologies, and therefore with the change in political system. Co-operatives were not enterprises reserved for a group or class of persons to engage in at the exclusion of others, but were open and available to all South Africans, hence the increase in the number of new registrations.

⁴ Constitution of the Republic of South Africa: sec 2 and the preamble.

⁵ Constitution of the Republic of South Africa: sec 2.

⁶ Act 14/2005.

⁷ The Co-operatives Act 14/2005 has made provision for much easier registration of co-operatives, it omitted a provision that compels the auditing of co-operatives etc.

this versatile application.⁸ As stated above, co-operatives are generally much more accessible to people and have proven to form part of and be familiar to many groups of people, especially the rural and traditionally poor societies. These enterprises have already proven very appropriate to South Africa and are now formally acknowledged by government as such. Therefore, co-operatives are currently viewed as vehicles of empowerment and community upliftment, with the result that more new co-operatives are being registered.⁹

The final possible reason is the fact that upcoming co-operatives which further BEE, qualify for government grants (Empowerment Investment Grant) in accordance with the National Empowerment Fund Act of 1998.¹⁰ This will serve as a great motivational factor when selecting a business enterprise to enter into and might result in increased numbers of new registrations. However, the tendency of government to promote and hand out grants should be approached with caution. According to the preamble of the Co-operatives Act of 2005, the co-operative is an enterprise based on the principles of self-help, self-reliance, self-responsibility and democratic values, and is an equal and socially responsible entity which will serve as a catalyst for government to achieve its objectives.¹¹ Therefore it must be guarded against that government does not “hijack” these institutions through the provision of large grants which may result in government becoming the main stakeholder (shareholder) in the co-operative. In the opinion of the author, a more viable method may be preferential government procurement to assist new BEE co-operatives in need of financial support, thereby posing no threat to the autonomy and independence of the co-operative in accordance with the seven international co-operative principles, mentioned previously.¹²

⁸ Roelf 2005:
http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_busines%2f: accessed 16 August 2005.

⁹ Co-operatives Act 14/2005: preamble.

¹⁰ Act 105/1998: sec 3.

¹¹ Act 14/2005 and According to sec 2 of the Memorandum on the Objects of the Co-operatives Bill of 2005: GN 4/2005, the objects include the following:

- Promote the development of sustainable co-operatives, thereby increasing the number and variety of economic enterprises.
- Encourage persons who subscribe to co-operatives principles to register as legal entities.
- Enable the new types of co-operatives to acquire a legal status.
- Promote equity and greater participation of black people, especially those in rural areas, women, youth and persons with disabilities.
- Facilitate the provision of support programmes for co-operatives, specifically those that create employment and benefit disadvantaged groups.

¹² De Waal 26 Augustus 2005: 92.

8.4 Conclusion

From the above it is evident that co-operatives are not out-dated enterprises, but are suited to the challenges of the modern economy. Furthermore, the impact of the change in Constitutional order, government policy, regulation and the provision of government grants in terms of new co-operative registrations may explain the sharp increase in the number of new co-operative registrations.

CHAPTER 9

CO-OPERATIVE MOVEMENT AND DEVELOPMENT POLICY

9.1 Introduction

This chapter will attempt to illustrate the importance of a successful co-operative movement, and the need for a development policy to be drafted and issued by government. This policy document should be supplementary to legislation and will have a great effect on determining public opinion towards and trust in co-operative enterprises in general.

9.2 The concept of a co-operative movement and development policy

A co-operative movement and development policy (hereafter referred to as the co-operative policy) is additional to legislative or regulatory measures created and implemented by government. Generally, it aims to develop and raise consciousness regarding co-operatives.¹ However, a co-operative movement or policy is much wider than the ambit of legislation, as it sets out the values and principles with which co-operatives should comply. Moreover, the co-operative movement and development policy aims to consolidate all co-operatives under the ambit of one regulatory body, namely the National Co-operative Association of South Africa (hereafter referred to as the NCASA), in order to further the interests of co-operatives in South Africa.²

¹ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

² Therefore this co-operative movement stretches much further than the ambit of legislation and includes all enterprises incorporated in accordance with the seven international co-operative principles and NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006, Department of Trade and Industry 2004: 5 and the National Cooperative Association of South Africa (NCASA) was founded in 1997 with the purpose of bringing together all South African co-operatives under one apex body. In the course of its development NCASA has forged links with international co-operative movements such as the International Co-operative Alliance (ICA) and International Labour Organisation (ILO). The mission of NCASA is to promote the concept and practice of co-operation and contribute to the organisation of the significant areas of the economy and society around co-operatives values and principles - the building of a co-operative sector.

“...The mission of NCASA is to promote the concept and practice of cooperation and contribute to the organisation of the significant areas of the economy and society around co-operative values and principles - the building of a co-operative sector...”³

However, this does not imply that legislation is useless, or is to be replaced by the co-operative policy. Legislation forms the basis of any co-operative policy as it sets minimum standards and creates rights and accountability. Moreover, a co-operative policy influences public opinion regarding co-operatives and contributes to the practical implementation of co-operative enterprises by the general public. Therefore, in order to realise this in terms of its practical guidelines, government must actively participate in this movement by encouraging, creating and supporting skills development opportunities in order to equip people so that the social and economical empowerment of people can result effectively.⁴ According to President Thabo Mbeki:

“The Government will also place more emphasis on the development of a co-operative movement to combine the financial, labour and other resources among the masses of the people, to rebuild our communities and engage the people in their own development through sustainable economic activity.”⁵

However, in creating such a policy, there are obstacles to overcome. This may pose a challenge as there are many divergent ideas of co-operatives currently prevalent in South Africa.⁶ The NCASA is determined to overcome these and still be representative of all co-operatives from all spheres of the population.⁷

The first step is awareness and education about the co-operative structure, the requirements, functions, advantages and disadvantages. Cooperation among members of co-operatives must enjoy priority. The establishment of a central regulating body should facilitate support and provide education to (and about) co-operatives. One of the most important contributions of a co-operative policy is the social and legal recognition of informal co-operatives.⁸

³ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

⁴ University of the Witwatersrand 1990: 218.

⁵ 25/06/1999 opening of Parliament : 8 and Department of Trade and Industry 2006: iii

⁶ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

⁷ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

⁸ Department of Trade and Industry 2004: 11.

In order to establish an effective co-operative policy, the following principles must be considered:⁹

Firstly the co-operative must be managed effectively according to sound business principles. Members must be carefully selected, taking into consideration their managerial skills. Effective dispute resolution procedures must be in place in cases where disputes between members cannot be avoided.

Secondly, the initiative for the establishment of a co-operative must emanate from the members themselves, as the co-operative's long term success is highly unlikely if it is not driven by the enthusiastic support of its members.

Thirdly, financial support and commitment is essential for the success of any business enterprise. Because the co-operative is a business, it requires patronage or support for its continued existence. Moreover, the members of the co-operative, who are the greatest customers of the co-operative, are remunerated for their patronage or support in the form of the division of profits according to the patronage proportion. Thus, members must realise that there is co-dependence between the members and the co-operative *inter se*.

Fourthly, entrepreneurial mindset is essential. This implies that the co-operative must remain creative and innovative to address the changing needs of its members, role players and the business environment. This implies that the co-operative is first and foremost a business undertaking and secondly a tool for social upliftment and empowerment.

Fifthly, co-operative education is crucial for any development to take place in terms of the enterprise.

Lastly, government support, although not fundamental for the establishment and sustenance of a co-operative, is surely important, especially in accordance with co-operative policy.

9.3 Conclusion

The co-operative policy seem to be only of practical importance, but must be addressed mainly because co-operatives, however independent in nature, are influenced by government policies and ideologies, especially as dictated by a co-operative policy. It is therefore evident that a well drafted co-operative

⁹ Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006, for a lengthy discussion thereon.

policy is an imperative for the successful, continued existence of co-operatives in South Africa. Professional people like attorneys, academics, accountants and business advisors can make valuable contributions to the drafting and implementation of a successful co-operative policy.

PART 2: BLACK ECONOMIC EMPOWERMENT IN SOUTH AFRICA

CHAPTER 10

SOUTH AFRICAN POLITICAL AND LEGISLATIVE BACKGROUND LEADING TO THE ENACTMENT OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003¹

10.1 Introduction

This chapter provides a brief exposition of the political and legislative history of South Africa predating 1994, in order to promote an understanding of the rationale behind the imperative to implement government's latest transformation policy, namely Black Economic Empowerment (BEE).

10.2 The economic exclusion of certain persons

In 1948, the National Party (hereafter referred to as the NP) won the general election and instituted apartheid, which was even more rigorous and authoritarian than any of the segregationist policies of the previous governments.² The NP's primary appeal lay in its determination to maintain white domination in the country's economic life and in their assertion of political rights for whites.³ The primary goals of the nationalist government were to uplift poor Afrikaners, to challenge the pre-eminence of English-speaking whites in public life, the professions and business, and to abolish the remaining imperial ties.⁴ The State became an engine of patronage for Afrikaner employment.⁵ Secret societies such as the Afrikaner Broederbond played a very important role in achieving this objective and ensured that it could be met.⁶ As a result the bulk of South African wealth was divided only among whites.⁷

¹ This is merely a brief exposition for the purposes of historical and political background, as this topic is too wide for the purpose of this study.

² Howard College and University of Natal 1987: 28 and University of Cape Town 1988: 119 – 120.

³ Howard College and University of Natal 1987: 68 and Republic of South Africa: <http://www.info.gov.za/aboutsa/history.htm>: accessed 6 February 2006.

⁴ Balshaw and Goldberg 2005: 22.

⁵ Balshaw and Goldberg 2005: 22.

⁶ Posel 1991: 241 – 244 and Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>; accessed 6 February 2006.

⁷ Mbatha 1994: 43.

The importance of “racial purity” became apparent in laws prohibiting interracial marriages and any relevant relations, and provisions for population registration required that every South African be classified according to a race.⁸ As a result of this the coloured people, who had always been subject to informal discrimination, were openly discriminated against as well.⁹ Pass laws and influx control were extended and harshly enforced, and labour bureaux were set up to channel labour to where it was needed.¹⁰ Industrial decentralisation to growth points on the borders of, but not inside the homelands, was promoted.¹¹

The underlying reason for keeping black people outside the borders of South Africa was to reinforce their allotted role as 'temporary sojourners', which was solely to serve the needs of the employers of labour.¹²

In 1949 the African National Congress (hereafter referred to as the ANC) adopted the Programme of Action, which embodied a rejection of white domination, and subsequently mass action in the form of protests, strikes and demonstrations were undertaken.¹³ A period of turbulent mass action in resistance to the imposition of still harsher forms of segregation and oppression followed.¹⁴

A critical step in the emergence of non-racialism was the formation of the Congress Alliance, including the Indian Congress, the Coloured People's Congress, the small Congress of Democrats and the South African Congress of Trade Unions.¹⁵ The Alliance gave formal expression to an emerging unity across racial and class lines and prompted the formation of the Federation of South African Women.¹⁶ In 1955, the Freedom Charter was drawn up.¹⁷ It enunciated the principles of the struggle, binding the movement to a culture of human rights and non-racialism.¹⁸ Little did the drafters know that the roots of the current

⁸ A multi-disciplinary inquiry into de facto racial discrimination 1994: 7.

⁹ Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006, Howard College and University of Natal 1987: 14 – 16 and A multi-disciplinary inquiry into de facto racial discrimination 1994: 7.

¹⁰ Howard College and University of Natal 1987: 70 and 107 – 10. Posel 1991: 150 - 151 and 181 and Posel 1991: 192 – 202, for further reading.

¹¹ Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006 and Posel 1991: 231 and 234.

¹² Posel 1991: 234 – 235 and Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006 for further reading Posel 1991: 235 – 245.

¹³ Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006.

¹⁴ Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006.

¹⁵ The small congress of democrats was a white congress organisation. Horrell 1978: 399 and Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006.

¹⁶ Horrell 1978: 399 and Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006.

¹⁷ Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>; accessed 6 February 2006 and Horrell 1978: 399.

¹⁸ Republic of South Africa: <http://www.rebirth.co.za/apartheid.htm>: accessed 6 February 2006 and Horrell 1978: 399.

government's strategies would go back to this Freedom Charter.¹⁹ On 5 August 1962, Nelson Rolihlahla Mandela was sentenced to life imprisonment –

“...for leadership of his people in the struggle against racist oppression and for a non-racial democratic society....”²⁰

In November 1962, Nelson Rolihlahla Mandela made the following statement, in illustration of public dismay at the political system followed in the country, as well as the values it infringed upon:

"I hate the practice of race discrimination and in my hatred I am sustained by the fact that the overwhelming majority of mankind hate it equally... I have no doubt that posterity will pronounce that I was innocent and that the criminals that should have been brought to court are the members of the Verwoerd government."²¹

10.3 Two separate systems of legislation

In a country ruled by a system of parliamentary sovereignty, one separate system of legislation existed to govern the economic movement of white people and another to govern non-white people.²² The following examples of legislation were enacted and enforced against black people (non-whites) only:²³

The Bantu Investment Corporation Act²⁴ provided for the creation of financial, commercial, and industrial schemes in areas designated for black people; the Black Labour Relations Act²⁵ amended the 1937 Industrial Conciliation Act, changing the definition of 'employee' to exclude black people, so that they could no longer be members of registered trade unions.²⁶ The Act also incorporated the War Measure Act of 1942,²⁷ which prohibited strikes by black workers. In addition, it made lock-outs of black people,

¹⁹ Kruger 2005: 36, Wolley 2005: 21 and Osode 2004: 108.

²⁰ <http://www.anc.org.za/ancdocs/history/campaigns/prisoner.html>: accessed 13 April 2006.

²¹ <http://www.anc.org.za/ancdocs/history/campaigns/prisoner.html>: accessed 13 April 2006.

²² Ellmann 1992: 12 – 14 for a brief exposition on the effects of parliamentary sovereignty and University of Cape Town 1988: 136 – 164, for further reading on two separate legal systems.

²³ Republic of South Africa: <http://africanhistory.about.com/library/bl/blsalaws.htm>: accessed 3 February 2005. These merely serve as examples for the purpose of illustration of the existence of two separate systems of legislation.

²⁴ Act 34/1959.

²⁵ Act 48/1953.

²⁶ Horrell 1978: 281.

²⁷ Act 145/1942.

the instigation of strikes and lock-outs, and sympathetic strikes illegal. The Black Labour Act²⁸ consolidated the laws regulating the recruiting, employment, accommodation, and feeding and health conditions of black labourers, amongst others.

Furthermore, other examples of legislation restricted the freedom of movement, and in general the freedom of black people in South Africa: the Bantu Authorities Act²⁹ provided for the establishment of black homelands and regional authorities and, with the aim of creating greater self-government in the homelands, abolished the Native Representative Council. The Natives Abolition of Passes and Co-ordination of Documents Act³⁰ was commonly known as the Pass Laws. This ironically named Act forced black people to carry identification with them at all times. A pass included a photograph, details of place of origin, employment record, tax payments, and encounters with the police. Failure to produce a pass when required to do so by the police constituted a criminal offence. No black person could leave a rural area for an urban one without a permit from the local authorities. On arrival in an urban area, a permit to seek work had to be obtained within 72 hours. Black councils were established in urban areas which were supposed to be linked to the authorities running the related ethnic homeland. Together with the 1956 amendment, the Separate Representation of Voters Act³¹ led to the removal of Coloureds from the common voters' roll.

10.4 Different BEE policies leading to the first (democratic) general election on 27 April 1994

When capitalist economies suffered under the international oil crisis of 1973, black trade unions were revived in South Africa.³² The involvement of workers in resistance took on a new dimension with the formation of the Congress of South African Trade Unions and the National Council of Trade Unions, and increased international pressure mounted against the apartheid government.³³ Government embarked on a series of reforms: the recognition of black trade unions to stabilise labour was one of them, and BEE really started to develop from this point onwards.³⁴ In the 1970s a concept called black advancement was established in an attempt to solve and prevent the reoccurrence of events leading up to the Soweto tragedy on 16 June 1976.³⁵ Some multi-national organisations decided to remove their investments from

²⁸ Act 67/1964.

²⁹ Act 68/1951.

³⁰ Act 67/1952.

³¹ Act 46/1951.

³² Horrell 1978: 278 – 284.

³³ Fig 2002: 81.

³⁴ Republic of South Africa: <http://africanhistory.about.com/library/bl/blsalaws.htm>: accessed 3 February 2005 and Horrell 1978: 284 – 286.

³⁵ Republic of South Africa: <http://africanhistory.about.com/library/bl/blsalaws.htm>: accessed 3 February 2005.

South Africa, but were put under pressure to work towards black advancement and eventually embarked on voluntary initiatives towards corporate social responsibility.³⁶ The US multi-nationals made a prominent effort by introducing a code of conduct referred to as the Sullivan Code.³⁷ From the above it is quite clear that it would have been illegal for organisations to enter into partnerships with black employees, thus the advancement of blacks had to be achieved through other means.³⁸

The 1980s were a decade marked by political upheaval and chaos in an attempt to overthrow or force the South African government to change its systems and policies.³⁹ Moreover, international pressure was mounting on the South African government. In the 1980s, however, a new term came into the arena, namely the Equal Opportunity Programme. This Programme had the objective of creating opportunities for participation in the economic mainstream irrespective of racial differences.⁴⁰ Furthermore, this Programme was based on the presumption of fairness that would exist when people from all backgrounds were given equal opportunity to succeed or to fail in society.⁴¹ The decade was ended by the release of Nelson Rolihlahla Mandela from prison on 11 February 1990 and South Africa embarked on a period filled with hope and enthusiasm.⁴²

It seems that Nelson Rolihlahla Mandela had realised his life goal as stated at the Rivonia Trial of 1963 where he ended his summation in his treason trial with these words:

“I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.”⁴³

On 27 April 1994, South Africa had its first democratic election and changed from an undemocratic state, ruled by an oppressive minority, to a state under the rule of law and with constitutional sovereignty. This

³⁶ Republic of South Africa: <http://africanhistory.about.com/library/bl/blsalaws.htm>: accessed 3 February 2005.

³⁷ Fig 2002: 81.

³⁸ Madi 1997: 8.

³⁹ Madi 1997: 8 – 9.

⁴⁰ Madi 1997: 8 – 9.

⁴¹ Madi 1997: 8 – 9.

⁴² <http://www.anc.org.za/ancdocs/history/campaigns/prisoner.html>: accessed 13 April 2006 and <http://www.anc.org.za/people/mandela.html>: accessed 13 April 2006.

⁴³ <http://www.anc.org.za/ancdocs/history/campaigns/prisoner.html>: accessed 13 April 2006.

day marked the enactment of the interim Constitution as well, which was the predecessor of the final Constitution.⁴⁴ According to Chaskalson J, the Constitution is the bridge between the past and the future:

“These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.”⁴⁵

Affirmative action came onto the scene when the NP released its political opponents from prison in the 1990s.⁴⁶ Thereafter government’s intention to make transformation an imperative was illustrated by the inclusion of the Reconstruction and Development Programme (hereafter referred to as RDP) in 1994.⁴⁷ However, empowerment as described in this document lacked the fundamentals of practicality and a better proposal to facilitate transformation was urgently required.⁴⁸

10.5 The enactment of the Constitution of the Republic of South Africa of 1996

The 1996 Constitution was enacted, with South Africa’s values now being based on the following:

- a) “Human dignity,
- b) Non-racism and non-sexism,
- c) Supremacy of the constitution and the rule of law,
- d) Universal adult suffrage, a national common voter’s roll, regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness.”⁴⁹

The most fundamental change brought about by the enactment of the Constitution was the change from a government of parliamentary sovereignty to that of constitutional supremacy, which is enshrined in

⁴⁴ This refers to the Constitution of the Republic of South Africa of 1996.

⁴⁵ S v Makwanyane and another CCT/3/94 at paragraph 223 and paragraph 130 and <http://www.anc.org.za/ancdocs/history/mbeki/2003/tm0415.html>: accessed 16 June 2006.

⁴⁶ Kruger 2005: 36 and Woolley 2005: 21.

⁴⁷ Kruger 2005: 36 and Woolley 2005: 21.

⁴⁸ Cliffe Dekker 2004: 2.

⁴⁹ Constitution of Republic of South Africa of 1996: Sec 1.

section 2 of the Constitution.⁵⁰ Thus any law which is in conflict with this, is invalid. Furthermore, it binds all persons and organs of state.⁵¹

Chapter 8 of the Constitution deals with the fact that the courts can now juridically review the actions of state organs and review all law and strike down any provision thereof that is inconsistent with the Constitution.⁵² According to Du Plessis, this was not the case previously, as our government of parliamentary sovereignty could enact any law it desired, and no institution, including the courts, could challenge these laws.⁵³ Furthermore, only if parliament did not follow the correct procedure in passing legislation, could such legislation be declared invalid.⁵⁴ Therefore, the primary function of the courts was to interpret the legislation but not to challenge its validity.⁵⁵

Another fundamental change brought about was the introduction of the Bill of Rights.⁵⁶ The Bill of Rights is the cornerstone of democracy and affirms the values of human dignity, equality and freedom, upon which South African society is based. These values are contained in Chapter 2 of the Constitution, i.e. the Bill of Rights. The Constitution is the highest law in South Africa and aims to protect and promote the rights of all persons in South Africa and even prevents government from infringing upon any person's right or from enacting any law that discriminates, or from unfairly limiting or taking away any rights to which a person is entitled.⁵⁷

The Constitution further allows the enactment of any legislation which is in line therewith, to promote equality and prevent unfair discrimination in any sense.⁵⁸ In terms of section 9(2) of the Constitution equality is defined as:

“Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”

⁵⁰ Also referred to as the so-called supremacy clause.

⁵¹ The Constitution of the Republic of South Africa of 1996: Sec 8 of Chapter 2.

⁵² Constitution of Republic of South Africa of 1996, read with sec 165(2), 165(5) and 172(1)(a) thereof. Judicial review includes the review of common law, customary law and statutory provisions according to the Constitution of Republic of South Africa of 1996: sec 7.

⁵³ Du Plessis 2000: 136.

⁵⁴ Du Plessis 2000: 136.

⁵⁵ Du Plessis 2000:136.

⁵⁶ Constitution of Republic of South Africa of 1996: Chapter 2.

⁵⁷ Du Plessis, Fouchè and van Wyk 2002: 4.

⁵⁸ Constitution of Republic of South Africa of 1996: Sec 9.

Therefore, in a democratic society, unfair discrimination of any form cannot be tolerated, especially in the labour market or in business. Proof hereof is the enactment of the Labour Relations Act of 1995,⁵⁹ the Employment Equity Act of 1998,⁶⁰ the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000⁶¹ and the Broad-Based Black Economic Empowerment Act of 2003,⁶² all of which are in line with the Constitution.⁶³

Furthermore, the Constitution lists all the grounds upon which persons may not be discriminated against; thus aspects of race or colour are grounds upon which, in accordance with section 9(3) no person shall be discriminated against.⁶⁴ It also guarantees all persons, including employers and employees, sharing in South African wealth, as well as the right to freedom of association and the right to equality.⁶⁵

10.6 The enactment of legislation as a contribution to the transformation of South Africa

According to the National Association of Automotive Component and Allied Manufacturers (hereafter referred to as NAACAM), there has been much legislative development in the South African BEE policy, mainly to enable and motivate all South Africans to do their individual parts to promote South Africa's transformation process.⁶⁶

First, the National Small Business Act of 1996⁶⁷ enabled Small, Micro and Medium Enterprises (hereafter referred to as SMMEs) to establish several institutions that can provide financial and other support to entrepreneurs. Ntsika and Khula, for example, have targeted substantial proportions of their programmes towards the cultivation of black entrepreneurs.⁶⁸

In 1997, government issued a green paper on procurement reform. Government is the largest procurer of goods and services in the economy and has a responsibility to support the local entrepreneur (seller) in

⁵⁹ Act 66/1995.

⁶⁰ Act 55/1998.

⁶¹ Act 4/2000.

⁶² Act 53/2003.

⁶³ Kruger 2005: 36 and Constitution of the Republic of South Africa 108 of 1996: sec 2 and sec 9(2).

⁶⁴ However these grounds are not limited to those mentioned in this part, as section 9 makes provision for both listed and unlisted grounds of discrimination.

⁶⁵ Constitution of the Republic of South Africa of 1996: sec 17 and sec 9 respectively.

⁶⁶ In their article on South Africa's transformation a strategy for broad-based black economic empowerment in March 2003.

⁶⁷ Act 106/1996.

⁶⁸ NAACAM 2003: 7 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

fulfilling its BEE policy objectives and to develop a labour-intensive construction through these preferential procurement requirements: the opportunity to tender must be more accessible to black people; large tenders must be unbundled to enable smaller enterprises to tender as well; and a points system was put in place based on price and preferences for certain target groups.⁶⁹ Subsequently, the Preferential Procurement Act of 2000 was promulgated to regulate this.⁷⁰

In 1998 legislation was enacted to address the specifics of the BEE challenge that lay ahead. The Competition Act of 1998, for example, has as one of its objects to increase the number of historically disadvantaged persons with an ownership stake in the economy.⁷¹

The Employment Equity Act⁷² followed and started making provision for the prevention of unfair discrimination, as well as the institution of affirmative action in the workplace.⁷³

10.7 Conclusion

As a result of the discriminatory political system that existed in South Africa, a transformation movement became necessary to eradicate the effects of the past. However, the legacy left by apartheid, the abnormal socio-economic divide and the skills shortage cannot be eradicated by the enactment of legislation only. Legislation is merely the regulatory framework and driving force of action.⁷⁴ The legacy of apartheid will not be wiped out until every South African has equal access to housing, education, water, electricity and access to South Africa's wealth.⁷⁵ Action must be taken and the responsibilities acknowledged by every South African to educate, develop and ultimately empower all persons to create genuine, lasting equality between all South Africans.

⁶⁹ NAACAM 2003: 7 to 8 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005 and Woolley 2005: 22.

⁷⁰ Act 5/2000.

⁷¹ Act 89/1998.

⁷² Act 55/1998.

⁷³ NAACAM 2003: 8 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

⁷⁴ Balshaw and Goldberg 2005: 21.

⁷⁵ Mbatha 1994: 43.

CHAPTER 11

BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BEE)¹

11.1 Introduction

As stated in the preceding chapters, BEE is a new frontier. Therefore this chapter aims to investigate the definitions, purpose, scope and functions of BEE specifically, in order to ensure proper implementation within the co-operative structure.

According to Woolley, BEE exists for two purposes or functions namely, the moral imperative which is to eradicate the effects of oppression and unlawful expropriation during the reign of apartheid, where people were channelled into labour and kept from sharing in the country's wealth and economic opportunities and secondly, an the economic imperative, which must address the results of the policies and effects of apartheid that caused a marked difference in the living standards of the rich and the poor.² Moreover, the South African middle class, unlike in other third world countries, contributes greatly towards the economy which in turn creates a higher percentage of privileged people in the country, which has the added effect of creating social tension between people.³ Thus, the high level of unemployment in South Africa is one of the main reasons for the imperative towards successful transformation.⁴

“if implemented properly and viewed as an opportunity, BEE could prove to be the best weapon not only to insure continued growth for South African businesses, but also as a skills transfer tool for millions of black people who were historically excluded.”⁵

Moreover, apart from being a moral and economic imperative, BEE also promotes the country's democratic values as enshrined in the Constitution of the Republic of South Africa.⁶ According to Crotty:

“democracy would remain seriously half-baked if the private sector remained in white hands only.”⁷

¹ This is merely a brief exposition for the purposes of applying the co-operative structure to the provisions of BEE.

² Woolley 2005: 16.

³ Osode 2004: 107.

⁴ Woolley 2005: 16 – 17 and Gihwala 2005: 3.

⁵ Kruger 2005: 37.

⁶ Constitution of the Republic of South Africa: sec 1 and sec 9(2).

However, the above does not imply that BEE is merely a “reshuffling of share certificates”, where a selected elite (white people) will be replaced by another (black people). According to Minister Alec Irwin, government is strongly against such purpose or function.⁸

“if a black business views BEE as a way of replacing a few rich whites with a few rich blacks, government is not interested.”⁹

Furthermore, BEE is a wide movement that functions on ownership, employment, procurement and advancement levels to accommodate members of the private sector (holding companies) who may not want to sell the equity of the enterprise.¹⁰ These companies or enterprises can then support BEE by, for example, making black companies preferential suppliers, or entering into joint ventures with them.¹¹ This will ensure the creation of economic cooperation between the public and private sector, which is the key to economic development.¹² The fundamental objective of BEE is therefore to make the economy grow.

Marcus states:

“If we change the ownership in the economy, but the economy is still the same size, we have achieved only one level of success, but have not succeeded in what we want to do with the economy.”¹³

11.2 BEE defined and described

Woolley defines empowerment as:

“an integrated and coherent socio economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the

⁷ Crotty 2006: <http://www.busrep.co.za/index.php?fSectionId=552&fArticleId=3228143>: accessed 3 May 2006.

⁸ Woolley 2005: 12 and Kruger 2005: 37.

⁹ Kruger 2005: 37.

¹⁰ B-B BEE Act 53/2003 follows a broad approach in its scorecard elements applied to measure BEE compliance. Furthermore BEE encompasses a wide selection of beneficiaries in the term black people and Act 53/2003: sec1.

¹¹ Paton 2003: 34 and Mbatha1994: 45.

¹² Philip 1996: 10.

¹³ Balshaw and Goldberg 2005: 17.

number of black people that manage, own and control the country's economy, as well as significant decreases in economic inequalities"¹⁴

The BEE commission defined BEE as:

"an integrated and coherent economic process. It is located within the context of the country's national transformation programme, namely RDP. It is aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa's financial and economic resources to the majority of its citizens. It seeks to ensure broader and meaningful participation in the economy by black people in order to achieve sustainable development and prosperity."¹⁵

The Act defines Broad-based BEE as follows:¹⁶

"broad-based black economic empowerment means 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-

- a) increasing the number of black people that manage, own and control enterprises and assets;
- b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- c) human resource and skills development;
- d) achieving equitable representation in all occupational categories and levels in the workforce;
- e) preferential procurement; and
- f) investment in enterprises that are owned or managed by black people."¹⁷

The Draft Preferential Procurement Regulations of 2004, define Broad-based BEE as follows:¹⁸

¹⁴ Woolley 2005: 12.

¹⁵ Executive summary report of the BEEC 2001: http://www.bmfonline.co.za/bee_rep.htm: accessed 14 February 2004.

¹⁶ Act 53/2003.

¹⁷ Act 53/2003: sec 1.

“Broad-based Black economic empowerment means the economic empowerment of all black people through diverse but integrated socio-economic strategy...”

11.3 The historic development of BEE and the BEE commission of enquiry in 2001

As stated above, empowerment of black people in South Africa is not such a recent development, although the most recent of these developments has been affirmative action, as implemented by the Employment Equity Act,¹⁹ which has since become closely connected to the term “empowerment”.²⁰ According to Madi, however, the term “affirmative action” should not be seen as synonymous with “empowerment”, as this could result in a haunting legacy for current South African government.²¹ The most basic difference between BEE and affirmative action is that BEE deals with an ownership level and aims to increase black ownership in the economic mainstream, while affirmative action deals with selective employment of designated groups.²² The term empowerment has also since been prefixed with “Black” and is commonly known as Broad-based Black Economic Empowerment or BEE. According to Esterhuyse there were three phases of BEE: the first phase was mostly about placing control in black hands, i.e. black ownership and placing blacks in managerial positions.²³ The second phase was mostly about establishing partnerships between black and white South Africans.²⁴ The third phase is mainly about the empowerment and participation of communities in the economic mainstream. This includes skills development, poverty alleviation, provision of housing, minimum wages and social upliftment. The rationale behind this phase is simply doing the right thing to ensure tomorrow.²⁵ However, according to the Codes of Good Practice, there are only two phases of B-B BEE: first, the framework for management and ownership control, and second, the remaining components of the BEE scorecard.²⁶

¹⁸ GN 2174 Government Gazette 2004: (26863).

¹⁹ Act 55/1998.

²⁰ Act 55/1998: Chapter 3. Empowerment existed at this stage but was implemented without the prefix “black”.

²¹ Madi 1997: 8 – 9.

²² Designated groups refers to black people, women and people with disabilities, hereafter. Act 55/1998: sec 1.

²³ Esterhuyse 2003: 12, these phases can be linked to government’s vision of three B-B BEE components, in this case this refer to the first component and Osode 2004: 111.

²⁴ According to Esterhuyse 2003: 12, Anton Rupert had already seen the advantages of such a partnership and recognised that the only way that stability and peace could be ensured for the future would be through sharing of wealth that establishes shared interests. In turn this can also be linked to government’s vision of three B-B BEE components, in this case this refers to the second component and Osode 2004: 111. This implies relational partnerships in skills development as well as economic partnerships through the investment into black empowered companies, black companies and black influenced companies by joint ventures and funding.

²⁵ This can be linked to government’s vision of corporate-social investment in communities.

²⁶ [Http://www.sabinet.co.za/sabinetlawbee_update.html](http://www.sabinet.co.za/sabinetlawbee_update.html): accessed 27 February 2006. The Codes of Good Practice first - and second phase as promulgated in December 2005.

Thus, even though affirmative action and BEE function on different levels of the economy, they are co-dependant on one another, in that the provisions of labour law, specifically Employment Equity, facilitate the entrance of participants from designated groups into the economic mainstream, thereby creating opportunities for possible acquisition of ownership and sharing in wealth, which will effect successful transformation in South Africa.²⁷ Further proof hereof is the fact that the provisions of Employment Equity have been included in the ownership, management and human resource development aspects of the BEE scorecard. Therefore it encompasses a large section of the BEE scorecard.

Moreover, skills development has also been included in the provisions of BEE, in order to ensure a well-trained and skilled workforce. Skills development has also been included in the human resource development and enterprise development aspects of the BEE scorecard. In terms of human resource development, the provisions of the Skills Development Act must be applied, while in terms of enterprise development the development of such enterprise can be facilitated through any means whether financial assistance or any other.²⁸

As stated above, BEE is about widening the economic sphere through the creation of opportunities and the transferring of equity into black hands but, according to government, this can only be successful if empowerment is subject to selected sector BEE requirements.²⁹ It soon became evident that the performance of black owned companies was not living up to expectations, and therefore the government was pressurised to accelerate the empowerment process. Consequently, the BEE commission was appointed in 2001 and reported that a national BEE strategy was required.³⁰

²⁷ Designated groups refers to black people, women and people with disabilities, hereafter. Act 55/1998: sec 1.
²⁸ Act 97/1998.

²⁹ Gihwala D 2005: 3, Steyn 2005: 9 – 10 and Paton 2003: 34.

³⁰ Executive summary report of the BEECom 2001: http://www.bmfonline.co.za/bee_rep.htm: accessed 14 February 2004.

At the Black Management Forum (BMF) National Conference in Stellenbosch, from 14 to 15 November 1997, it was argued the Commission should address issues such as:

- “the lack of a national vision for BEE;
- the failure by Government and black business to provide leadership and a vision for BEE;
- empowerment versus enrichment;
- the empowerment process being driven by white institutions;
- the lack of a coherent definition for BEE;

The BEECom was then formally established in May 1998 under the auspices of the Black Business Council (BBC), an umbrella body representing 11 black business organisations.

The BEECom set its objectives as follows:

- To gain insight into the BEE process through empirical research and to make observations on the pace and results of BEE initiatives during the 1990s.
- To draw conclusions on the obstacles to meaningful participation of black people in the economy.
- To develop a powerful case for an accelerated National BEE Strategy and to make recommendations on policies and instruments required to guide a sustainable strategy.

The commission made a number of recommendations which mainly constituted the implementation of a national BEE strategy, together with the enactment of a national Broad-based Black Economic Empowerment Act.³¹ It was recommended that the national legislation provide an unambiguous definition of BEE; set uniform guidelines for public and private sector; set procurement targets for the public sector, and lastly force the state to insist that all government departments submit an annual BEE report.³²

According to the BEE commission, the following components should be included in an integrated national BEE strategy:³³

- “An investment for growth accord between business, labour and government aimed at reaching agreement on a concrete strategy to lift the country’s levels of fixed investment and economic growth.
- The design and implementation of an integrated human resources development (HRD) strategy.
- The implementation of the integrated sustainable rural development strategy and the creation of an agency which streamlines and co-ordinates funding initiatives in rural areas.
- A national procurement agency located within the department of trade and industry aimed at transforming the public and private sector procurement environment.
- An enabling legislative framework creating uniformity in policy and establishing the necessary institutional support and instruments with which to drive the BEE strategy.

-
- To develop benchmarks and guidelines to monitor the implementation of the National BEE Strategy. The commission then conducted extensive research and embarked on wide-ranging consultations. A consultative conference was held on 30 September 2000. The views of these and subsequent discussions with stakeholders were incorporated into the report.

Woolley 2005: 22 and according to the executive summary report of the BEE Commission 2001: http://www.bmfonline.co.za/bee_rep.htm: accessed 14 February 2004. The commission was a result of a resolution passed at the Black Management Forum National Conference held at Stellenbosch on 14 and 15 November 1997. Kruger 2005: 36.

³¹ For example, access to financial services and capital, affirmative procurement, an empowerment framework for public sector restructuring, rural development and access to land, etc. Woolley 2005: 23 and Osode 2004: 109.

³² Osode 2004: 109.

³³ Executive summary report of the BEECom 2001: http://www.bmfonline.co.za/bee_rep.htm: accessed 14 February 2004 and Osode 2004: 109.

The commission is proposing a National black economic empowerment that defines BEE and sets uniform guidelines which will ultimately facilitate deracialisation of business ownership in the private sector.

- An empowerment framework for public sector restructuring that outlines principles to be followed in the restructuring process.
- An affordable and appropriate framework aimed at providing access to finance for households and businesses through the creation of new institutions, disclosure and reporting requirements in the banking sector as well as targets encouraging service delivery.
- Recommendations on the streamlining and co-ordination of public sector funding initiatives through a national empowerment funding agency.
- Recommendations on building the capacity of black business structures.
- The strategy should also incorporate national targets to be met by stakeholders. The BEECom proposes that the following targets, to be achieved in a period of ten years, should guide the integrated national BEE strategy (with black women accounting for 35% of all targets below and disabled persons accounting for 5%)”.

11.4 The BEE strategy document

The BEE strategy document is accessory to the provisions of the B-B BEE Act,³⁴ and aims to ensure practical transparency and certainty in government BEE policies.³⁵ This strategy was designed to combine and co-ordinate measures to achieve meaningful participation by black people in the economy.³⁶

³⁴ Act 53/2003.

³⁵ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005. “This strategy document is the outcome of an extensive consultation process within government and with the private sector. It is informed by contributions of the Black Economic Empowerment Commission as well as the views of the President’s Black Business and Big Business working groups. ... The strategy consists of a policy statement and a statement of the policy instruments that government will be using consistently and predictably...”

³⁶ Cliffe Dekker 2004: 2.

The BEE strategy is underpinned by the following:³⁷

First, BEE is broad based;³⁸ second, BEE is an inclusive process;³⁹ third, BEE is associated with good governance and;⁴⁰ lastly, BEE is part of the government's growth strategy.⁴¹

BEE, as a government strategy, has further been developed by the legislature, enacting the Broad-based Black Economic Empowerment Act of 2003.⁴² The Act is not over-regulatory and allows the private sector enough freedom to implement economic transformation, but has effective measures built into it to increase pressure, if it does not deliver.

³⁷ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

³⁸ This implies that the government aims to speed up the deracialisation of the South African economy.

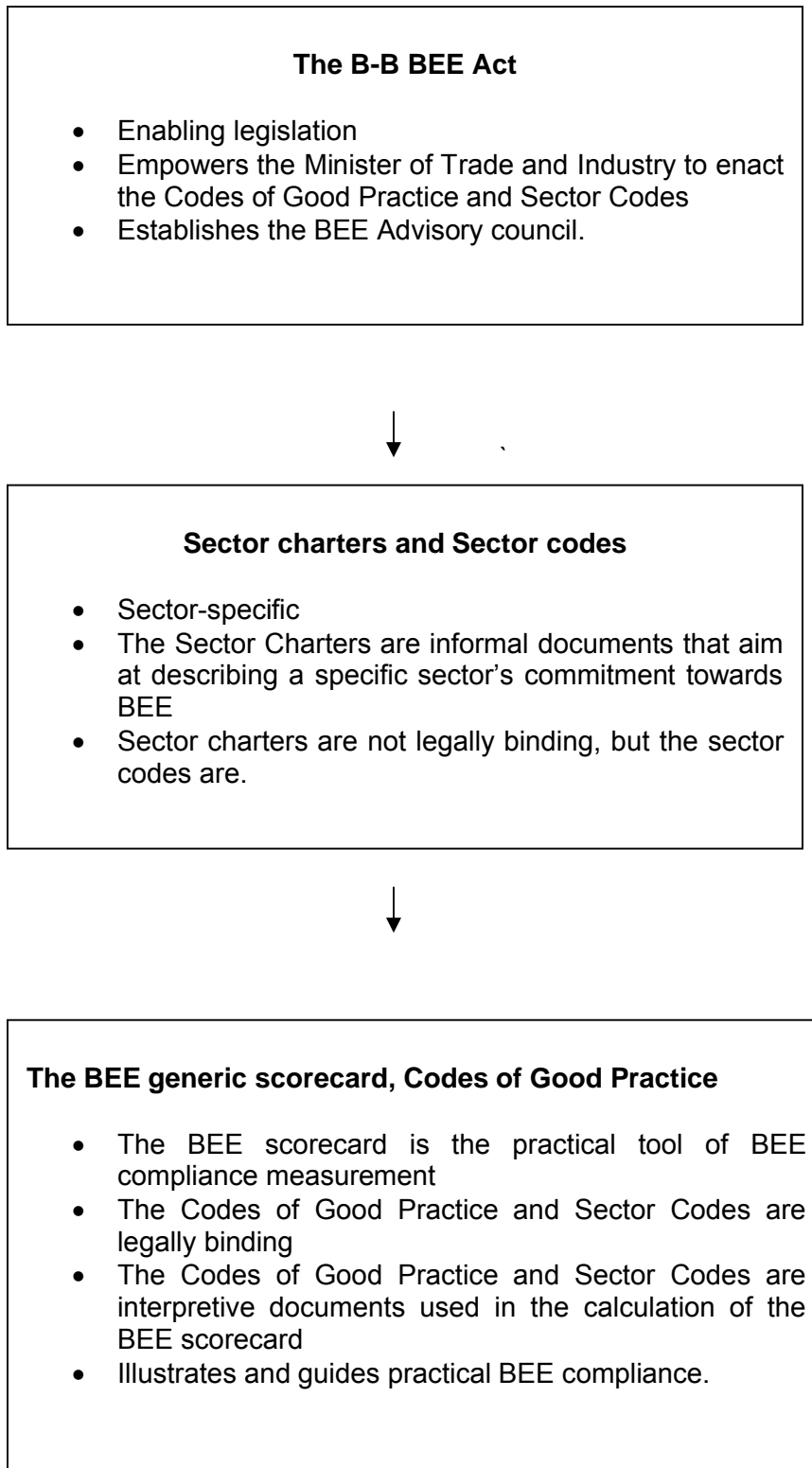
³⁹ Both enterprises and individuals are included in the transformation process. Furthermore, it stretches to all facets of the economy and is not limited to a specific industry etc.

⁴⁰ BEE must be integrated with good governance.

⁴¹ This implies that all persons must be involved in BEE, in order to accelerate economic growth. Further, in order to perform, the goods and services produced by companies must be of the highest standard so that they in turn attract outside investment.

⁴² Act 53/2003.

11.5 Diagrammatical structure of the BEE legislative framework



11.6 The Broad-based Black Economic Empowerment Act 53 of 2003

The Broad-based Black Economic Empowerment Act is the enabling legislation for the BEE structures and policies in South Africa.⁴³ The Preamble of the B-B BEE Act determines that BEE aims to:⁴⁴

“establish a legislative framework for the promotion of black economic empowerment; to empower the Minister to issue Codes of Good Practice and to publish transformation charters; to establish the Black Economic Empowerment Advisory Council; and to provide for matters connected therewith.”⁴⁵

⁴³ Act 53/2003.

⁴⁴ Act 53/2003.

⁴⁵ Act 53/2003: PREAMBLE

WHEREAS under apartheid race was used to control access to South Africa’s productive resources and access to skills;

WHEREAS South Africa’s economy still excludes the vast majority of its people from ownership of productive assets and the possession of advanced skills;

WHEREAS South Africa’s economy performs below its potential because of the low level of income earned and generated by the majority of its people;

AND WHEREAS, unless further steps are taken to increase the effective participation of the majority of South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans, irrespective of race;

AND IN ORDER TO-

promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution; and

establish a national policy on broad-based black economic empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services,

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-...”

Section 2 of Act 53/2003 provides for the following objectives to be met by black economic empowerment deals: “... to facilitate broad-based black economic empowerment by-

- (a) promoting economic transformation in order to enable meaningful participation of black people in the economy;
- (b) achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;
- (c) increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training;
- (d) increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;
- (e) promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
- (f) empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and
- (g) promoting access to finance for black economic empowerment.”

Practically, BEE functions on three broad levels namely, direct empowerment, human resource development and indirect empowerment, in accordance with the BEE generic scorecard in terms of the BEE Codes of Good Practice.⁴⁶

11.6.1 Direct Empowerment⁴⁷

Direct empowerment refers to the ownership and control of the economy to be transferred equitably into black hands through the application of BEE. It must be a controlling interest that reflects genuine participation in decision making at board, executive management and operational levels and of course the assumption of real risk.⁴⁸ Therefore, the beneficiaries are the equity holders, executives and other owners and managers of economic enterprises.⁴⁹

Thus the following requirements must be met in terms of direct empowerment:

- Ownership
- Management.

According to Madi, this implies in practical terms that:

“the idea behind this is desirable, equitable and in the interests of nation building for every profit-making organisation operating in South Africa which previously had no black shareholders to begin to have them.”⁵⁰

Moreover, direct empowerment in the form of ownership should be applied more effectively, through issuing of employee shares, employee ownership, direct shareholding by someone in a similar profession, social empowerment schemes through attracting and involving broad-based trusts or selling shareholding to a group of black people or an empowerment company, which will not become operationally involved in the business.⁵¹

⁴⁶ The Codes of Good Practice is given legislative force by Act 53/2003: sec 9.

⁴⁷ Direct empowerment can count a maximum of 30% towards the BEE scorecard's score.

⁴⁸ Department of Trade and Industry: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005: 21.

⁴⁹ Balshaw and Goldberg 2005: 75.

⁵⁰ Madi 1997: 9 to 10.

⁵¹ Employee ownership can be a great advantage to a business because it can increase productivity and improve the employee's loyalty towards the business, Woolley 2005: 54, 55 – 59, 60, 62 – 65 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005. Therefore this implies that the investor's funds are protected and is much wider than just using ownership to empower.

This form of transformation is very slow. If an employee ownership trust is used in this business, the employee's investment is kept safe and managed with equal voting rights for all.⁵² Thus this trust is a vehicle to common employee ownership. The trustees can further act as representatives to give feedback to the board, in this way becoming participants in all important decisions.⁵³ On the other hand, selling shares, mergers or joint ventures have proven to have a poor track record. Before the latter option is exercised, careful investigation must be conducted in order to ensure that these partners are carefully selected for sound business reasons and secondary BEE requirements: after all, no one is empowered by a failing or failed business.

11.6.2 Human resource development⁵⁴

This is a better known procedure, which has been followed in South Africa and which involves an organisation to actively and consciously seek out, select and recruit black employees with the goal to train and develop them for later promotion into senior positions within that organisation.⁵⁵ This focuses on the development of the employees of an enterprise or sector, as well as on employment equity and ensures that equitable representation of black persons occurs in all occupations and that these persons are properly trained.⁵⁶ The beneficiaries hereof are employees and job seekers.⁵⁷

Thus the following requirements must be met in terms of human resource development:

- Requirements of the Employment Equity Act must be met.⁵⁸
- Requirements of the Skills Development Act must be met.⁵⁹

11.6.3 Indirect Empowerment⁶⁰

This involves the creation and nurturing of new enterprises owned and managed by black people. Furthermore, it serves as an instrument to assist black enterprises with opportunities to expand their

⁵² Woolley 2005: 57.

⁵³ Woolley 2005: 57.

⁵⁴ Human resource development can count a maximum of 30% towards the BEE scorecard's score.

⁵⁵ Designated groups as per the Employment Equity Act of 1995.

⁵⁶ Department of Trade and Industry: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005: 22 and Gihwala 2005: 4.

⁵⁷ Balshaw and Goldberg 2005: 75.

⁵⁸ Act 55/1998.

⁵⁹ Act 97/1998 and Mbatha 1994: 46.

⁶⁰ Indirect empowerment can count a maximum of 40% towards the BEE scorecard's score.

output.⁶¹ The beneficiaries here are the suppliers, communities and other relevant external shareholders.⁶² An obligation is therefore placed upon the already established organisation to help small, medium and micro black enterprises (SMMEs) that have not yet been firmly established. They are assisted to grow by the provision of contracts and other forms of assistance, for example, financial assistance to SMMEs, and within the local economy by making use of the SMMEs as a preferred supplier/service provider. This is often referred to as the dual logic economy, and has since become known as indirect BEE.

The following requirements must be met in terms of indirect empowerment:

- Preferential procurement
- Enterprise development
- Residual element.⁶³

In the case of preferential procurement in a sector that does not fall under a sectoral charter, the Department of Trade and Industry gives the guideline that preferential procurement can be measured according to a greater than 25.1% score on the scorecard or alternatively, 51%. If it falls under the ambit of a sectoral charter, however, the definition must be analysed in accordance with the provisions of such charter; in order to effect effective procurement.⁶⁴ The following charters have been published: financial sector charter, petroleum and liquid fuels charter, tourism charter, maritime transportation charter, the forwarding and clearing industry, ICT charter and the mining charter. However, most charters have followed the Department of Trade and Industry's example and based preferential procurement on ownership.⁶⁵

⁶¹ Department of Trade and Industry : <http://www.dti.gov.za/bee/bee.htm> : accessed 16 August 2005: 22.

⁶² Balshaw and Goldberg 2005: 75.

⁶³ This allows a sector or enterprise to tailor their scorecard to the specific demands and circumstances of their sector or enterprise.

According to the Department of Trade and Industry: <http://www.dti.gov.za/bee/bee.htm> : accessed 16 August 2005: 22.

"Government encourages sectors and enterprises to consider the possibility of including some of the following in their scorecards:

- Infrastructural support to suppliers and other enterprises in the same area or community,
- Labour-intensive production and construction methods,
- Beneficiation,
- Investment and support to enterprises operating in rural communities and the geographic areas identified in government's integrated sustainable rural development programme and urban renewal programme,
- Investment in the social wage of employees (for example, housing, transport, and health care)."

⁶⁴ Woolley 2005: 71.

⁶⁵ The forwarding and cleaning industry Charter and the ICT Charter, are still only drafts.

The residual element is influenced by the phenomenon of corporate social investment. According to Woolley, in order to have successful corporate social investment three spheres must be addressed:⁶⁶

Firstly, involve the whole company: therefore all the stakeholders in the environment of the company must be well developed and must understand the business environment they are in.

Secondly, strategic investment in the business environment: these investments can include scholarships which may expand the skills and services the business offers, in turn expanding its client base.

Thirdly, collaboration and partnerships: there are many small and medium sized businesses that cannot make a difference on their own. Assistance should be provided to these initiatives.

As previously stated, the above forms the basis of the Codes of Good Conduct⁶⁷ to be followed by companies and represents the so-called BEE scorecard, which is basically a way to measure the progress in achieving BEE.⁶⁸ The BEE score represented on the BEE scorecard will then be displayed in a so-called verification certificate issued by a recognised verification agency, of a level between 1 and 8.⁶⁹ This in turn, will influence the buying power of customers, including government, as a decisive factor in preferential procurement. Therefore, the focus must not merely be on the creation of black entrepreneurs, but also on combatting inequality between people in accordance with the provisions of the Constitution.⁷⁰

Furthermore, the B-B BEE Act makes provision for the establishment of the BEE Advisory Council.⁷¹ The council has the following functions:⁷²

⁶⁶ Woolley 2005: 80.

⁶⁷ Also known as the Codes of Good Practice.

⁶⁸ See figure 4 below.

⁶⁹ Balshaw and Goldberg 2005: 19 – 20.

⁷⁰ Mbatha 1994: 46 and the Constitution of South Africa: Sec 9.

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

⁷¹ Act 53/2003: sec 4 – 7.

First, to advise the government on BEE; second, to review the progress in achieving BEE; third, to advise the Minister on Codes of Good Practice; fourth, to advise in terms of strategy; fifth, to advise on the drafting of transformation charters and facilitate partnerships between organs of state and private sector and lastly, to advise on the objectives of the B-B BEE Act.⁷³ The council consists of the President of the Republic of South Africa, the Minister of Trade and Industry, three ministers approved by the President, and at least 10 but no more than 15 other members appointed by the President.⁷⁴

11.7 The practical implementation of BEE (in terms of the BEE generic scorecard)

The implementation of BEE can be implemented through a number of methods, namely the so-called long-term organic approach and the short- to medium-term acquisitive approach.⁷⁵

Firstly, the long-term organic approach can be implemented through the use of so-called corporate social investment as foundation.⁷⁶ The company thus uses community-based initiatives upon which to base its business, thereby building a relationship with its environment. This line of thought is rooted in the conviction that a company or business cannot effectively contribute to the country's transformation unless it involves and empowers the community, and its customers and employees as well. It stretches much broader and adds to the skills development of such a community, and later to the retention of the developed student as an employee who will, still later, develop into a manager or partner.

Secondly, the short- to medium-term acquisitive approach can be implemented through the preferential procurement and government tender policies, mergers and joint ventures, where the focus lies mainly on the requirement of black ownership.⁷⁷ This however, only ensures short-term success.

However, it is very important that when you select the strategy for your business to follow, to consider the nature and objectives of your business, as well as the rate of transformation you require. It must be kept in mind that the strategy you choose to follow will (and should) become such an integral part of the business that it influences all the other strategies employed. It is imperative to follow a so-called holistic

⁷² Act 53/2003: sec 5.

⁷³ Balshaw and Goldberg 2005: 70.

⁷⁴ Balshaw and Goldberg 2005: 70.

⁷⁵ Woolley 2005: 49.

⁷⁶ Woolley 2005: 49 – 50.

⁷⁷ Woolley 2005: 50.

approach with BEE, in order to ensure its success.⁷⁸ BEE follows a broad approach and not one where the seven elements on the BEE scorecard are seen as separate elements.⁷⁹

As previously mentioned, the BEE scorecard provides the procedure according to which a business's BEE progress is measured. Furthermore, it allows government and other procurement agencies to effectively select a specific enterprise for preferential procurement purposes.⁸⁰ Government is a large source of empowerment provision, as it has immense buying power. Moreover, it provides a measure of standardisation and a flexible approach to accommodate every charter and enterprise; as the B-B BEE Act of 2003 gives the Minister of Trade and Industry the authority to enact any Sectoral Charter in order to transform South Africa, sector by sector.⁸¹ To score high points on the BEE scorecard should not be regarded as the sole requirement to speed up transformation, but government should rather exert other forms of pressure to effect this process.⁸² BEE legislation encourages private enterprises to use procurement policies to help the growth and development of black enterprises.

⁷⁸ The Star (unknown) 2006: 8.

⁷⁹ The Star (unknown) 2006: 8.

⁸⁰ Woolley 2005: 23.

⁸¹ Department of Trade and Industry : <http://www.dti.gov.za/B-B BEE/B-B BEE.htm> : accessed 16 August 2005: 21, Balshaw and Goldberg 2005: 71, Woolley 2005: 25 and sec 12 of the B-B BEE Act 53/2003.

⁸² The Star (unknown) 2005: <http://www.thestar.co.za/index.php?fArticleId=2521353>: accessed 16 May 2005. According to Osode 2004: 114 there is no direct penalty to force the enactment of BEE on the public and private sectors. Instead, by measuring an enterprise's performance through a balanced generic score card, it influences procurement and in effect will punish non-compliance economically.

11.8 The BEE generic scorecard

Figure 4: Department of Trade and Industry BEE (to be balanced)⁸³ generic scorecard

Core component of B-B BEE	Indicators	Conversion Factor	Raw Score	Weighting	Total Score
Direct empowerment score					
Equity Ownership	% share economic benefits			20%	
Management				10%	
Human resource development and employment equity score					
Employment equity	Weighted employment equity analysis			10%	
Skills development	Skills development expenditure as a proportion of total payroll			20%	
Indirect empowerment score					
Preferential procurement	Procurement from black-owned and empowered enterprises as a proportion of total procurement			20%	
Enterprise development	Investment in black-owned and empowered enterprises as a proportion of total assets			10%	
Residual 10%					
To be determined by sector/enterprise				10%	
Total Score out of 100%					

According to the Department of Trade and Industry, a balanced scorecard will affect the following: firstly, qualification criteria for the granting of licences and concessions; secondly, the determination and implementation of a preferential procurement policy; third, the determination of the sale of state-owned enterprises; and fourth, the development of criteria for entering into partnerships in the private sector.⁸⁴

⁸³ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005 to balance the scorecard, statement 000 of the Codes of Good Practice and statement 002.

⁸⁴ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 4.

When the scorecard has been completed, it should be submitted to a verification agency for validation and issue of a verification certificate which is valid for one year.⁸⁵ This came as a result of the inconsistencies in the measurement of BEE compliance, as some verification agencies applied less stringent verification criteria than others, which is completely contrary to the principles of uniformity and transparency.⁸⁶ Statement 020 provides a legislative framework for the qualification criteria and procedure to be followed for BEE verification, so that it functions as a regulatory body and applies quality control.⁸⁷ Furthermore, these standards are set in close cooperation with the accreditation body and industry body.⁸⁸

In addition to the B-B BEE Act of 2003,⁸⁹ most sectors are provided with sectoral charters. These charters are for informal purposes only, and only illustrate the sector's commitment to transformation; they are not legally binding on organs of state or on public entities.⁹⁰ Therefore, if the business in question falls under a charter, the targets and provisions set must be applied in order to calculate the scorecard.⁹¹ However, private entities must apply code 100 – 700, and if they wish to interact with public enterprises or state entities, 800 code as well.⁹² Sector codes have the same legal force as the rest of the Codes of Good Practice, through binding organs of state and public entities in their interactions with the sector,⁹³ as intended by section 10 of the B-B BEE Act.⁹⁴ Furthermore, these sectoral charters must be developed by the main stakeholders and must be sufficiently consultative: they must also advance the aims and objectives of the B-B BEE Act.⁹⁵ However, if the business falls outside such a charter, the first

⁸⁵ Statement 020 of the Codes of Good Practice and Balshaw and Goldberg 2005: 92 – 95 and Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 14.

⁸⁶ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 19.

⁸⁷ Code 000, statement 002 of Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 2.

⁸⁸ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 19 and 21.

⁸⁹ Act 53/2003.

⁹⁰ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 16 and sec 12 of the B-B BEE Act.

⁹¹ Statement 010 and code 800 of the Codes of Good Practice and Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 15 – 18. Sector codes are established in terms of Act 52/2003: sec 9.

⁹² Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 16.

⁹³ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 16.

⁹⁴ Act 53/2003.

⁹⁵ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 17.

phase of the Codes of Good Practice must be applied.⁹⁶ The Codes are an interpretive measure, which will be enforced for ten years, and will thereafter be revised.⁹⁷

11.9 The Codes of Good Practice

The B-B BEE Act is a legislative framework for the enactment of the Codes of Good Practice.⁹⁸ According to section 9 of the B-B BEE Act of 2003,⁹⁹ the Codes of Good Practice must be enacted by the Minister of Trade and Industry.¹⁰⁰

The Codes of Good Practice make it abundantly clear that there is no legislative provision that compels the private sector to implement BEE, it only compels government.¹⁰¹ Therefore, there is no legislative

⁹⁶ Woolley 2005: 95 and Balshaw and Goldberg 2005: 84, therefore the generic scorecard will be drawn according to code 100 – 700 of the Codes of Good Practice.

⁹⁷ Balshaw and Goldberg 2005: 86.

⁹⁸ Act 53/2003.

⁹⁹ Act 53/2003.

¹⁰⁰ Act 53/2003: sec 9.

- (1) "In order to promote the purposes of the Act, the Minister may by notice in the Gazette issue Codes of Good Practice on black economic empowerment that may include-
 - (a) the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
 - (b) qualification criteria for preferential purposes for procurement and other economic activities;
 - (c) indicators to measure broad-based black economic empowerment;
 - (d) the weighting to be attached to broad-based black economic empowerment indicators referred to in paragraph (c);
 - (e) guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector; and
 - (f) any other matter necessary to achieve the objectives of this Act.
- (2) A strategy issued by the Minister in terms of section 11 must be taken into account in preparing any code of good practice.
- (3) A code of good practice issued in terms of subsection (1) may specify-
 - (a) targets consistent with the objectives of this Act; and
 - (b) the period within which those targets must be achieved.
- (4) In order to promote the achievement of equality of women, as provided for in section 9(2) of the Constitution, a code of good practice issued in terms of subsection (1) and any targets specified in a code of good practice in terms of subsection (3), may distinguish between black men and black women.
- (5) The Minister must, before issuing, replacing or amending a code of good practice in terms of subsection (1)-
 - (a) publish the draft code of good practice or amendment in the Gazette for public comment; and
 - (b) grant interested persons a period of at least 60 days to comment on the draft code of good practice or amendment, as the case may be".

¹⁰¹ Code 0000 of the first phase of the Codes of Good Practice. Balshaw and Goldberg 2005: 83.

penalty but only an economic one. Before the Codes of Good Practice were implemented, the BEE strategy provided a framework for the scorecard weightings, but did not contain detailed measurement principles and for application of the scorecard.¹⁰² Because of the BEE strategy, each sector started drafting their Charters for BEE at the time as the B-B BEE Act¹⁰³ was enacted in 2004.¹⁰⁴

The Codes of Good Practice are a standard framework in implementing BEE across the entire SA economy: this means that no sector will be disadvantaged when presenting their BEE credentials.¹⁰⁵ Thus, the playing field for all South African enterprises is levelled under a uniform interpretative framework namely, the Codes of Good Practice.

The following must therefore be considered in order to calculate the latter (BEE) scorecard according to the Codes of Good Practice:

11.9.1 Direct empowerment:

11.9.1.1 Ownership¹⁰⁶

Ownership can exist on three levels namely, economic interest, non-encumbrance and control.¹⁰⁷ Economic control is not defined, but refers to the equity interest of a member in addition to assuming all risk in regard to liability and profit.¹⁰⁸ Equity control, on the other hand, refers to the ability to appoint and remove directors with majority voting rights, the ability to control or direct majority votes, as well as the

¹⁰² Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 2.

¹⁰³ Act 53/2003: sec 12.

¹⁰⁴ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 4.

¹⁰⁵ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 4.

¹⁰⁶ B-B BEE Codes of Good Practice code 100.

¹⁰⁷ Balshaw and Goldberg 2005: 77.

¹⁰⁸ Woolley 2005: 96 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005. Further the Codes of Good Practice aim to give guidelines according to Kruger 2005: 36 :

- To enable the measurement of implementation of B-B BEE,
- Guidelines for the drawing of transformation charters in a given sector,
- Objectives and targets measured against the number of indicators of B-B BEE,
- Time periods for achieving these targets and
- Reporting system on the implementation of B-B BEE.

control and management of the business.¹⁰⁹ Non-encumbrance means that owners of equity can apply and enjoy their share as they deem fit, without any restrictions.

11.9.1.2 Management control¹¹⁰

This refers to the number of black men or black women in executive managerial positions or who serve on executive board committees. Moreover, it refers to the extent of effective control of economic resources and activities.¹¹¹ These areas of assessment comprise two factors: skills development and employment equity, which overlap with indirect BEE; however these factors only overlap as far as management is concerned.¹¹² Skills development and employment equity are measured on three levels, namely: the power to determine policies, and the power to direct economic activities and resources.¹¹³ This element measures the results of learnerships and demographic representation of the different population groups in the workplace, in order to ensure equitable representation and to eradicate income differences between people of different races. Practically speaking, management control predominates: first, representation of black people at executive board level; second, representation of black owners; third, involvement of black people in the daily operations and strategic decision-making at most senior levels and, lastly, the representation of black people in overall financial and management positions.¹¹⁴

11.9.2 Human resource development

11.9.2.1 Employment equity¹¹⁵

The provisions of the Employment Equity Act must be complied with in order to achieve equitable representation in the workplace.¹¹⁶ This refers to the so-called empowerment and representation of designated groups by designated employers.¹¹⁷ This principle is applied to management and ownership,

¹⁰⁹ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

¹¹⁰ B-B BEE Codes of Good Practice code 200.

¹¹¹ Balshaw and Goldberg 2005: 77.

¹¹² Balshaw and Goldberg 2005: 77 – 78.

¹¹³ Balshaw and Goldberg 2005: 77.

¹¹⁴ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 32 and 33 for calculation of BEE compliance.

¹¹⁵ B-B BEE Codes of Good Practice code 300, statement 300 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

¹¹⁶ Act 55/1998.

¹¹⁷ Designated groups refers to black people, women and people with disabilities hereafter. Act 55/1998: sec 1.

in employment of employees and in the development of skills in the workplace.¹¹⁸ It has its roots in all the forms of indirect empowerment, either directly or indirectly. Therefore it aims to assist in the implementation and application of employment equity.

11.9.2.2 Skills development¹¹⁹

This section focuses on the development of existing employees and on improving their skills. Furthermore, this part of the scorecard measures the contribution of a business to the development of black people.¹²⁰ This will ensure the growth of the economy and trained/ skilled individuals to participate therein. Furthermore, this element encourages businesses to take part in BEE.¹²¹ The emphasis falls on the development of core and critical skills and is defined by the Codes such as:¹²²

“Core skills are value-adding activities of an enterprise in line with its core business, and within the operational component of its value-chain.”

“Critical skills are identified by each SETA in relation to the National Skills Development Strategy.”

Moreover, the Codes do not specifically mention the indicators to be used in determining the score; however it is a general practice to measure the expenditure on continuous professional development and job-specific training of the permanent employees as a percentage of the payroll.¹²³ The following are examples of implementation that will carry BEE weight: mentorships, internships, development of core critical skills, adult basic education, the retention and employment of learners, the development of scarce resources and skills development in rural areas.¹²⁴ As illustrated, this is probably going to be very costly.

¹¹⁸ As stated above.

¹¹⁹ B-B BEE Codes of Good Practice code 400, statement 400 and Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4.

¹²⁰ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4.

¹²¹ Balshaw and Goldberg 2005: 79.

¹²² Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2: 8.

¹²³ Woolley 2005: 100.

¹²⁴ Balshaw and Goldberg 2005: 126.

11.9.3 Indirect empowerment

11.9.3.1 Preferential procurement¹²⁵

This part of the scorecard measures the extent to which companies procure from BEE compliant companies.¹²⁶ The following enterprises must be considered: black companies, black empowered companies and black influenced companies.¹²⁷ Black companies refers to companies that are more than 50,1% controlled and owned by black people.¹²⁸ A black-empowered company refers to a company owned by 25,1% of black people and which has substantial control vested in black people; black-influenced companies refer to companies that have between 5% and 25% black ownership and that have black participation in the control.¹²⁹

11.9.3.2 Enterprise development¹³⁰

The capacity of black suppliers who are BEE compliant must be developed. This means that such a business must have a good broad-based BEE score.¹³¹ Furthermore, this statement facilitates the assistance or accelerated development, sustainability and ultimate financial and operational independence of a beneficiary.¹³² These contributions can be monetary or non-monetary in nature, and are measured in accordance with the Codes. Moreover, a bonus point will be awarded in cases where such assistance or contribution has resulted in the creation of jobs.¹³³ This can be achieved by direct financial investment, or through a joint venture.¹³⁴

¹²⁵ B-B BEE Codes of Good Practice code 500, statement 500.

¹²⁶ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4 – 5.

¹²⁷ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/BEE/BEE.htm>: accessed 16 August 2005 and Agent (unknown) 2006: 13.

¹²⁸ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/BEE/BEE.htm>: accessed 16 August 2005.

¹²⁹ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

¹³⁰ B-B BEE Codes of Good Practice code 600, statement 600.

¹³¹ Agent (unknown) 2006: 14 and Balshaw and Goldberg 2005: 79.

¹³² Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5.

¹³³ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5.

¹³⁴ Woolley 2005: 101 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

11.9.4 Residual

11.9.4.1 Corporate social investment¹³⁵

This element was added in to ensure industry-specific flexibility.¹³⁶ It aims to provide natural persons with a means to generating income for themselves.¹³⁷ This includes investment in rural development and infrastructural support in the same area or community, and also includes labour-intensive production.¹³⁸ Generally, this refers to the after-tax expenditure on the provision of such items as housing, bursaries and transport to the social wages of employees.¹³⁹ However, these do not have set targets. In addition, the following serve as strategies in BEE initiatives: provision of infrastructural support of enterprises in the same area; labour-intensive production and construction; beneficiation and investment and support in enterprises operating in rural communities.¹⁴⁰

11.9.5 SMME provisions

Codes 1000 to 1700 focus on the development and regulation of SMMEs.¹⁴¹ It is believed that the provisions of the Codes will enable these informal SMMEs to be integrated into the formal sector. The main aim is to promote the shared and accelerated growth through the implementation of these elements of the scorecard.¹⁴²

11.9.6 BEE generic scorecard scores¹⁴³

The following scores attempt to provide a method of grading enterprises: a BEE scorecard with a score of 65% and above constitutes a good contributor to BEE; a score of between 40% and 64.9% is a

¹³⁵ B-B BEE Codes of Good Practice code 700, statement 700.

¹³⁶ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5.

¹³⁷ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5.

¹³⁸ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

¹³⁹ Woolley 2005: 102 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005 and Agent (unknown) 2006: 14.

¹⁴⁰ Balshaw and Goldberg 2005: 80 – 81.

¹⁴¹ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary interpretation 2005: 6.

¹⁴² Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 2005: 19.

¹⁴³ Woolley 2005: 105.

satisfactory contributor to BEE; a score of below 40% constitutes a limited contributor to BEE; and a score of 30% or less is seen as a non-compliant contributor to BEE.¹⁴⁴

11.10 Other legislation enacted in support of the BEE process

In addition to the above, the National Empowerment Fund was established and administers trust equity stakes in state-owned enterprises, other private companies and other private enterprises, on behalf of disadvantaged persons.¹⁴⁵ The National Empowerment Fund Act followed and empowered the National Empowerment Fund Corporation to:¹⁴⁶

first, provide historically disadvantaged persons the opportunity to directly/indirectly acquire shares;

second, encourage and promote savings, investments and meaningful economic participation; and,

third, promote and support business ventures pioneered and run by historically disadvantaged persons.¹⁴⁷

Government has implemented many policies and foundations for BEE and the latest of these is the Empowerment Investment Grant.¹⁴⁸ Black entrepreneurs will extend this grant to qualifying entities as a new owner's contribution to investment cost for new investments, expansions or acquisitions of minority shares, and the grant will be complemented by loan finance.¹⁴⁹

11.11 Negative aspects of BEE and possible solutions

Unfortunately, every legislative development leaves room for fraud and corruption. The criminally inclined always seem to be one step ahead of the legislator and some problems have been incurred.

¹⁴⁴ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005 and Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 13 and http://www.smartprocurement.co.za/archives/measuring_suppliers_on_ownership_can_result_in_no_verified_BEE: accessed 1 September 2006.

¹⁴⁵ NAACAM 2003: 8 to 9 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

¹⁴⁶ Act 105/1998.

¹⁴⁷ NAACAM 2003: 8 to 9 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

¹⁴⁸ National Empowerment Fund Act 105/1998: sec 3.

¹⁴⁹ Act 105/1998: sec 3.

11.11.1 “Narrow” BEE

Narrow BEE was used until December 2004 and mainly involved the empowerment of black persons in a direct way. This meant that ownership or management was simply given to black persons in an attempt to empower the nation.

As a result, there was a widespread perception that BEE only benefits a selected few black capitalists who are amassing their own fortunes. The solution to this is simply that empowerment must be more widely spread so that the black middle class can benefit as well. This problem was prominent especially during the implementation of both the first phase of BEE and Estherhuysen’s first phase, as mentioned above. The author therefore suggests that BEE should be applied by all role players in a broad-based approach in order to reach the objectives set by BEE.

11.11.2 “Fronting”

The next problem arose in the form of “fronting” by companies.¹⁵⁰ The practice of fronting has become a huge problem in South Africa, whereby businesses pretend to be BEE-compliant and as a result get awarded state contracts and other business.¹⁵¹ The practice of fronting however constitutes common law fraud and will in accordance therewith be subject to criminal sanction.

“...some have been acting as fronts. Some have been caught unawares while others are doing it deliberately for their own benefit ... we have also discovered that once mineral rights are granted to BEE companies these sell them to big companies.”¹⁵²

Fronting has become very sophisticated and many companies claim to have 51% black ownership, while they are actually still owned by a white majority.¹⁵³ Some examples of fronting are window-dressing,

¹⁵⁰ “Fronting” refers to a situation where a company puts the names of black shareholders or managers on the company’s documentation, but these people never reap the benefits of these positions they have apparently been placed in. A number of reasons can be presented for this situation, namely the fact that the black people whose names were placed on the company’s documentation were ignorant of the fact, or the ignorance of the person in question is exploited so that the person is unaware of his/her responsibilities and rights etc. Woolley 2005: 53.

¹⁵¹ Ensor 2006: 1.

¹⁵² Jacks 2006: <http://www.busrep.co.za/index.php?fSectionId=552&fArticleId=3235200> : accessed: 8 May 2006.

¹⁵³ Mathews 2006: 1.

benefit diversion and the use of opportunistic intermediaries.¹⁵⁴ This was extremely evident during Esterhuyse's second phase and the first phase of BEE. However, the institution of the Codes of Good Practice certainly aims to eradicate corrupt activities, by means of a thorough regulatory framework provided by the Codes.¹⁵⁵ The Codes prescribe that substance must always take precedence over form, and provide interpretive notes to eradicate this practice through: first, measuring principles based on actual level of compliance at the date of measurement; second, supporting evidence and documentation to substantiate BEE contribution; third, disqualification upon any misrepresentation made, with the result that the entire scorecard will be disqualified. In the last instance, fronting must be reported to the Minister of Trade and Industry.¹⁵⁶

11.11.3 Time lapse of empowerment agreements

Another problem is that empowerment deals are entered into with the agreement that they will lapse in 2014.¹⁵⁷ Theoretically there is nothing wrong with agreements like these, however, they might be contrary to moral and ethical standards. BEE aims to widen the economic sphere and create opportunities and not to just to comply with the regulations, which is the case where agreements are entered into to lapse in 2014. Therefore, the author suggests that BEE agreements entered into should not be subject to a time limit, but should rather be entered into for the right reasons and to reach the objectives set by the B-B BEE Act.¹⁵⁸

11.11.4 Low levels of available initial capital

Another obstacle is the fact that, according to NAACAM, this form of empowerment has been hampered because of low levels of initial capital available in the black community.¹⁵⁹ The result has been the establishment of a high-g geared financing process. Financing consortia or special purpose vehicles were utilised to compensate for the lack of capital of prospective owners of BEE investment funds and

¹⁵⁴ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 2.

¹⁵⁵ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 12 code 000, statement 001 and Balshaw and Goldberg 2005: 24.

¹⁵⁶ Republic of South Africa Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 12.

¹⁵⁷ Mathews 2006: 1.

¹⁵⁸ Act 53/2003.

¹⁵⁹ NAACAM 2003: 10 to 11 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

conglomerate corporation-like structures.¹⁶⁰ This has resulted in new black owners incurring extremely high levels of debt and subsequently being removed from the management operations of these entities.¹⁶¹ This in turn could cause an unhealthy dependence on the provision of government grants and hand-outs, which would only create a false sense of independence.

11.11.5 Unhealthy relationship between government and big enterprises

Another potential problem is that the BEE provisions could set up an unhealthy relationship between big businesses and government, which raises some concerns regarding competition.¹⁶² Broad-based BEE was introduced to eliminate this problem,¹⁶³ as it has a more fair approach in the ways of empowering persons, along with the Codes of Good Practice and sectoral charters, as guidelines and regulatory framework.

11.12 Conclusion

BEE is the latest transformation movement embarked upon by government in order to rectify the injustices of the past. It is also a broad-based approach regulated by the B-B BEE Act,¹⁶⁴ the Codes of Good Practice, Sector Charters and Sector Codes. These regulatory structures aim to set BEE targets as well as a uniform method of measurement of BEE compliance. BEE policies have the objective of creating opportunities and spreading wealth in order to widen the economic sphere and involve black participants in the economy, and not to replace one elite group of persons with another.

¹⁶⁰ NAACAM 2003: 10 to 11 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

¹⁶¹ NAACAM 2003: 10 to 11 - <http://www.naacam.co.za/beestratac170303exgmeyerapro3.doc>: accessed 4 March 2005.

¹⁶² Crotty 2006: <http://www.busrep.co.za/index.php?fSectionId=552&fArticleId=3228143>: accessed 3 May 2006.

¹⁶³ http://www.smartprocurement.co.za/archives/measuring_suppliers_on_ownership_can_result_in_no_verified_BEE: accessed 1 September 2006.

¹⁶⁴ Act 53/2003.

PART 3:
THE CO-OPERATIVE AS A VEHICLE FOR BLACK ECONOMIC EMPOWERMENT

CHAPTER 12

THE CO-OPERATIVE'S FUNCTION AS A VEHICLE FOR THE IMPLEMENTATION OF BLACK
ECONOMIC EMPOWERMENT (BEE)

12.1 Introduction

BEE is not a suggestion but rather a moral, social, and of course, a legislative imperative.¹ BEE is legislatively new and in order for the transformation movement in South Africa to be successfully implemented and achieved, practical suggestions for its implementation must be identified and researched.² Moreover, because of the serious drawback in terms of the availability of capital (especially in poverty-stricken areas) needed in order to exercise entrepreneurship in creating own opportunities and generating income, a problem arose in the implementation of the empowerment process in general.³ To overcome this lack of resources, government began looking at specific vehicles that could possibly overcome this obstacle and successfully implement BEE.⁴ The co-operative is a unique business enterprise, unlike other traditional business enterprises:⁵ it has certain attributes that make it ideal for the implementation of some of the requirements set by the B-B BEE Act⁶ and government's BEE strategy.⁷ BEE is about providing access to participation in the economic mainstream through a wide range of persons, including the designated groups, falling within the ambit of its application on a wide range of socio-economic activities extending to ownership, employment, community development and both

¹ Osode 2004: 107 and Woolley 2005: 16.

² The B-B BEE Act was promulgated in 2004 while the first and second phases of the Codes of Good Practice were issued in November and December 2005, making BEE's implementation in terms of regulatory measures strange and new.

³ The objective of BEE is to be of general or broad-based application and not merely to advance a select few.

⁴ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

⁵ For example, public and private companies.

⁶ Act 53/2003.

⁷ This includes all BEE strategy documentation as well as the Codes of Good Practice and BEE sectoral charters and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005, Department of Trade and Industry 2005: <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006 and Department of Trade and Industry 2005: <http://www.thedti.gov.za/bee/2codesofgoodpractice2005.htm>: accessed 28 June 2006.

internal and external procurement schemes.⁸ It is thus of cardinal importance that the co-operative specifically, as a vehicle of practical implementation of the B-B BEE Act, be examined.⁹

Inferring the co-operative worthy of research is further strengthened by the definition of co-operatives included in the Broad-based Black Economic Empowerment Strategy:¹⁰

“Autonomous associations 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 owned enterprise”.¹¹

According to the Co-operatives Act of 2005,¹² co-operatives have much potential on both SMME and large corporate scale, for both social and economic upliftment of people.¹³ Furthermore, they aim to incorporate and align SMME policies, strategies and support programmes specifically for co-operative entrepreneurship as illustrated in the 2003 South African government publication of “The growth and development summit agreement” which stated that the co-operative is an important vehicle to:¹⁴

“Create and develop income generating activities and sustainable, decent employment, develop human resource capacities, increase savings and investment, improve social and economic well-being, establish and expand a viable and dynamic distinctive sector of the economy, which includes co-operatives, that responds to the social and economic needs of the community.”¹⁵

⁸ Designated groups refers to black people, women and people with disabilities, hereafter. Act 55/1998: sec 1 and internal procurement strategies refers to the co-operative procuring its own BEE compliant members in delivering goods or services to the co-operative, while external procurement strategies refers to the co-operative procuring other BEE compliant enterprises to provide goods or services to the co-operative.

⁹ Act 53/2003.

¹⁰ Broad-based Black Economic Empowerment Strategy 2001.

¹¹ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

¹² Act 14/2005.

¹³ Primary co-operatives can only have natural persons as members, while secondary and tertiary co-operatives have juristic persons as members. Act 14/2005: sec 1 and Harms 2006: report submitted to author. Pretoria and paragraph 2.7 below for a detailed discussion on the co-operative's social and economic function, i.e. its dual function.

¹⁴ Code 1000, statement 1000 – 1700 of the Codes of Good Practice second phase executive summary at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006 and Department of Trade and Industry 2006: vii.

¹⁵ Government of the Republic of South Africa 2003: 71 and Government of the Republic of South Africa 2005: <http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006.

On government department level, co-operatives have been described as being very accessible and attractive enterprises that draw people into productive activity.¹⁶ The Department of Trade and Industry have further also committed themselves to ensuring that co-operatives are developed and promoted in that they:

“...promote the development of sustainable co-operatives enterprises in all sectors ... ensure accessibility to the poor ... and promote equity and greater participation of targeted groups...”¹⁷

Despite the above formal recognition of co-operatives as possible empowerment tools, the department has also recognised them as very versatile enterprises,¹⁸

“Co-operative arrangements must extend to all sectors, especially manufacturing.”¹⁹

It is therefore the opinion of the author that the formal recognition of co-operatives as possible vehicles for implementing BEE is a very positive step.²⁰

Co-operatives are further described as vehicles to implement the so-called small medium enterprise development programme, especially in manufacturing.²¹ This is because both co-operatives and their members often find themselves organised as individuals or small and medium business undertakings, but this must not be mistaken as the only manifestation and application of co-operatives.²² Co-operatives can also be large groupings of either small and medium enterprises or large corporate entities in vertically-integrated systems.²³ Examples of such large entities are organisations like Sentraal-Suid Co-operative

¹⁶ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

¹⁷ SEDA: <http://www.seda.org.za/content.asp?subID=161>: accessed 18 July 2006.

¹⁸ Act 14/2005: sec 4.

¹⁹ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

²⁰ Formal recognition includes legislative recognition in both the Broad-based Black Economic Empowerment Act 53/2003: sec 1 and Co-operatives Act 14/2005: preamble.

²¹ Specifically for SMMEs, Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

²² Primary co-operatives can only have natural persons as members. Act 14/2005: sec 1. These small and medium businesses constitute the members of secondary or tertiary co-operatives. Harms 2006: Report submitted to author. Pretoria. Act 14/2005: sec 1 and Act 14/2005: sec 16 for special provisions set out for secondary and tertiary co-operatives.

²³ Harms 2006: Report submitted to author. Pretoria. Act 14/2005: sec 1(1) and 16. These vertically integrated systems of co-operatives can and tertiary co-operatives.

Ltd and Free State Co-operative and, prior to their conversion into companies, KWV, Clover and Senwes. Therefore, the co-operative can become a large integrated system or merely a grouping comprising of small or medium units. The advantage in this versatility is the fact that co-operatives can provide individuals, SMMEs and large corporate entities with benefits such as bulk buying, increased buying power, better interest rates, lower insurance premiums for its members and so forth, in order to make their business more profitable with the assistance provided by being a member of the co-operative, whilst each member of secondary and tertiary co-operatives retain their individualism in conducting and managing the business enterprise, outside the dealings of the co-operative.²⁴

As stated above, it is a versatile business enterprise not limited to manufacturing only. The Department of trade and Industry has recognised the further possible objectives for co-operative features of business implementation as:

Creation of wealth and generation of employment; developing entrepreneurship and promoting empowerment; utilisation of raw local material; promotion of the sustainability of recipient projects; reducing investment costs for small and medium investors; and promotion of foreign investment.²⁵

A National Economic and Labour Council (hereafter referred to as NEDLAC) task team has since been appointed to focus on the strengthening of HIV- AIDS supportive co-operatives which can address the urgent challenges faced in terms thereof; co-operative banks to provide support where there is a lack of access to financial services, and consumer co-operatives to provide lower prices on goods and services to the people living in poverty-stricken, traditionally black (or rural communities).²⁶

According to the SACP, co-operatives in informal forms have always been in the hands of African black people in South Africa and it is an ideal system to organise modern business undertakings on a communal level.²⁷ Furthermore, co-operatives were used in rural areas during the apartheid era in order to provide traditionally black communities with their basic needs.²⁸ Hence, co-operative business is already something familiar and natural to many South Africans, making its implementation as a vehicle for BEE easier and more effective, especially in rural communities. As a result, BEE's broad application

²⁴ Biyela 2006: Report submitted to author. Pretoria.

²⁵ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005.

²⁶ Government of the Republic of South Africa 2003: 71.

²⁷ Informal co-operatives are for example, stokvels and burial societies, and are generally enterprises which were previously not regulated by legislation, South African Communist party: www.sacp.org.za/docs/stratconf/co-ops.html: accessed 25 December 2003 and Dellatola 1989: 2.

²⁸ SEDA: <http://www.seda.org.za/content.asp?subID=161>: accessed 18 July 2006.

in advancing the creation of opportunities and widening the economic sphere is achieved in communities by creating and sustaining economies of scale, and not just in the lives of individuals.²⁹ Here an ubuntu culture, which originates from traditionally poor, rural areas, must be incorporated within the enterprise. The co-operative is based on ideals like cooperation and creating an improved standard of living through joint action, like the principles embedded within the concept of ubuntu. Therefore by incorporating an ubuntu culture within business, the culture created will relate loosely to the culture within many traditionally poor, rural societies and is also protected under the Constitution.

The next part of this chapter will specifically investigate the implementation of the co-operative as a vehicle for BEE, firstly in terms of it being advantageous; secondly, in that the dual function of the co-operative satisfies the requirements set by the highest law in the country, the Constitution, and thirdly, in that the co-operative complies with the requirements stipulated by the B-B BEE Act,³⁰ in the creation of opportunities and expanding the economy.³¹

12.2 Difference between the co-operative and other business enterprises pertaining to BEE

To date no other form of business enterprise has been specifically mentioned as a vehicle to implement BEE, possibly because BEE is an imperative for all South Africans, including government and the entire private business sector.³² However, possible vehicles for the specific implementation of BEE are being investigated. One of those vehicles, currently being investigated by the NEDLAC task team, is the co-operative which has been described as a business enterprise that develops and / or empowers people through self help by international organisations, such as the ICA.³³

One must keep in mind what is to be achieved by BEE: is it the creation of wealth or is it widening the economy through the continuous creation of new opportunities? In fact it is both, but in order to have the effect of widening the economic sphere, one must first aim to create opportunities to improve people's

²⁹ Widening of the economic sphere refers to fact that BEE aims to create opportunities with the assistance of government and entrepreneurs, to involve all persons in participating actively in the economy.

³⁰ Act 53/2003.

³¹ Constitution of the Republic of South Africa 108 of 1996: sec 2.

³² Government of the Republic of South Africa 2003: 71, Government of the Republic of South Africa 2005: <http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006 and Department of Trade and Industry 2006: iii and Code 0000 of the first phase of the Codes of Good Practice. Balshaw and Goldberg 2005: 83. However, according to the first phase of the Codes of Good Practice only government is directly compelled to comply with BEE at <http://www.thedti.gov.za/bee/2codesofgoodpractice2005.htm>: accessed 28 June 2006.

³³ <http://www.coop.org>: accessed 31 July 2006, the 1995 congress and general assembly of the International Co-operative Alliance.

lives, which is certainly a long-term goal with lasting effects to strive towards; the secondary aim is the creation and sustenance of wealth, as this only benefits a select few.³⁴ The company is a vehicle for the creation and sustenance of a specific group's wealth while the co-operative, which is not a tool for investment and creating wealth in general, rather focuses on providing a better standard of living through the provision of income, goods and services to its members and also benefits to the community. The company is a vehicle to create and sustain group wealth,³⁵ while the co-operative is usually a vehicle to create opportunities in order to enter the economic mainstream.³⁶ As stated above, BEE is the creation and sustenance of group wealth as well as the creation of opportunities. Therefore it is important to examine and compare the co-operative to the company as this clearly illustrates the meaning of BEE in the creation of wealth as well as the creation of opportunities in the economy.

As will be illustrated below, there are major differences between the co-operative and other business enterprises in terms of its BEE functionality; specifically enterprises like public and private companies that aim at creating wealth, which can possibly make the co-operative a unique vehicle to implement BEE.³⁷ These unique features include, for instance, the co-operative's versatility in its application, its dual function, one-member-one-vote system and the fact that each member of secondary or tertiary co-operatives retains individual management power of the dealings of each member's business enterprise outside the co-operative, thereby still maintaining the autonomous nature of their own businesses despite being members of the co-operative.³⁸ Thus, one of the major risks members of secondary and tertiary co-operatives do not generally run is the risk of losing individual management and control over the member enterprise outside the dealings of the co-operative, even in the case where the co-operative is taken over, or subject to a merger with another co-operative, which is not the case in the case of a company.³⁹

Mainly, co-operatives can generally be distinguished from other business enterprises in the following way:⁴⁰

Co-operatives are community enterprises:
they promote democracy,⁴¹

³⁴ Balshaw and Goldberg 2005: 17.

³⁵ Created by a company.

³⁶ Created by a co-operative.

³⁷ Public and private companies are mentioned in the context of generally promoting the creation and sustenance of group wealth and, Hart and Moore 1996: 56.

³⁸ Act 14/2005: sec 4 and this specifically in cases of secondary and tertiary co-operatives.

³⁹ Subject to the provisions set out in the constitution of the co-operative and Dellatola 1989: 3.

⁴⁰ Agricultural business Chamber 2005: 5 – 7.

they build open markets,
they raise human dignity, and
they are systems through which communities can develop themselves.

12.2.1 Purpose of the enterprise

As stated above, co-operatives generally have a limited return on capital,⁴² as the purpose is not to make one's money grow, but to enable the co-operative to operate independently for the benefit of its members.⁴³ Membership in a co-operative is not generally seen as an investment as it mostly generates less income than the invested asset itself and a member's equity share cannot be freely purchased or sold in a co-operative.⁴⁴ It is rather an advantage in the provision of social benefits to its members, the provision of goods and services to its members and the community, as well as in bulk buying as in franchises, but much cheaper.⁴⁵ The existence of co-operatives in communities is an advantage to the members of the co-operative, as illustrated below, but also to the communities in which they exist. This is because co-operatives create employment and are able to supply goods and services at a cheaper price where there is a need in the community. If co-operatives are not really price-competitive, they offer the convenience of location where these goods or services can be purchased. In this way they build economies of scale within smaller, poverty-stricken or rural communities, where these smaller units or businesses would not be able to make a living without the co-operative, and help people earn a good, sustainable quality or standard of life.⁴⁶

In other enterprises like companies, more value is attached to the profitability of capital, especially the member's own capital.⁴⁷ Thus, being a member or shareholder of a company is seen as an investment. There is less restriction on the resale of shares and shares are generally resold at a profit.⁴⁸ The general purpose of a company is rather to generate and sustain a specified group's wealth.

⁴¹ Through its democratic voting system of one-member-one-vote, regardless of the amount of shares held by each member and joint member ownership of the enterprise.

⁴² Ortmann and King 2006: 30 and von Pischke and Rouse 2004: preface.

⁴³ Von Pischke and Rouse 2004: 6.

⁴⁴ Ortmann and King 2006: 30 and Act 14/2005: sec 24 and 25.

⁴⁵ Biyela 2006: report submitted to author. Pretoria, van Niekerk 1988: 193, 50 - 51 and 68 and van Zyl 2004: 59.

⁴⁶ According to the seven co-operative principles at paragraph 3.3, Chapter 3 above, specifically the seventh principle, co-operatives aim at developing communities through their policies.

⁴⁷ Membership in a co-operative is not an investment as in the case of a public company, for example, it is rather a vehicle with the purpose to serve its members and to make their contributions work for them in a group organisation van Niekerk 1988: 93 – 95.

⁴⁸ Cilliers ea 2000: 290, 291 and 293.

Mandisi Mpahlwa, Minister of the Department of Trade and Industry states:

“Empowerment has been an important notion in co-operative theory; the original intent of co-operatives was to empower individuals by bringing people together to achieve something they could not do alone.”⁴⁹

It has been established in the above that co-operatives have other advantages and not really that of the creation of wealth in general, but rather sustained income and increased quality of life.⁵⁰ This means that the co-operative is an ideal vehicle where people can act jointly and benefit through the co-operative’s structures in order to better their lives as members or through the existence of the co-operative, the members of the community in general.⁵¹ Moreover, the application of the co-operative as a tool in empowerment has already proven effective when the Afrikaners, during the apartheid era, built co-operatives and applied them as powerful engines for collective bargaining, for example in terms of the regulation of market prices of their products and by negotiating through their increased buying power. Clearly the fact that the co-operative does not create wealth, does not imply that it cannot become powerful and influence or even regulate the markets. According to a report in the Farmers’ Weekly, co-operatives are the answer for emerging black farmers who should follow the example of the Afrikaner co-operatives as they can provide the members of the co-operative with goods and services which would otherwise not have been available to them, together with economic independence.⁵²

12.2.2 Division of profits

This element of comparison is certainly one of the main decisive factors when selecting an appropriate business enterprise in practice.

Every member receives what is agreed upon in the constitution of the co-operative, or a fixed percentage of the profits, called the “patronage proportion”.⁵³ All the members of the co-operative are the primary users of the services thereof and benefit in proportion to their use.⁵⁴ Therefore the members can be

⁴⁹ Department of Trade and Industry 2006: 1.

⁵⁰ University of the Witwatersrand 1990: 218.

⁵¹ Seventh co-operative principle in paragraph 3.3, Chapter 3 above.

⁵² Louw 2005: 47.

⁵³ Ortmann and King 2006: 30 and the third co-operative principle in paragraph 3.3, Chapter 3 above. This method of division of profits is also called a patronage proportion and Act 14/2005: sec 44.

⁵⁴ Ortmann and King 2006: 29 and Reynolds 1997: abstract.

members, or owners and users, or consumers of the co-operative.⁵⁵ A co-operative may also provide a fund for members in which the member of a co-operative may be credited with any monies due to him or her.⁵⁶ Note that a share of the surplus is to be transferred to a reserve fund, the proceeds of which may not be divided amongst the members.⁵⁷ The latter part of the surplus is divided among the members in accordance with the patronage proportion.⁵⁸ In addition, in the case of secondary and tertiary co-operatives where the members are other co-operatives, the profits generated by these enterprises are retained and can be applied as the members of the entity deem fit, subject to the provisions set out in the constitution of the co-operative.

In traditional forms of business, like companies, profits are paid out in the form of a dividend declared from profits.⁵⁹ In other words, the profits are divided in relation to each member's shareholding in the company.

The co-operative retains member support through members being both members and consumers of the co-operative. In the view of the author this creates cooperation between the members, so that the co-operative can of itself retain member support. In turn, if the co-operative seems economically viable through continued member patronage, inherent trust is created in the minds of the community, the community will in turn support the co-operative and benefit from the goods and services it provides while the local economy is sustained by the continued existence of the co-operative.⁶⁰ Furthermore, the co-operative's function within a community has already been illustrated by the Rochdale pioneers that:

"The Rochdale co-operative of 1844 co-incided with poverty, misery, lack of schools and housing but also economic individualism and the industrial revolution."⁶¹

Clearly the co-operative will satisfy the residual element (corporate social investment) of the BEE scorecard, which implies investment in rural development and infrastructural support in the same area or community.⁶²

⁵⁵ Harms 2006: Report submitted to author. Pretoria.

⁵⁶ Co-operatives Act 14/2005: sec 43.

⁵⁷ Co-operatives Act 14/2005: sec 13(1) (m) and 46.

⁵⁸ Co-operatives Act 14/2005: sec 44.

⁵⁹ Cohen v Segal 1970 3 SA 702 W: 702 A to C.

⁶⁰ In that, if the member supports the co-operative regularly, the prices, quality and service the co-operative supplies must be of high standard. Department of Trade and Industry: Codes of Good Practice phase 2 executive summary 2005: 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

⁶¹ Van Niekerk 1988: 122.

12.2.3 Liability

This is yet another element of comparison that is certainly one of the main decisive factors when selecting an appropriate business enterprise in practice.

Furthermore, this element of comparison is the only one, of those discussed, which does not contain any major differences between co-operatives and enterprises, like companies.

Generally the co-operative is liable for its own debts as it has legal personality.⁶³ The members of the co-operative share ownership, management, risk and responsibilities equitably, therefore it is definitely in line with the limited liability provided by other enterprises, such as public and private companies. However, each member is liable for the amount of unpaid shares belonging to him.⁶⁴

This element does not contribute to any BEE scorecard element directly, but does, provide a sense of security against being held liable for the debts of the enterprise and therefore makes the co-operative an option for the implementation of BEE, as it satisfies risk element, as mentioned above. If it did not, many entrepreneurs would be wary of the enterprise, which would reduce participation and implementation.

12.2.4 Required initial capital

This element of comparison is also clearly one of the main decisive factors when selecting an appropriate business enterprise in practice, especially in South Africa where poverty-stricken areas are prevalent and capital is not readily available.

⁶² The fifth co-operative principle in paragraph 3.3, Chapter 3 above. Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005 and the seventh co-operative principle in paragraph 3.3, Chapter 3 above.

⁶³ Act 14/2005: sec 8 and Evans 1994: 315, Franschoekse Wynkelder (Ko-operatief) BPK v South African Railways and Harbours 1981 3 SA 36 C: F and Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 50 – 51 which is contra the belief of the existence of juristic personality.

⁶⁴ Government of the Republic of South Africa 2005: <http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006. Act 14/2005: sec 23 and Evans 1994: 323.

In the case of co-operatives, initial capital for their formation is generally obtained from the members themselves.⁶⁵ The amount of initial capital needed is determined by the constitution of the co-operative and often takes the form of entrance fees, membership fees or subscriptions, consideration for membership shares or additional shares in the co-operative, member loans and funds of a member.⁶⁶ Moreover, regulations regarding the provision of financial assistance (loans) for members to acquire shares in the enterprise are much less stringent than the provisions of company law for this purpose, which will also allow more participation and encourage membership to persons eager, but financially unable, to become members.⁶⁷

In the case of a company, initial capital is obtained from various entrepreneurs who pool their capital.⁶⁸ In a company with share capital, this is done by issuing shares to persons, and in the case of a company "Limited by Guarantee" where no share capital is raised, initial capital must be raised from other sources than members and shares, for example from loans.⁶⁹

In the case of co-operatives, very little initial capital is needed, compared to a company.⁷⁰ This is because the operational costs to make a company structure economically viable and sustainable in its specific economic environment are much higher than in the case of a co-operative, which must merely become self-reliant through its structures by providing its members with services or facilities such as bulk buying, increased buying power, better interest rates, lower insurance premiums and so forth. Moreover, because of the lower initial capital needed by the enterprise and the fact that less stringent regulation exists for the provisions of loans to members, more people can afford to become members of the co-operative, especially in the case of people living in rural or poverty-stricken areas. This makes the co-operative an ideal vehicle to create opportunities for people in terms of entrepreneurship and enterprise ownership, thereby widening the economic sphere, an objective of BEE.⁷¹

⁶⁵ The third co-operative principle in paragraph 3.3, Chapter 3 above and Act 14/2005: sec 41.

⁶⁶ Act 14/2005: sec 40 and is provided for by the constitution of the co-operative.

⁶⁷ Act 14/2005: sec 45(1)(c)(ii) which provides that the co-operative is able to give financial assistance to its members or any other person if it is not financially detrimental to the co-operative. Companies Act 61/1973: sec 38 where there is a prohibition on giving financial assistance directly or indirectly to any member or other person for the purpose of acquiring subscription or membership shares in such company and Co-operatives Act 14/2005: sec 45.

⁶⁸ Cilliers ea 2000: 4.

⁶⁹ Cilliers ea 2000: 31 and Companies Act 61/1973: sec 32. A company limited by guarantee can be created in a public or private company.

⁷⁰ Department of Trade and Industry 2006: 20.

⁷¹ Act 53/2003: preamble, Department of Trade and Industry Codes of Good Practice phase 2 2005: 19 and Department of Trade and Industry: <http://www.dti.gov.za/bee/bee.htm>: accessed 16 August 2005: 22.

12.2.5 Membership and ownership

The co-operative is a jointly owned enterprise where all the members are owners.⁷² According to Hickson and Oldham, the ownership and enterprise structure differs from any other business enterprise, in that members of the co-operative can be users, producers and even employees thereof:

“...it redefines the workers’ job by including him in the policy-making and work co-ordination tasks of management, as well as the productive processes. The co-operative does not abolish the division of labour but they do remove the division of responsibility, which becomes part of each worker’s job.”⁷³

Therefore the members are the essence of the enterprise and are much more closely integrated with each other and the enterprise, than is the case in any other business enterprise.⁷⁴ However, this does not imply that the co-operative does not have legal personality;⁷⁵ it merely suggests a closer relationship between the members than in the case of a company, for example.⁷⁶ This often has the consequence that the board of directors makes decisions based on the members’ interest instead of the best interests of the co-operative, which is a serious drawback and the reason why many co-operatives fail.⁷⁷ This is why it is of the utmost importance that members nominate and elect a board of directors that will manage the co-operative in its best interests economically, and that will represent the members’ vision for the enterprise in terms of competence, resources and skills.⁷⁸

In the case of the company, members are not in such a close-knit relationship and management often comprises of individuals that aim at managing the enterprise so that maximum economic benefit is reaped, as this is not a case of survival or increasing quality of life, but rather of creating and sustaining wealth of the group. The fact that a company may not be managed in its own best interest, is therefore much less of a risk than this would be in a co-operative.⁷⁹ Thus, the benefit of the ownership structure of

⁷² Co-operatives Act 14/2005: sec 1.

⁷³ Hickson and Oldham 1990: 95.

⁷⁴ Reynolds ea 1997: preface.

⁷⁵ Act 14/2005: sec 8 and Evans 1994: 315.

⁷⁶ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede 1967: 51.

⁷⁷ Van Niekerk 1988: 94 – 95 and Ortmann and King 2006: 31.

⁷⁸ Harms 2006: Report submitted to author. Pretoria.

⁷⁹ Also a director has a fiduciary duty to act in best interest of the company of which he is a director.

the co-operative must be acknowledged, while keeping in mind that the co-operative is first and foremost a business enterprise that must be economically viable in order to benefit its members.⁸⁰

According to Birchall, the advantage of the co-operative's ownership structure in terms of BEE can be summarised as follows:

“It is misleading to say that co-operatives have members. It is more correct to say that members have their co-operatives. Co-operatives do not help the poor, but by working together, by pooling their resources, by submitting themselves to group discipline and by accepting to combine self-interest and group solidarity, the poor can solve some of their problems by way of organized self-help and mutual aid better than alone.”⁸¹

The co-operative does run some risk in terms of its membership and ownership structure, but also provides an advantage in that it promotes cooperation between people to create better standards of living through their joint action, which can be helpful in furthering the objectives set by BEE. This must, however be done with caution while keeping in mind that the co-operative must be economically viable as a business enterprise in order to improve lives.

12.2.6 Management

An important motive for the decentralisation of decision making is to achieve empowerment of the individual in order to realise economic creativity: something which the co-operative achieves successfully through its structures.⁸² The members elect a board of directors to manage the co-operative and to act on its behalf, which is also done democratically and in accordance with the constitution of the co-operative.⁸³ However, control and management of the enterprise must always be based on democratic voting principles, regardless of the number of shares held by each member.⁸⁴ The democratic principle in voting that directly influences management makes the management process very complex but not impossible.⁸⁵ There will always be the groups who are successful and who master these complexities, just as there are

⁸⁰ Doyer 2006: Report submitted to author. Bloemfontein.

⁸¹ Birchall 2003: 15.

⁸² Economic creativity refers to entrepreneurs realising efforts into economic viability through conducting business in various forms of business enterprises and the second co-operative principle in paragraph 3.3, Chapter 3 above.

⁸³ Act 14/2005: sec 33 and the second co-operative principle in paragraph 3.3, Chapter 3 above.

⁸⁴ Co-operatives Act 14/2005: sec 1.

⁸⁵ Philip 2003:19.

always groups who lack the background and experience to the extent that the co-operative fails.⁸⁶ Generally, each member only has one vote in the case of a primary co-operative, while in the case of secondary and tertiary co-operatives, proportional voting rights can be provided for by the constitution of the co-operative.⁸⁷ In this sense the application of the 2005 Act⁸⁸ is much narrower than the 1981 Act, which allowed more freely for the provision of proportional voting rights.⁸⁹

Much scrutiny has been levied in respect of this issue of proportional voting rights, as opposed to the co-operative's general one-member-one-vote system. This is because some of the members of the co-operative contribute a larger capital proportion than other members, and increased capital contribution creates increased risk. The rationale behind this is that proportional voting rights serve as motivation for members to continue supporting the co-operative in business as well as by contributing to its capital formation, in terms of which the co-operative grows within its structures.⁹⁰ Moreover, Doyer has argued that proportional voting in co-operatives must be included in order to ensure the continued existence and development of the co-operative as an enterprise.⁹¹ In the author's opinion, however, such members will function better in a company or close corporation where they have more control over their wealth in its creation, sustenance and management.

Additionally, in the opinion of the author, if this were made easier to incorporate within the co-operative structure, the co-operative would lose a unique characteristic and become profit-driven, as companies are, losing its valuable social contribution in its purpose of providing its members with income, and its members and the community with goods and services previously unavailable and inaccessible to them.⁹²

In other business enterprises, like companies, democratic voting systems are also exercised, but they differ from co-operatives in that, generally, the proportional weight of votes of each member is based on the number of shares he or she owns.⁹³ However, when voting is based on the number of shares a member owns, a psychological impression of class distinction is created and this in turn causes

⁸⁶ Philip 2003: 19 – 20.

⁸⁷ Act 14/2005: sec 13(1)(e) and 3(3). Here secondary and tertiary co-operatives are permitted to have proportional voting rights, provided that in the case of a secondary co-operative no member shall have more than 15% of the total votes of members of the co-operative.

⁸⁸ Act 14/2005.

⁸⁹ Van Niekerk 1988: 39 and 132.

⁹⁰ De Waal 26 Augustus 2005: 92.

⁹¹ Roelf 2005:

http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

⁹² Van Niekerk 1988: 132.

⁹³ Cilliers ea 2000: 104.

separation among members.⁹⁴ Moreover, this factor of management control, effectively resting on the wealthiest, results in the exclusion of certain people and classes of people from taking part in business enterprises.

There is a sense of promotion of democratic values in the democratic, one-member-one-vote, voting system, which co-operatives generally follow, a sense of promoting equality in that each member generally only has one vote, regardless of the number of membership shares he or she owns.⁹⁵ This in itself will satisfy the provisions of the Constitution, as will be discussed later.

12.2.7 The co-operative's dual function: social and economic benefits

This dual function of the co-operative refers to the economic function it has in providing its members with a better standard of living, both economically and socially in society, whilst providing members of the community with more accessible goods, services and employment opportunities, which did not exist before.⁹⁶ This is achieved through joint ownership in an economically viable co-operative structure.⁹⁷

The co-operative is unique in that it is not solely motivated by the creation of wealth. It aims rather at providing a group of persons, cooperating with one another for their mutual benefit, with membership in a more accessible business enterprise, subsequently creating opportunities for them; and in turn being beneficial to the communities they find themselves in.⁹⁸ Through the creation of opportunities and generation of income, the social benefits of the co-operative are both the cause and the result of successful co-operative dealings.⁹⁹ Furthermore BEE is a moral, legislative and social imperative. The

⁹⁴ Van Niekerk 1988: 132.

⁹⁵ This has been referred to as a "democratic principle" by Van Niekerk 1988: 132. More so, this democratic voting principle is one of the seven co-operative principles, making a co-operative a co-operative and paragraph 3.3 in Chapter 3 above.

⁹⁶ Van Niekerk 1988: 122 – 123 and social benefits and the consequence of an economically successful co-operative where its members are joint owners and have an income, and therefore a higher standard of living. Because of this better standard of living the members of the co-operative are accepted and respected in society which, in turn, raises individual human dignity. Moreover, if the co-operative is successful, it builds a local economy within the community which betters the lives of the members of the community, in that goods, services and job opportunities are now created. Members of the community may even be employed by the co-operative or become consumers who purchase goods and services at a better price than elsewhere. A growing economy within a community inherently betters the lives of the members of such community. The seventh co-operative principle in paragraph 3.3, Chapter 3 above.

⁹⁷ Department of Trade and Industry 2006: 20.

⁹⁸ Instituut vir Kooperasiewese [Institute for Cooperatives] 1968: 16 and the seventh co-operative principle at paragraph 3.3, Chapter 3 above.

⁹⁹ By acting together or cooperating with one another, which is a social cause, the co-operative is started; hence the social element of the co-operative's structure becomes the beginning of the co-operative's economic

co-operative has a dual function, in that it is an ideal vehicle to satisfy the social imperative of social upliftment through member cooperation and the co-operative's economic success.

For the practical application of social and legislative imperatives, like BEE, the legislative framework of the enterprise in question must allow and recognise its potential as a vehicle for empowerment. The legislature acknowledged and supports co-operatives as vehicles for the implementation of BEE with the enactment of the Co-operatives Act of 2005,¹⁰⁰ as evidenced by the preamble:¹⁰¹

“In the end the priority is to embrace diverse and inclusive approaches and to find innovative, flexible and locally specific ways to use economic co-operation as a means to improve the quality of people's lives. Whether these are formalised as co-operatives of any kind matters less than that they contribute to the reduction of poverty, to empowerment, to job creation and to enhanced forms of social mobilisation to achieve these ends.”¹⁰²

With the enactment of the Co-operatives Act of 2005,¹⁰³ the recognition of the co-operative's dual function in the implementation of BEE does not imply that the dual function of the co-operative is a new discovery. It had already been recognised in 1968, by the Institute for Co-operatives (Instituut vir Kooperasiewese) which inferred that the older generation was prone to use the co-operative for its social functions, while the younger generation was more likely to implement its economic functions.¹⁰⁴ Again, with a new situation and generation, this has certainly changed once more. According to the Agricultural Business Chamber, government aims to implement business enterprises, including co-operatives that can satisfy both the social and economic needs of the community.¹⁰⁵ More so, government has acknowledged the use of co-operatives in a practical way by planning on implementing co-operatives themselves. On provincial level there will be one tertiary co-operative, and on the local level eleven secondary co-operatives representing each municipal district and many primary co-operatives, providing employment to the members of housing, agricultural and financial co-operatives, all employed by

success. Furthermore, if the co-operative is successful economically, the members have raised acceptance and human dignity, which is also a social result.

¹⁰⁰ Act 14/2005.

¹⁰¹ Act 14/2005.

¹⁰² Philip 2003: 23.

¹⁰³ Act 14/2005.

¹⁰⁴ Instituut vir Kooperasiewese 1968: 1.

¹⁰⁵ Agricultural Business Chamber 2005: 4.

government in these key areas.¹⁰⁶ This reinforces government's acknowledgement and trust in the co-operative's enterprise and its potential in BEE.¹⁰⁷

Government's rationale for supporting co-operatives as vehicles for the implementation for BEE can be explained by the fact that South Africa comprises of many poverty- stricken areas where the provision of goods, services and social benefits derived from the existence of enterprises can make a big difference in the lives of those affected.¹⁰⁸ Some of the main reasons for poverty, especially in rural areas, are the lack of access to resources like land and capital, and poor standards and the unavailability of social services such as housing and medical facilities.¹⁰⁹ In these situations, the co-operative can make a difference in alleviating poverty because of its versatility and the tremendous impact its existence makes in communities.¹¹⁰ In many developing economies, like that of South Africa, social business enterprises play an increasingly important role, mainly because of the existence and extent of poverty.¹¹¹ Co-operatives are a better solution to this problem, because they provide communities with the required lower initial capital (to raise) in order to gain joint ownership and shared risk, in an attempt to achieve both economic and social upliftment.¹¹² Again, this reinforces the co-operative's dual function in a practical way.¹¹³ The dual function of the co-operative does not merely distinguish the co-operative from other institutions, it is also one of its greatest assets, especially in the implementation of BEE.¹¹⁴ Therefore it may be inferred that all the informal organisational structures within the co-operative typically focus on and aim to achieve the objective of socio-economic empowerment for its members.¹¹⁵ Lastly, its application in creating economies of scale within communities will bring South Africa into line with international tendencies, since the use of co-operatives to stimulate rural economies has become a global occurrence.¹¹⁶

¹⁰⁶ Natal Witness (unknown) 2005: 5.

¹⁰⁷ Department of Trade and Industry 2006: ii and vii.

¹⁰⁸ Department of Trade and Industry 2006: 6.

¹⁰⁹ Ortmann and King 2006: 50.

¹¹⁰ Act 14/2005: sec 4 read with sec 1. The alleviation of poverty within a specific area refers to the creation and sustaining of local economies. Wentzel 1992: 64.

¹¹¹ Department of Trade and Industry 2006: 20.

¹¹² Birchall 2003: 4 and University of the Witwatersrand 1990: 213.

¹¹³ Government of the Republic of South Africa 2005:

<http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006.

¹¹⁴ Business enterprises like companies only have a profit-making function and not generally a social function. This is because the co-operative is not a vehicle for investment, but rather one that provides goods, services and employment in order to better the lives of the members of the co-operative as well as the community; while the company is a vehicle for the creation and sustenance of group wealth.

¹¹⁵ For example free and open membership, lower initial capital, joint ownership, general one-member-one-vote system, shared risk and profits, as well as the dual function and University of the Witwatersrand 1990: 218.

¹¹⁶ The seventh co-operative principle in paragraph 3.3, Chapter 3 above and van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

However, we should not let the social agenda take precedence over the fact that the co-operative is an economic entity, and that there is a fine balance that must be maintained in order to empower people socially, while still having an economically viable vehicle.¹¹⁷ A co-operative will only be successful if it is treated first and foremost as a business enterprise by its members.¹¹⁸ If this is done, the co-operative will be successful, but if decisions are based on the preference, interest or social needs of members alone, the co-operative will surely fail financially and as a result fail at empowerment.¹¹⁹

Because co-operatives have a special contribution to make to South Africa in terms of the BEE process, government must continue to provide adequate training, education and financial support, especially to upcoming co-operatives.¹²⁰ However, caution must be exercised in the provision of grants or any financial assistance that may offer unlimited assistance, create dependence and decrease productive motivation. According to Biyela, if there is financial support without a time limit, even more co-operatives will turn out to be unsuccessful, as they do not see the need to become self-financing and independent.¹²¹ In short, such co-operatives become so dependent on these hand-outs that they never grow or become independent from these contributions, and as a result they fail as soon as the contribution is delayed or discontinued.¹²² Therefore, the objectives set by the preamble of the 2005 Act should be acknowledged and striven towards:¹²³

“...that a viable, autonomous, self-reliant and self-sustaining co-operative movement can play a major role in the economic and social development of the Republic of South Africa, in particular by creating employment, generating income, facilitating broad-based black economic empowerment and eradicating poverty...”¹²⁴

Keeping the provisions of the above in mind, if these grants are provided within boundaries with the aim of assisting and not creating dependence, it will have the effect of building and strengthening upcoming co-operatives in South Africa and might even increase their rate of success.

¹¹⁷ Doyer 2006: Report submitted to author. Bloemfontein.

¹¹⁸ Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

¹¹⁹ Van Niekerk 1988: 111.

¹²⁰ Department of Trade and Industry 2006: 3 – 4.

¹²¹ The fourth co-operative principle at paragraph 3.3 at chapter 3 above. Biyela 2006. Report submitted to author. Pretoria.

¹²² Biyela 2006. Report submitted to author. Pretoria.

¹²³ Act 14/2005, also the fourth co-operative principle in paragraph 3.3, Chapter 3 above.

¹²⁴ Co-operatives Act 14/2005: preamble.

Another potential problem is when governments attempt to use the co-operative as an apparent vehicle of social upliftment, but actually apply it as yet another instrument of governmental control.¹²⁵ When this is the case, and co-operatives are employed to advance the policies of government, the co-operatives become bureaucratic instruments, with the result that co-operatives are linked to the values and ideals of the government in power, whether those values be good, bad, right or wrong.¹²⁶ Moreover, co-operatives tend to have an unfair advantage, which may result in unfair competition based on state support, which undermines economic growth.¹²⁷ This result is exactly the opposite of the objectives of BEE. For example, in the case of the apartheid government, many co-operative monopolies were created, especially in agriculture.¹²⁸ The values and policies embedded in society by discriminatory legislation and overall policy subsequently seeped through into society and unknowingly caused the same result in business.¹²⁹ As a result the biggest co-operatives of the day were “white” co-operatives that excluded other classes and races of people from participating as members, or even as consumers in some cases. In this way government probably (unknowingly) kept certain classes of people from participation in the economic mainstream. This is an important factor when addressing the negative perception that exists towards co-operatives in general.¹³⁰

The co-operative’s dual function is a unique, distinguishing factor; making it ideal for the implementation of BEE specifically. However, the dual function does create certain risks to be acknowledged and guarded against. The positive contribution of the dual function specifically, should not be terminated merely because there is risk to the enterprise, although caution must be exercised. In terms of poor economic management, necessary training must be provided. In terms of state ownership in co-operatives, some legislative regulation and clarity are required in order to exercise effective control.

¹²⁵ Roelf 2005:
http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

¹²⁶ Doyer 2006: Report submitted to author. Bloemfontein.

¹²⁷ Republiek van Suid-Afrika: Kommissie van Ondersoek na Kooperatiewe Aangeleenthede [Republic of South Africa: Commission of Investigation into Co-operative Matters] 1967: 89.

¹²⁸ Department of Trade and Industry 2006: 1.

¹²⁹ Balshaw and Goldberg 2005: 22. This statement is justified as the state became an engine for mass Afrikaner employment during apartheid where many co-operatives were supported by large government funds and subsidies and thus had to conform to certain values and policies set by the government. Further, many of the traditionally white co-operatives had members of the Broederbond as members, who supported and aimed at furthering the values and ideals of the government of the time. On both of these levels the values and policies of the apartheid government were furthered through society.

¹³⁰ Department of Trade and Industry 2006: 1.

12.3 The application of the values of *ubuntu* and the Constitution of the Republic of South Africa to the co-operative

The co-operative is a jointly owned enterprise where a group of people act together for their mutual benefit, with free and open membership, where both the profits and risks are shared equitably between the members, decision making is based on democratic principles and each member generally only has one vote regardless of the number of shares he or she owns.¹³¹

Co-operatives have an important role to play in the BEE process. According to Paton, policy and legislation for co-operatives is essential, since it is viewed as a very important vehicle in the broadening of ownership in terms of BEE, and to prevent the individual enterprise from becoming wealthy while the majority still suffers.¹³²

Because the co-operative generally aims at creating and increasing community-based cooperation, which clearly forms an integral part of rural culture, the meaning and application of the word “*ubuntu*” is raised and will be investigated, especially in terms of its application to co-operatives as a vehicle to implement the provisions of BEE.¹³³

12.3.1 Definition of ubuntu

Ubuntu cannot be defined by one single definition, as in the case of the concepts of “democracy” and “culture”. Each person will have his or her own interpretation of the concept.¹³⁴ However, for a better understanding of the concept, some authors have defined it as either or all of the following:

“I am because we are” and “the hands wash each other”¹³⁵

“It describes the significance of group solidarity on survival issues so central to the survival of community. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity...”¹³⁶

¹³¹ The seven co-operative principles in paragraph 3.3, Chapter 3 above.

¹³² Paton 2003: 34.

¹³³ The seventh co-operative principle in paragraph 3.3, Chapter 3 above and <http://www.gal.co.za/newsitem.php?id=438>: accessed 12 April 2006 and van der Merwe 1996: 22 - 24 and <http://www.dfa.gov.za/docs/speeches/2005/mbek1216.htm>: accessed 16 June 2006.

¹³⁴ Sindane 1995: 1.

¹³⁵ Balshaw and Goldberg 2005: 44 for a loose translation of ubuntu.

“*Ubuntu* is a humanistic experience of treating all people with respect, granting them their human dignity”¹³⁷

“*Ubuntu* applied in business and corporate responsibility would be ultimately about sharing wealth and making (at the very least) basic services, such as food, housing and access to health and education accessible and visible to all members of our global family” and “*ubuntu* is the capacity in African culture to express compassion, reciprocity, dignity, harmony and humanity in the interests of building and maintaining community with justice and mutual caring.”¹³⁸

"as the basis for a morality of co-operation, compassion, community (spiritedness) and concern for the interests of the collective, for others and respect for the dignity of personhood; all the time emphasising the virtues of that dignity in social relationships and practices"¹³⁹

"the only truly and exclusively African concept in South African constitutional law.." ¹⁴⁰

Ubuntu is a concept that embodies ideals like humaneness, social justice and fairness, through community values which are based on mutual cooperation, which results in raising human dignity through the sharing of wealth and social upliftment of the members of the community, jointly and individually.¹⁴¹ *Ubuntu* results in the promotion of democracy as it reinforces the values founded therein and requires cooperation between all parties in order to work together.¹⁴² *Ubuntu* is applied in the relationships of all groups of people in some form or another, and is the very essence and underlying value of cooperation among any group of people in a community or even society in general.¹⁴³ It is something that every nation

¹³⁶ S v Makwanyane and another CCT/3/94 at paragraph 308.

¹³⁷ Sindane 1995: 2.

¹³⁸ Nussbaum 2003: 1, 2, 3 and 4.

¹³⁹ According to Justice Yvonne Mokgoro of the Constitutional Court
http://www.capetimes.co.za/general/print_article.php?fArticleId=2522971&fSectionId=335&fSetId=520:
accessed 11 April 2006.

¹⁴⁰ Former Minister of Justice and Constitutional development, Penuell Maduna,
http://www.capetimes.co.za/general/print_article.php?fArticleId=2522971&fSectionId=335&fSetId=520:
accessed 11 April 2006.

¹⁴¹ S v Makwanyane and another CCT/3/94 at paragraph 237.

¹⁴² Like human dignity.

¹⁴³ Sindane 1995: 2.

must strive to achieve as an ideal.¹⁴⁴ Just because *ubuntu* has its roots in traditional African society, does not mean that it must be limited to traditional African society.¹⁴⁵ It does imply however that traditional African, or even rural poverty-stricken areas are more experienced in its thought and application.¹⁴⁶ But, as stated above, it should rather become an ideal that society in general strives towards in all its relations with others.

12.3.2 Constitutional protection afforded for *ubuntu*

Although not defined or included in the Constitution, the concept of *ubuntu* is protected therein.¹⁴⁷ This concept has become an integral part of South African society. It was included in the epilogue of the interim constitution but was omitted from the final Constitution.¹⁴⁸ Because of this omission, it has been inferred that the final Constitution does not achieve the creation of African authenticity through the inclusion of a multiple value system.¹⁴⁹ In the case of *S v Makwanyane*, however, one of the first cases where the Constitutional Court applied value statements in a judgement in order to give effect to the provisions and values enshrined in the Constitution, the role of *ubuntu* was discussed and it was linked to values such as human dignity, cooperation and respect.¹⁵⁰ Although not explicitly included in the Constitution, *ubuntu* incorporates the values of democracy,¹⁵¹ freedom,¹⁵² human dignity,¹⁵³ respect and cooperation between people for a common good, and is thereby securely placed under the ambit of application and protection of the Constitution.¹⁵⁴

12.3.3 The presence of an *ubuntu* culture within the co-operative under Constitutional protection

As seen above, membership in a co-operative is free, unbiased and open to all South Africans, subject to the consent of the board of directors of the co-operative.¹⁵⁵ This is in line with section 9 of the Constitution. Because membership is free and open, more people are provided with opportunities and

¹⁴⁴ *S v Makwanyane and another CCT/3/94* at paragraph 227.

¹⁴⁵ *S v Makwanyane and another CCT/3/94* at paragraph 227.

¹⁴⁶ Cornell and van Marle 2005: 205.

¹⁴⁷ A full discussion will follow.

¹⁴⁸ Cornell and van Marle 2005: 196 and 207.

¹⁴⁹ Cornell and van Marle 2005: 207 – 208.

¹⁵⁰ *S v Makwanyane and another CCT/3/94* at paragraph 225 and 227.

¹⁵¹ Sindane 1995: 4 protected under Constitution of the Republic of South Africa 108 of 1996: sec 1.

¹⁵² Cornell and van Marle 2005: 206.

¹⁵³ Cornell and van Marle 2005: 210 and protected under Constitution of the Republic of South Africa 108 of 1996: sec 10 and *S v Makwanyane and another CCT/3/94* at paragraph 309 and 311 respectively.

¹⁵⁴ Cornell and van Marle 2005: 219 and the first co-operative principle in paragraph 3.3, Chapter 3 above.

¹⁵⁵ Dellatola 1989: 4.

access to basic services like education, housing and medical facilities. The co-operative in its versatility can provide these services.¹⁵⁶ The theory adapted to select membership and personnel is effectively based on need, constrained by the individual's ability or adaptability and is not based on discriminatory factors, therefore more people are given the opportunity to prove themselves economically.¹⁵⁷

The co-operative is an ideal vehicle to organise modern business undertakings on a communal level, because of its versatility, accessibility and social function.¹⁵⁸ It is a way of improving peoples' skills within a community; as it tries to make people more self-reliant by encouraging participation and responsibility by all members of the co-operative, thereby empowering its members.¹⁵⁹ In addition, the individual member, as well as the community, benefits, because of the provision of goods and services at a cheaper price.¹⁶⁰ It creates employment opportunities, improves efficiency of work, enhances job satisfaction and increases community participation in industrial production, which in itself is an advantage and in line with the balance between individual and community interest.¹⁶¹ By being successful, the co-operative enhances human dignity and respect of its members in society, thus clearly complying with the values set by *ubuntu* and also section 10 of the Constitution.

The co-operative's decision-making process is generally based on the one-member-one-vote system as well as on the democratic process.¹⁶² Thus, co-operatives support and promote democracy, which is entrenched in the concept of *ubuntu* and in the Constitution, and is a fundamental value of South African society.¹⁶³

The Constitution protects all the above values and must be applied to all laws on both vertical and horizontal level, as enshrined in section 2 of the Constitution.¹⁶⁴ As stated above, the co-operative structure in itself, conforms to the values embodied in the concept of *ubuntu*, in this sense making it authentically South African in terms of values, and complies and promotes the values enshrined and protected by the Constitution, the highest law in the country.¹⁶⁵ As *ubuntu* means different things to different people, it is essential that each group wanting to start a co-operative, or already part of a co-

¹⁵⁶ Constitution of the Republic of South Africa 108 of 1996: sec 26, 27 and 29 and Act 14/2005: sec 4.

¹⁵⁷ Hickson and Oldham 1990: 94 to 95 and Act 14/2005: sec 4(2).

¹⁵⁸ Dellatola 1989: 2.

¹⁵⁹ Paralegal advice: www.paralegaladvice.org.za: 25 October 2003.

¹⁶⁰ The second co-operative principle in paragraph 3.3, Chapter 3 above.

¹⁶¹ Mbatha 1994: 46. and the seventh co-operative principle in paragraph 3.3, Chapter 3 above.

¹⁶² the second co-operative principle at footnote 302.

¹⁶³ Constitution of the Republic of South Africa 108 of 1996: preamble and sec 1.

¹⁶⁴ Horizontal level refers to the relationship between members of the community on an equal level, while the vertical level refers to the relationship between state and its subjects, at an authoritative level.

¹⁶⁵ Cornell and van Marle 2005: 207 – 208 and the Constitution of the Republic of South Africa 108 of 1996: sec 2.

operative, develop and enforce their own meaning of *ubuntu* to be applied to their co-operative, in order to further conform to the provisions of the Constitution and to create and sustain the communal and cooperative benefits of *ubuntu*, which in turn will relate to the existing community culture of the greater part of South Africa.¹⁶⁶

Furthermore, if it complies with the Constitution, it will automatically further the transformation process in the country. The Constitution also permits legislation to be enacted in order to transform South Africa.¹⁶⁷ The role of co-operatives was clearly set out in this transformation process¹⁶⁸ with the enactment of the B-B BEE Act,¹⁶⁹ an aspect of legislation aimed at the speeding up of transformation by expanding the economy and increasing black participation.¹⁷⁰ This is another illustration of the fact that co-operatives do not just conform to the Constitution, but that they are also a very successful tool in the implementation of BEE.¹⁷¹

12.4 The co-operative through the BEE generic scorecard and Codes of Good Practice

The BEE structure in South Africa is regulated by enabling legislation contained in the B-B BEE Act,¹⁷² by the sectoral charters that illustrate the sector's informal and non-binding commitment to transformation and by the binding Codes of Good Practice, which is generally an interpretive document that also explains the function and completion of the BEE scorecard.¹⁷³ It must be kept in mind that both the sectoral charters, as well as the Codes of Good Practice, must conform to the policies, provisions and most importantly, the objectives set out by the B-B BEE Act.¹⁷⁴ As stated above, BEE is defined as:

¹⁶⁶ Sindale 1995: 2 above.

¹⁶⁷ Constitution of the Republic of South Africa 108 of 1996: sec 2 and sec 9(2).

¹⁶⁸ Act 53/2003: sec 2 (c).

¹⁶⁹ Act 53/2003.

¹⁷⁰ Act 53/2003: preamble and sec 2.

¹⁷¹ *Finansies en Tegniek* (unknown) 1990: 43.

¹⁷² Act 53/2003.

¹⁷³ Department of Trade and Industry Codes of Good Practice phase 1 and 2 interpretation and executive summary 2005, at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006, <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006 and <http://www.thedti.gov.za/bee/2codesofgoodpractice2005.htm>: accessed 28 June 2006 respectively.

¹⁷⁴ Act 53/2003: sec 2

“... to facilitate broad-based black economic empowerment by-

- (a) promoting economic transformation in order to enable meaningful participation of black people in the economy;
- (b) achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;
- (c) increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training;

“broad-based black economic empowerment [which] means the 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:

- a) to increasing the number of black people that manage, own and control enterprises and productive assets;
- b) to facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- c) to human resources and skills development;
- d) to achieving equitable representation in all occupational categories and levels in the workforce;
- e) to preferential procurement; and
- f) to investment in enterprises that are owned or managed by black people.”¹⁷⁵

According to the above, BEE is about providing access to participation in the economic mainstream through a wide range of persons, including the designated groups, falling within the ambit of its application on a wide range of socio-economic activities extending to ownership, employment, community development and internal procurement schemes.

Co-operatives specifically are all about creating one’s own opportunities, thereby empowering oneself, through engaging in an enterprise with joint ownership for mutual benefit.¹⁷⁶ Empowerment in this sense means expanding one’s capabilities and assets in order to have a better standard of living.¹⁷⁷

As previously mentioned, the BEE scorecard, in practical terms, is the way in which the BEE progress or status of a business is measured; it further enables government and other procurement agencies to

-
- (d) increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;
 - (e) promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
 - (f) empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and
 - (g) promoting access to finance for black economic empowerment.”

¹⁷⁵ Act 53/2003: sec 1.

¹⁷⁶ Birchall 2003: 20 and 21.

¹⁷⁷ Birchall 2003: 21.

effectively select a BEE-compliant enterprise for preferential procurement purposes.¹⁷⁸ This is because BEE is not a requirement enforced through prohibition, but rather through moral, social and of course, legislative imperative. By providing accredited means of measurement, the cooperation created between government and the private sector will result in the expansion of the economy, as stated by Philip:

“The potential for forms of economic co-operation between such entrepreneurs is enormous; and developmentally, the priority is clearly to find ways to optimise and support such existing local initiative, in ways that encourage diversity, yet avoid prescribing its form.”¹⁷⁹

The value of co-operatives in terms of the BEE scorecard will now be discussed. The seven scorecard principles which are used in determining a business’s BEE compliance are: ownership, management, employment equity, skills development, preferential procurement, enterprise development and corporate social investment.

Generally the co-operative can contribute to BEE and comply thereto in three ways, namely: firstly, by being BEE compliant (or not BEE compliant) within its own structures; secondly, by acquiring ownership in another BEE-compliant enterprise and thirdly, by engaging in service or trade transactions with another BEE compliant enterprise through both internal and external procurement transactions.

12.4.1. Direct empowerment

12.4.1.1 Ownership

As stated above, ownership can exist on three levels, namely¹⁸⁰ economic interest,¹⁸¹ control¹⁸² and non-encumbrance.¹⁸³

¹⁷⁸ Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 4 at <http://www.thedti.gov.za/bee/2codesofgoodpractice2005.htm>: accessed 28 June 2006.

¹⁷⁹ Philip 2003: 22.

¹⁸⁰ Balshaw and Goldberg 2005: 77.

¹⁸¹ Economic control refers to the equity interest of a member in addition to the assumption of all risk in regard to liability and profit, Woolley 2005: 96 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005. Furthermore, the Codes of Good Practice aim to give guidelines according to Kruger 2005: 36:

- To enable the measurement of implementation of B-B BEE,
- guidelines for the drawing of transformation charters in a given sector,

Generally, the co-operative is ideal for this application, because it shares ownership, management, risk and responsibilities equitably among its members.¹⁸⁴ More specifically, co-operatives satisfy this element through membership, control and non-encumbrance.

Membership, i.e. ownership, is free and open and is generally more accessible to people than for example, membership in the case of companies.¹⁸⁵ A nominal fee is payable to acquire membership in a co-operative, which is often lower than what is required for a company, which ensures that more people are able to acquire membership in co-operatives.¹⁸⁶ In addition, the enterprise has a unique ownership structure in that it is an extension of its members.¹⁸⁷ However, membership in a co-operative is not an investment, but is rather the pooling of funds in order to render the enterprise operational. This may be problematic in terms of economic interest in the B-B BEE Act;¹⁸⁸ as one of BEE's functions is to generate wealth. The sharing in ownership, capital and generated benefits, however, (regardless of the fact that such ownership is not one that creates wealth) satisfies the sharing in equity in terms of the other benefits the co-operative provides to its members, which, in the opinion of the author, satisfies the other object of BEE, namely the creation of opportunities.¹⁸⁹

Alternatively, the co-operative can acquire ownership in an outside enterprise in order to comply with this element of the scorecard.¹⁹⁰ The members of the co-operative are all joint-owners of the co-operative (including the assets thereof), thus will be joint owners of the shareholding or ownership interest in the outside enterprise as well. Moreover, if the enterprise in question is not already BEE compliant, it can become BEE compliant where a BEE-compliant co-operative is (majority) shareholder of such enterprise.

-
- objectives and targets measured against the number of indicators of B-B BEE,
 - time periods for achieving these targets and
 - reporting system on the implementation of B-B BEE.

¹⁸² Equity control refers to the ability to appoint and remove directors with majority voting rights, the ability to control or direct majority votes, as well as the control and management of the business; Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

¹⁸³ Non-encumbrance means that owners of equity can apply and enjoy their share as they deem fit without any restrictions.

¹⁸⁴ Department of Trade and Industry 2006: 17 and the third co-operative principle in paragraph 3.3, Chapter 3 above. Government of the Republic of South Africa 2005: <http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006 and above as well.

¹⁸⁵ The first co-operative principle in paragraph 3.3, Chapter 3 above.

¹⁸⁶ Act 14/2005: sec 40 and is provided for by the constitution of the co-operative.

¹⁸⁷ Birchall 2003: 15.

¹⁸⁸ Doyer 2006: Report submitted to author. Bloemfontein.

¹⁸⁹ These benefits include income to its members as well as more accessible goods and services to its members as well as the community it operates in.

¹⁹⁰ The co-operative is able to achieve this because it has juristic personality.

In terms of the control level, each member generally has one vote, regardless of the number of shares he or she owns.¹⁹¹ Voting is based on democratic principles, therefore each member has an equal say regarding the control and management of the enterprise.¹⁹²

In terms of non-encumbrance, members can enjoy their share of the business as they deem fit. Furthermore, the corporate member does not lose his or her individualism in regard to how he chooses to manage his or her business.¹⁹³ This further infers the freedom co-operative enterprises provide to their members.¹⁹⁴ Members are joint owners, so they can alienate or sell assets of the co-operative, subject to the provisions of the constitution of the co-operative, similar to the case of the company. However, the shares cannot be freely sold as in the case of a company. This is mainly because the co-operative is not a vehicle for investment. Moreover, the constitution of the co-operative and/or section 24 and 25 of the Co-operatives Act of 2005¹⁹⁵ regulates the repayment of member shares and stipulates that members shares can only be repaid in situations where it is economically feasible for the co-operative to do so.¹⁹⁶ Therefore the selling of shares held in co-operatives is limited and cannot be done freely without adhering to the provisions stated above. This is definitely a drawback in terms of BEE compliance in that the member's control over his individual ownership is restricted.

12.4.1.2 Management control

This refers to the number of black men or black women in executive managerial positions or who serve on executive board committees and have a sufficient amount of effective control over economic resources and activities.¹⁹⁷ This area of assessment overlaps the requirements of skills development and employment equity in terms of management.¹⁹⁸ These are measured at three levels, namely power to determine policies, to direct economic activities and to direct resources.¹⁹⁹ In practical terms management control comes first, i.e. representation of black people at executive board level; second, representation of black owners; third, involvement of black people in the daily operations and strategic

¹⁹¹ Act 14/2005: sec 13 (1) (e) and Doyer 2006: Report submitted to author. Bloemfontein and Harms 2006: report submitted to author. Pretoria.

¹⁹² The second co-operative principle in paragraph 3.3, Chapter 3 above.

¹⁹³ Biyela 2006: Report submitted to author. Pretoria.

¹⁹⁴ Seven co-operative principles in paragraph 3.3, Chapter 3 above.

¹⁹⁵ Act 14/2005.

¹⁹⁶ Act 14/2005: sec 32 and 33.

¹⁹⁷ Balshaw and Goldberg 2005: 77.

¹⁹⁸ Balshaw and Goldberg 2005: 77 – 78.

¹⁹⁹ Balshaw and Goldberg 2005: 77.

decision making at most senior level and, lastly, the representation of black people in overall financial and management positions.²⁰⁰

In the case of co-operatives, a board of directors is elected to manage the co-operative.²⁰¹ As stated above, one of the problems the co-operative structure faces is that management's decisions are sometimes based solely on the well-being of the members, which may negatively impact on their managerial capacity and on the co-operative's success. However, a successful co-operative venture is based on sound democratic and economic principles.²⁰² Again, co-operatives are representative of ground control enterprises, where control by members is imperative because it is safeguarded by the co-operative's constitution, and in this way, besides management, the members also take part in the decision-making process of the co-operative.²⁰³ In practice, before the co-operative applies for registration, the interested parties must draw up a business plan and decide whom they want to involve, in order to be representative of designated groups in terms of employment equity or not, as far as ownership is concerned.

In terms of satisfying the requirements of this element, managerial control must be placed in the hands of people from designated groups and must aim to further the skills in the workplace whether it be through membership or employment. Therefore, compliance with the provisions of the Skills Development Act²⁰⁴ and the Employment Equity Act²⁰⁵ on employment level, results in compliance in empowerment level, such as learnerships in terms of skills development, for example, and recruits from designated groups. This has resulted in well-trained persons from designated groups which can then enter managerial or ownership levels and exercise effective management control which, if achieved, results in BEE compliance.

²⁰⁰ Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 32 and 33 for calculation of BEE compliance at <http://www.thedti.gov.za/bee/2codesofgoodpractice2005.htm>: accessed 28 June 2006.

²⁰¹ Evans 1994: 335.

²⁰² Biyela 2006: Report submitted to author. Pretoria.

²⁰³ The second and third co-operative principles in paragraph 3.3, Chapter 3 above. Dellatola 1989: 3.

²⁰⁴ Act 97/1998.

²⁰⁵ Act 55/1998.

12.4.2 Human resource development

12.4.2.1 Employment equity

This refers to the so-called empowerment and representation of designated groups by designated employers.²⁰⁶ This principle is applied to management and ownership, in employment of employees and in the development of skills in the workplace.²⁰⁷ The provisions of the Employment Equity Act²⁰⁸ must therefore be complied with in order to achieve equitable representation in the workplace. Moreover, this element (employment equity) has its roots in all forms of empowerment, either directly or indirectly.

The co-operative structure can easily be employment equity compliant, because the co-operative's members appoint the directors. As with other business enterprises, there must be policies in place so that management as well as new members are appointed from designated groups; or in turn, people that have been employees of the co-operative and who have proven themselves accordingly, through the skills development process, who may or may not belong to designated groups. This can be done when drafting the business plan and constitution of the co-operative in the case of a new co-operative, but can also be decided at an annual general meeting, if the co-operative is already incorporated and operational.

12.4.2.2 Skills development

This part of the scorecard measures the contribution of a business to the skills development of existing employees, especially that of black people.²⁰⁹ This will result in the growth of the economy and will ensure that trained or skilled individuals participate therein. Furthermore, this element encourages businesses to take part in BEE, by allocating scorecard benefits to the provision of mentorships,

²⁰⁶ Designated groups refers to black people, women and people with disabilities and designated employer is
a. a person who employs 50 or more employees;
b. a person who employs fewer than 50 employees but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of the Schedule 4 of this Act;
c. a municipality, as referred to in Chapter 7 of the Constitution;
d. an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
e. an employer bound by collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement and Act 55/1998: sec 1.

²⁰⁷ As stated above.

²⁰⁸ Act 55/1998.

²⁰⁹ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

internships, development of core critical skills, adult basic education, the retention and employment of learners, the development of scarce sources and skills development in rural areas.²¹⁰

If the members of the co-operative themselves, as well as the employees of the co-operative, are provided with training, then empowerment will not fail as the person targeted for empowerment will be capable of doing the work because he has been trained and his skills developed.²¹¹ Because co-operatives are multi-faceted, many people involved therein are trained across a wide variety of fields or in a wide area of expertise.²¹² Consequently, there are many possibilities where the members and employees can be trained and given support by the co-operative in order to develop core skills.²¹³ By letting the people that have been implementing the decisions take part in the decision-making process, members will be more motivated and efficient in their performance, which will ultimately benefit the enterprise. Fundamentally, education and training is one of the most important aspects of the success of co-operatives.²¹⁴ To make the provided training successful, persons in key positions like entrepreneurs, accountants and lawyers, must become involved and must share their skills and expertise. This will ensure accelerated development and increased consciousness in terms of co-operatives, especially in poverty-stricken and rural areas.

12.4.3 Indirect empowerment

12.4.3.1 Preferential procurement

This part of the scorecard measures the extent to which the private sector procures and supports other BEE-compliant companies.²¹⁵ In this context, BEE compliant refers to the enterprise being a black company,²¹⁶ black-empowered company²¹⁷ or black-influenced company, as defined earlier.²¹⁸

²¹⁰ Balshaw and Goldberg 2005: 79 and 126.

²¹¹ Act 97/1998: sec 2 (e) "to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education..."

²¹² Act 13/2005: sec 4(2).

²¹³ Department of Trade and Industry Codes of Good Practice phase 2: 8 for a definition of:
"Core skills are value-adding activities of an enterprise in line with its core business, and within the operational component of its value-chain."
"Critical skills are identified by each SETA in relation to the National Skills Development Strategy" at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006. And the fifth co-operative principle in paragraph 3.3, Chapter 3 above.

²¹⁴ The fifth co-operative principle in paragraph 3.3, Chapter 3 above.

²¹⁵ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4 – 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

Because the co-operative has such a wide field of application such as in housing and consumer co-operatives, it can easily make use of external (specific) suppliers in order to comply with preferential procurement.²¹⁹ Alternatively, the co-operative can procure internally by procuring any of its own BEE-compliant members as suppliers of goods or services to the co-operative.²²⁰ According to Doyer, applying preferential procurement in a co-operative illustrates its most obvious compliance in terms of the BEE scorecard.²²¹ Consequently, co-operatives themselves can become black co-operatives, black-empowered co-operatives or black-influenced co-operatives, by complying with the other scorecard elements, and themselves be procured by other enterprises wishing to procure BEE-compliant enterprises. According to international co-operative principles, co-operatives are obligated to support other co-operatives.²²² Fundamentally the co-operative aims to supply goods or services to persons that get together and in turn, to provide these goods and services to the rest of the community in which the co-operative is operational. In this way both preferential procurement and enterprise development will be satisfied.²²³

12.4.3.2 Enterprise development

In terms of this requirement, assisted or accelerated development, sustainability and ultimate financial and operational independence of the beneficiary of enterprise development must be the objective.²²⁴ These assistance or development strategies can involve any means, whether they are monetary or non-monetary in nature.

²¹⁶ Black companies refers to companies that are more than 50,1% controlled and owned by black people, Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/BEE/BEE.htm>: accessed 16 August 2005.

²¹⁷ Black-empowered company refers to a company owned by 25,1% of black people and who have substantial control vested in black people and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

²¹⁸ Black-influenced companies are companies that have between 5% and 25% black ownership and that have participation in the control and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/BEE/BEE.htm>: accessed 16 August 2005 and Agent (unknown) 2006: 13.

²¹⁹ Department of Trade and Industry 2006: 15 and Act 14/2005: sec 4.

²²⁰ This is possible because members of secondary and tertiary co-operatives are co-operatives and other juristic persons: the elements of preferential procurement and enterprise development can be satisfied.

²²¹ Doyer 2006: Report submitted to author. Bloemfontein.

²²² The sixth co-operative principle in paragraph 3.3, Chapter 3 above.

²²³ Doyer 2006: Report submitted to author. Bloemfontein.

²²⁴ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

According to international co-operative principles, co-operatives are obligated to support other co-operatives.²²⁵ This can take place through the co-operative involving a smaller retailer as a member in its structure, or through the provision of financial support or necessary resources or training. However, the selected enterprises (or other co-operatives) must be BEE compliant if improving the BEE score is the objective for which enterprise development is sought.

12.4.4 Residual level

12. 4.4.1 Corporate social investment

This element aims to provide natural persons with the means to generate income for themselves.²²⁶ This includes investment in rural development and infrastructural support in the same area or community, and it also includes labour-intensive production.²²⁷

According to the seven co-operative principles, co-operatives are clearly required to develop the community through their structures.²²⁸ The co-operative is ideal for generating income or for capitalising on the benefits of standing together and exercising group or bulk-buying schemes, negotiating better interest rates and insurance premiums, and so forth.²²⁹ In accordance with the co-operative's dual function, it has much more to offer than only profit making: it is ideal for (community) upliftment. In addition, if suppliers who belong to the same community are used in the preferential procurement phase, this element will also be satisfied. Furthermore, the diverse services the co-operative can offer can also contribute to the development of the community.²³⁰

²²⁵ The sixth co-operative principle in paragraph 3.3, Chapter 3 above.

²²⁶ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

²²⁷ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005 and the seventh co-operative principle in paragraph 3.3, Chapter 3 above.

²²⁸ Memorandum to the co-operatives Bill of 2005: GN 4/2005: sec 41, Philip 2003: 5 – 6 and www.capegateway.gov.za/text/2004/11/principles_of_a_cooperative.pdf: accessed 31 July 2006 for the seven co-operative movement principles and the seventh co-operative principle in Chapter 3, paragraph 3.3 above.

²²⁹ Through joint action economies of scale are created and sustained within communities. Department of Trade and Industry 2006: 15.

²³⁰ Act 14/2005: sec 4(2) and Doyer 2006: Report submitted to author. Bloemfontein.

12.5 Conclusion

The co-operative has been described by international organisations like the ICA, as a business enterprise that develops and /or empowers people through self-help. Locally the co-operative both on SMME and large corporate scale has been identified as a potential vehicle to drive the social and economic upliftment of the people of the South Africa, therefore the Co-operatives Act of 2005 was promulgated to effect this.²³¹ Co-operatives have the following characteristics that make them ideally suited to the current South African situation: they are versatile in their application, they are accessible enterprises as initial establishment is cost effective and they are generally easy to establish. They provide both a social and an economic function (dual function) to their members, generally apply a one-member-one-vote-system in management thereby promoting democratic principles, and promote the concepts of individualism and autonomy within their structures. Furthermore, the co-operative as an enterprise complies with the BEE scorecard as well as the Codes of Good Practice which were drafted by government in accordance with the provisions of the B-B BEE Act of 2003.²³²

²³¹ Act 14/2005.

²³² Act 53/2003.

CHAPTER 13

THE YEBO CO-OPERATIVE LTD CASE STUDY

13.1 Introduction

This chapter presents the Yebo Co-operative Ltd (hereafter referred to as Yebo) case study which aims to illustrate the co-operative as a practical vehicle to implement BEE, as explained in Chapter 12 above.

13.2 Background of the Yebo Co-operative Ltd¹

Yebo is a dynamic organisation owned by various groups, burial societies, co-operatives and small businesses situated in all the provinces of South Africa.² It was formed by 16 founding member groups from seven provinces in March 2003, and was registered with the Registrar of Co-operatives in April 2003. Since its formation, Yebo has focused its resources on supporting co-operative members to implement self-help, self-administration and self-responsibility values as a practical strategy to meet existing and future economic and social challenges. With this cooperative approach, co-operating communities and businesses have succeeded in reducing the prices of goods they purchase from big suppliers, either for consumption or trading, resulting in massive savings. Yebo recently undertook two projects.³ The first was the development of a business model where unemployed people who want to get involved can make a contribution in partnership with other small businesses. A group of informal entrepreneurs indicated their interest and were placed in a pilot project. Yebo formed an empowerment partnership with a small bakery (Zolani bakery) and undertook to produce 500 loaves of bread a day in return for the use of the bakery's facilities and training opportunities. All loaves exceeding the 500 were then given to the entrepreneurs. Within two months of the commencement of the project, the group was able to sell 700 loaves for their own benefit. This project did not only create an opportunity for people eager to start their own bakery, but also provided trained individuals for a thirsty labour market in an environment characterised by high unemployment levels. The second project is the focus of the interview

¹ Registration number 2684 (registered on 7 April 2003), trading in Pretoria, Gauteng, <http://www.yebocoop.co.za>: accessed 3 April 2006 and Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

² Reference of the Yebo Co-operative Ltd's success is also made in *Finansies en Tegniek* (unknown) 2004: 57 and indirectly for further reading, George 2005: 4.

³ Van der Walt 2005: <http://www.dgrvsa.co.za/information/fullStory.php?id=33>: accessed 6 April 2006.

below; as it is an initiative where small bakeries were invited to join hands and purchase all their ingredients collectively in bulk.⁴ This later escalated to include farmers and spaza shops as well. The advantage provided by buying in bulk is increasing competitiveness in the market as well as an increasing turnover.

The following services are just a few from which members can benefit, using Yebo as their own supportive co-operative.⁵

13.2.1 Advice and counselling

Yebo offers its members advice and counselling in terms of running their businesses.

13.2.2 Co-operative or group training

Yebo offers training with regard to co-operative and business principles to existing co-operatives, groups and other private entities. The training that Yebo offers is demand-driven and outcome-oriented. Training methods that are used include, among others, local economic and participatory development, participatory approaches and participatory training methods.

13.2.3 Co-operative or group audit (management, financial and social audit)

Yebo provides training on corporate governance and co-operative audit i.e. the management, financial and social aspects, to co-operatives or groups.

13.2.4 Poverty alleviation

Yebo specialises in teaching people the mechanisms to generate their own money, which is coupled with training to use their disposable income to create sustainable businesses which could help them in alleviating poverty.

⁴ See annexure 1 as attached below.

⁵ <http://www.yebocoop.co.za>: accessed 3 April 2006.

13.2.5 SMME development (entrepreneurship)

Yebo presents discussion workshops and carefully determines and defines business opportunities.

13.2.6 Business advice

Yebo believes in helping people to develop their own business plans, because they understand the situation and business opportunities better than anyone else. Training sessions are conducted to equip future entrepreneurs with the necessary skills to develop their own business plans. Yebo also assists its members with marketing strategies and the marketing of their products.

13.2.7 Institutional development of self-help groups

By assisting the businesses in forming legal entities, particularly co-operatives, Yebo ensures that the institutions are developed and strengthened to allow growth in the business.

13.2.8 Creating business links

Yebo facilitates links between new business entrants and established businesses to provide opportunities for skills transfer and information sharing. They also facilitate with regard to contracts, market and business opportunities through the establishment of sustainable links.

13.2.9 Bulk buying

Yebo co-ordinates the bulk buying of consumables (e.g. maize meal, flour) and other commodities (e.g. fertilizer, seeds, cement, paraffin, etc.) in order to save money and increase turnover.

13.2.10 Follow-up (mentorship of institutions and businesses)

Depending on the needs and requests, Yebo provides continuous training to determine the impact and viability of the business, and thus provides on-the-job training to manage the growth of the business.

13.2.11 Financial services

Yebo will be offering credit to its member groups and co-operatives to support them in the establishment and enhancement of their existing and new business operations. Yebo will also assist in the central liquidity management (pooling of savings) of its members, as well as providing insurance (funeral, life and short-term).

13.2.12 Co-operative or village banking

Yebo provides advice on the establishment and further development and management of co-operative or village banks to enhance regional and local economic development.

13.3 The Yebo Co-operative Ltd: a practical example of the co-operative enterprise as an ideal vehicle to implement BEE

13.3.1 Direct empowerment

13.3.1.1 Ownership

As stated above, ownership can exist on three levels:⁶ economic interest,⁷ control⁸ and non-encumbrance.⁹

⁶ Balshaw and Goldberg 2005: 77.

⁷ Economic control refers to the equity interest of a member in addition to the assumption of all risk in regard to liability and profit and Woolley 2005: 96 and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005. Furthermore, the Codes of Good Practice aim to give guidelines according to Kruger 2005: 36:

- To enable the measurement of implementation of B-B BEE
- Guidelines for the drawing of transformation charters in a given sector
- Objectives and targets measured against the number of indicators of B-B BEE
- Time periods for achieving these targets
- Reporting system on the implementation of B-B BEE.

⁸ Equity control refers to the ability to appoint and remove directors with majority voting rights, the ability to control or direct majority votes, as well as the control and management of the business and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

⁹ Non-encumbrance means that owners of equity can apply and enjoy their share as they deem fit without any restrictions.

Generally, the co-operative is ideal for this application because it shares ownership, management, risk and responsibilities equitably among its members.¹⁰ More specifically, co-operatives satisfy this element through:

Firstly, membership (ownership) in Yebo is free and open as the ownership structure is an extension of its members. The sharing in ownership, capital and generated benefits to do business with the co-operative satisfies the sharing in equity in terms of the benefits the co-operative provides to its members, which in turn satisfies the other objective of BEE, namely the creation of opportunities.

Secondly, in terms of the control level, each member of Yebo generally has one vote according to the constitution of the co-operative, regardless of the number of shares he or she owns, and voting is based on democratic principles. This implies that each member has an equal say regarding the control and management of the enterprise. However, when voting is done by way of ballot, each member can cast additional votes, provided that a single member's votes do not exceed 20% of the votes of the co-operative.

Thirdly, in terms of non-encumbrance, members can utilise and enjoy their share of the business as they deem fit. Furthermore, although the corporate members of Yebo do not lose their individualism in terms of how they choose to manage their businesses, the constitution of the co-operative only requires all members to do all their business with the co-operative.¹¹ This further infers the freedom co-operative enterprises provide to their members. Members are joint owners, so they can alienate or sell assets of the co-operative, subject to the provisions of the constitution of the co-operative, which are similar to those of a company. However, the shares cannot be freely sold as in the case of a company as the termination of membership is subject to the provisions set out in the constitution of the co-operative.¹²

The members of Yebo all fall within the category of black people therefore in terms of the owners or members being representative of black people, Yebo complies with this section of the BEE scorecard.¹³

¹⁰ Department of Trade and Industry 2006: 17 and paragraph 2.5 above. Government of the Republic of South Africa 2005: <http://www.info.gov.za/speeches/2005/05031315151001.htm>: accessed 7 June 2006.

¹¹ Biyela 2006: Report submitted to author. Pretoria.

¹² Act 14/2005: sec 24 and sec 25.

¹³ This is mainly because many of Yebo's members are spaza shops, burial societies etc.

13.3.1.2 Management control

This refers to the number of black men or black women in executive managerial positions or who serve on executive board committees. Moreover, it refers to the extent of effective control of economic resources and activities.¹⁴ This area of assessment overlaps the requirements of Skills Development and Employment Equity in terms of management and is measured on three levels, namely power to determine policies, to direct economic activities and to direct resources, as mentioned previously.¹⁵ In practical terms management control encompasses representation of black people at executive board level, representation of black owners, involvement of black people in the daily operations and strategic decision-making at most senior level and finally, representation of black people in overall financial and management positions.¹⁶

A board of directors is elected to manage the co-operative.¹⁷ In terms of the constitution of Yebo, directors can be nominated and elected from any group of people and need not be members of the co-operative themselves. This does not imply that this co-operative is not representative of ground control enterprises, where control by members is imperative. It is safeguarded by the co-operative's constitution, according to which the members and people on basic level, and therefore not only members on management level, also take part in the decision-making process of the co-operative. In the case of Yebo, there must always be between three and (maximum) eleven directors who fulfil some general managerial functions, although certain decisions must still be discussed and decided upon through special resolution of all the members. In terms of the directors being representative of black people, the members of Yebo generally all fall within the category of black people. Therefore, Yebo is able to and has appointed people from designated groups to managerial positions and should conform to the requirements set by this part of the BEE scorecard.¹⁸

¹⁴ Balshaw and Goldberg 2005: 77.

¹⁵ Balshaw and Goldberg 2005: 77 – 78.

¹⁶ Department of Trade and Industry Codes of Good Practice phase 1 interpretation 2005: 32 and 33 for calculation of BEE compliance at http://www.thedti.gov.za/bee/2codes_ofgoodpractice2005.htm: accessed 28 June 2006.

¹⁷ Evans 1994: 335.

¹⁸ Designated groups refers to black people, women and people with disabilities and a designated employer is:
“a person who employs 50 or more employees;
a person who employs fewer than 50 employees but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of the Schedule 4 of this Act;
a municipality, as referred to in Chapter 7 of the Constitution;
an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and

13.3.2 Human resource development

13.3.2.1 Employment equity

As mentioned in the previous chapter, this refers to the so-called empowerment and representation of designated groups by designated employers.¹⁹ This principle is applied to both ownership and management, in the employment of employees as well as the development of skills in the workplace. Therefore the provisions of the Employment Equity Act²⁰ must be complied with in order to achieve equitable representation in the workplace.

This element is also achieved by Yebo, because the co-operative has many spaza shops, burial societies and bakeries as members in rural and traditionally poor areas. Furthermore the members of staff of each of the mentioned members as well as the co-operative are generally from the designated groups.

13.3.2.2 Skills development

This part of the scorecard measures the contribution of a business to the Skills Development of existing employees, especially that of black people.²¹ This will result in the growth of the economy and will ensure that trained or skilled individuals participate therein. Furthermore, this element encourages businesses to take part in BEE by allocating scorecard benefits to the provision of mentorships, internships, development of core critical skills, adult basic education, the retention and employment of learners, the development of scarce resources and Skills Development in rural areas.²²

Yebo provides the following services to their members:

Advice and counselling,

Co-operative or group training,

Co-operative or group audit (management, financial and social audit),²³

an employer bound by collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement.” Act 55/1998: sec 1.

¹⁹ Act 55/1998: sec 1.

²⁰ Act 55/1998.

²¹ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

²² Balshaw and Goldberg 2005: 79 and 126.

²³ The constitution of the Yebo Co-operative determines that the members be provided with auditing services as well as bookkeeping training.

Poverty alleviation,
SMME development (entrepreneurship),
Business advice,
Institutional development of self-help groups,
Follow-up (mentorship of institutions and businesses) and,
Co-operative or village banking.

Clearly, Yebo provides adequate services in training the members of the co-operative as well as their members of staff, in a wide range of activities. Furthermore, Yebo develops core critical skills, and aims to teach the members of the co-operative valuable managerial, financial and business skills, which will prove valuable in the economic sustenance of each member's business and ultimately that of the co-operative in general. In addition, Yebo has contributed to Skills Development by their labour-intensive trainee programme in the bakery.

13.3.3 Indirect empowerment

13.3.3.1 Preferential procurement

This part of the scorecard measures the extent to which the private sector procures and supports other BEE-compliant companies.²⁴ In this context, BEE compliant refers to the enterprise being a black company,²⁵ black empowered company²⁶ or black influenced company, as defined earlier.²⁷

According to the services provided by Yebo, preferential procurement is supported in the following ways:
SMME development (entrepreneurship),
Creating business linkages and,

²⁴ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 4 – 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

²⁵ Black companies refers to companies that are more than 50,1% controlled and owned by black people and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/BEE/BEE.htm>: accessed 16 August 2005.

²⁶ Black-empowered company refers to a company owned by 25,1% of black people and which has substantial control vested in black people and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

²⁷ Black-influenced companies refers to companies that have between 5% and 25% black ownership and that have participation in the control and Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/BEE/BEE.htm>: accessed 16 August 2005. and Agent (unknown) 2006: 13.

Co-operative or village banking.

Because the co-operative has such a wide field of application, for example in housing and consumer co-operatives, it can easily make use of external (specific) suppliers in order to comply with preferential procurement. Alternatively, the co-operative can procure internally by procuring from any of its own BEE-compliant members as suppliers of goods or services to the co-operative. In this case Yebo has proven very successful, for example, in procuring the services of the trainees for the bakery, bulk buying of ingredients through the members of the co-operative and making use of local co-operative or village banking facilities.

13.3.3.2 Enterprise development

In terms of this requirement, assisted or accelerated development, sustainability and ultimate financial and operational independence of the beneficiary of the enterprise development must be the objective.²⁸ These assistance or development strategies can involve any means, whether it is monetary or non-monetary in nature, as has been previously mentioned.

According to the services provided by Yebo, enterprise development is supported in the following ways:

Business advice,

Institutional development of self-help groups,

Creating business linkages and,

Co-operative or village banking.

Yebo has also contributed to enterprise development by means of bulk buying, and by making the businesses that buy their stock in bulk more sustainable and profitable. Moreover, by procuring the services of trainees in the bakery, it made the bakery more profitable by increasing production through increased manpower.

²⁸ Department of Trade and Industry Codes of Good Practice phase 2 executive summary 2005: 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

13.3.4 Residual level

13.3.4.1 Corporate social investment

This element aims to provide natural persons with the means to generate income for themselves.²⁹ This includes investment in rural development and infrastructural support in the same area or community, and it also includes labour-intensive production.³⁰

According to the services provided by Yebo, corporate social investment is supported in the provision of co-operative or village banking services and their training sessions are aimed at providing future entrepreneurs with the necessary skills to develop their own business plans. Yebo has members from traditionally poor and rural areas, and aims to uplift these members both economically and socially. Moreover, the economies of scale within the community will also benefit the members and will in turn benefit the community as a whole. It also provides training through labour-intensive production, by providing the bakery with trainees to assist in production of bread, which qualifies as a corporate social investment in terms of the BEE Codes of Good Practice.

13.4 Conclusion

From the above it is clear that the conclusions reached and proven in chapter 12 are practically feasible. Co-operatives are generally successful in their application to empowerment, social and economic upliftment. Yebo has proven successful in its diverse services, opportunities it offers its members, training for members and non-members, and community upliftment through the various projects. Yebo can therefore be regarded as a practical example of co-operatives as successful vehicles to promote BEE.

²⁹ Department of Trade and Industry Codes of Good Practice phase 2 executive summaries 2005: 5 at <http://www.thedti.gov.za/bee/2ndphase.htm>: accessed 28 June 2006.

³⁰ Department of Trade and Industry: South Africa's Economic Transformation: a Strategy for Broad-Based Black Economic Empowerment: <http://www.dti.gov.za/B-B BEE/B-B BEE.htm>: accessed 16 August 2005.

CHAPTER 14

CONCLUSION

An examination of the historical development of co-operatives in South Africa shows clearly that the roots of the co-operative system can be found in both formal and informal business, urban and rural areas, as well as in the traditionally black and poverty-stricken areas, and that they are used as a means of improving the lives of their members. The popularity of *stokvels* in both rural and urban areas, even today, clearly illustrates people's need for a social basis in business. Furthermore, the co-operative as a business enterprise is well established in South Africa, as the concept is not strange and people in all income groups and from all backgrounds can become members and in this way make a positive contribution to the economy. Support for this approach is illustrated by the inclusion of the seven international co-operative principles into the requirements set for co-operatives, in the Co-operatives Act 14 of 2005 (hereafter referred to as the 2005 Act). *Stokvels* are therefore also included within the definition and ambit of co-operatives registered in terms of the 2005 Act.¹

“In the end the priority is to embrace diverse and inclusive approaches and to find innovative, flexible and locally specific ways to use economic co-operation as a means to improve the quality of people's lives. Whether these are formalized as co-operatives of any kind matters less than that they contribute to the reduction of poverty, to empowerment, to job creation and to enhanced forms of social mobilisation to achieve these ends.”²

The co-operative's versatility and accessibility provide an answer to the question of how co-operatives, which have been part of society since the 1800s, have managed to stand the test of time. One reason for the continued existence of co-operatives is possibly the fact that they differ from other enterprises, specifically in that they aim at creating and sustaining group wealth, which in the author's opinion, is a very positive aspect in the co-operative's application in implementing BEE. Generally, membership in a co-operative is not an investment, but rather a provision of other benefits such as bulk buying, the possibility of negotiation for lower interest rates and insurance premiums and the provision of goods and services at more competitive price to its members. Government has started to recognise the potential of

¹ It may be inferred that the legislature intended for the *stokvel* to be included under Act 14/2005, until the enactment of the Co-operative Banks Bill into legislation.

² Philip 2003: 23.

co-operatives to generate employment and reduce poverty in South Africa. Furthermore, if the co-operative is economically viable, it manages to create economies of scale within a community and socially uplifts its members through cooperation between people for the mutual good. In this way people's individual and collective human dignity is enhanced. With the enactment of the Co-operatives Act of 2005, co-operatives have become more versatile, because they are no longer regarded as linked to agriculture only, as was the case under the Co-operatives Act 91 of 1981 (hereafter referred to as the 1981 Act).

Because of the system of apartheid, black people were excluded from participating in the economy, and were channelled into employment involving physical labour. This situation resulted in a lack of skills and training among black people. Furthermore, because of this selective economic exclusion, the economy did not grow as it should have, leaving South Africa with a definite economic and skills backlog. The enactment of the Constitution of the Republic of South Africa in 1996 facilitated the enactment of legislation to rectify this situation and to speed up transformation in South Africa, with affirmative action being the first transformation legislation: practically, however, this took too long as it was only directed at the employment industry. BEE followed, bringing with it aspects ranging from employment to equity ownership, management, development of skills, enterprise development, and (corporate social) community development. To make BEE more successful and to facilitate the required paradigm shift, practical ways and means for the implementation of BEE must be researched and promoted to make BEE viable and successful.

No single enterprise offers a solution to poverty in any country or is the sole vehicle through which empowerment may be effected, but some enterprises can make a big impact at the success level of such endeavours. This is illustrated by the National Co-operative Association of South Africa (NCASA) in 2003, which states:

“As our values and principles illustrate, we consider co-operative development as a process of building a unique and distinct sector in our society. Co-operatives are neither extensions of the state, nor are they private entities in a capitalist sense aimed at making profit for its own sake but a being autonomously controlled and driven by the people themselves to meet their own needs. While co-operatives are crucial in promoting social and economic development, we do not, however, consider them as a panacea for all our social and economic problems, or as a

substitute for other efforts by society, such as the public sector, to promote a sustainable social development.”³

The co-operative has proven to comply with the requirements of the Constitution of the Republic of South Africa, including the concept of ubuntu as a value in society, the provisions set by the B-B BEE Act and specifically the BEE scorecard.⁴ Its potential positive scorecard performance can be attributed to the co-operative’s required low initial capital, its accessibility to potential members in that it is versatile in its application, its open and free membership, its social function in the cooperation among a group of people to gain mutual benefit, as well as the creation of economies of scale within the communities in which they exist.

Doyer summarises a co-operative as:

“...the most empowering business entity that there is.” And it is an "amazing tool" to empower people, being a business activity by the people, for the people...”⁵

Currently co-operatives have some negative perceptions attached to them, mainly because of the high rate of deregistrations and conversions into companies during the 1990s, as well as their possible connotations with regard to the promotion of the apartheid government’s values and their association with white farmers.

Regarding the high conversion rate, co-operatives that converted have presented the following reasons for their conversions: the lack of tax advantages to co-operatives as they are being taxed at the same rate as companies and in addition are taxed on bonuses retained and not paid out to the members of the co-operative, when profit-making becomes the primary ideal in bigger co-operatives and the legal restrictions on co-operatives wanting to purchase shares in a company under the Co-operative Societies Act 91 of 1981.⁶ Regarding the lack of a tax advantage for co-operatives, the co-operative is a vehicle for

³ NCASA 2003: <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo18/build.html>: accessed 24 March 2006.

⁴ Act 53/2003.

⁵ Roelf 2005: http://www.mg.co.za/articledirect.aspx?articleid=236898&area=%2fbreaking_news%2fbreaking_news_business%2f: accessed 16 August 2005.

⁶ In the case of profit making, it is better for the members either to comply with the provisions of sec 24 and 25 of the Co-operatives Act in order to have proportional voting rights as with increased turnover comes increased risk, especially for the bigger members of the co-operative. In the alternative, the conversion into a company in this case may be justified; as creating and sustaining wealth has never been the sole objective of the co-

empowerment on ground level, especially in poor communities, and a tax advantage would make co-operatives even more accessible enterprises. Thus, it is the author's opinion that tax advantages ought to be granted, for instance in the form of a lower tax rate or even tax exemption, for example for the first three years of the co-operative's existence, to rectify this situation. Practically speaking, tax advantages are often a decisive factor when a person must decide on a type of business enterprise to engage in. Therefore, it is very important that the tax implications of engaging in a co-operative enterprise are favourable and in consequence should be revised.

The 2005 Co-operatives Act is certainly very different and much less stringent in its provisions in comparison to the 1981 Co-operative Societies Act. This is not necessarily a negative aspect, as it makes co-operatives more accessible than they were in the past. However, in the opinion of the author, the 2005 Act contains two provisions that are problematic, namely that the definition of primary co-operatives excludes corporate entities as members and the fact that the 2005 Co-operatives Act is generally under-regulative.

Firstly, the fact that primary co-operatives exclude membership of juristic persons means that South African co-operatives do not conform to international standards: many rural SMMEs and close corporations cannot survive on their own, and consequently they will be unable to become members of a primary co-operative. This is a problem, because these enterprises will not be able to organise themselves within the primary co-operative structure, because of the definitions of primary, secondary and tertiary co-operatives included in the 2005 Co-operatives Act. The members or owners of these enterprises will then be forced to join co-operatives in their personal capacity, which is not a very favourable situation either. In the author's opinion, this is the greatest flaw in the new Act and should be rectified by the legislature.

Secondly, the 2005 Act is generally under-regulatory in that co-operatives are very easy to establish and to register. In addition to this, the financial statements of the co-operative are not compelled to be submitted to the Registrar of co-operatives, as was the case in the past. The problem is that there could be a large increase in the number of co-operatives because of the simple registration process and if not managed properly, they will fail and the negative perception of co-operatives will be perpetuated. Moreover, people could use co-operatives in illegal dealings, because they are not under close watch.

operative. Legal restrictions placed on co-operatives in that under the 1981 Act ministerial permission had to be obtained for the co-operative in order to be able to purchase shares in a company; however, the 2005 Act does not make reference to this so some uncertainty exists, but it may be inferred that if the legislature does not make mention thereof, then it is not an issue anymore.

These provisions should be more stringently applied, especially in that financial statements should be submitted to the Registrar of co-operatives. If the less stringent provisions remain as they are, more training, education and guidance must be provided by the Registrar of co-operatives or government, in order to prevent co-operatives from becoming enterprises prone to redundancy or failure.

In addition to this the author also believes that the 2005 Act lacks two essential provisions: in the first place, the omission of legislative regulation to regulate governmental control in co-operatives is a potentially dangerous situation, as this could lead to co-operatives becoming bureaucratic instruments of government, defeating the whole purpose of co-operatives in terms of BEE; this should also be rectified by the legislature.

In the second place, there is one aspect that is so ill-defined that it is too wide and vague for proper implementation, namely the omission of regulations setting out the rights, duties and functions of the Supervisory Committee. In the author's view, this calls for legislative revision and correction.

Suggestions specifically in connection with the co-operative's application in its implementation of BEE are the requirements of support, training and education. As mentioned above, with the generally under-regulative nature of the 2005 Co-operatives Act, many co-operatives are currently being registered; as a result the need for increased education and training arises. The author suggests that government or the Registrar should offer training and education in effective managerial skills within the co-operative structure, so that co-operatives do not become the embodiment of redundant or failed business enterprises.

Furthermore, in the opinion of the author, education and training is also specifically required in the drawing up of business plans for co-operatives, as well as in the drawing up a practical and effective constitution for the co-operative and effective selection, appointment and training of managerial staff. Here the services of professionals with adequate experience and expertise such as lawyers, accountants and business advisors, should be implemented by government.

Lastly, besides the legislative improvements that need to be made in order to promote co-operatives in general, as well as their role in BEE, a co-operative development and movement policy should be created in accordance with contributions from all interested parties. Although new co-operative legislation has been enacted, it is not sufficient to change the values and perceptions of society, as legislation only has a regulatory function. A successful co-operative movement and development policy will have

educational value, in that co-operatives are promoted for what they are, as enterprises that are accessible to all people and that promote the building of the economy through their social functions and values. In addition, such a successful movement and development policy could eradicate the current negative perceptions of co-operatives and lay down values for successful co-operative enterprises.

“God save Co-operatives:⁷

Keep them from –

The *Academics* who wish to pull them apart to see how they work;

The *Professionals* who believe that nothing can be achieved by ordinary men and women;

The *Advisors* who never tire of finding new problems but never have time to solve any;

The *Managers* who want a Co-operative to work for them rather than them to work for it;

The *Politicians* who seek to use the Co-operatives as their stepping stone to power;

The *Governments* that will bury them in bureaucracy;

The *Peddlers of Dogma* who try to make them fit their view of the world and will not accept Co-operatives
as economic enterprises;

The *Investors* who would take them over and cash in their assets;

Help them to deliver benefits working in the interests of their members without transgressing the rights of
those out with the Co-operative.”

⁷ Edgar Parnell’s Prayer for Co-operatives.
Lewis 2001: 43, at <http://www.ica.coop/publications/review/2001-issue1.pdf>: accessed 6 June 2006 and
Agricultural Business Chamber 2005: 18

ANNEXURE 1

SUMMARY

In the South African context, BEE is not only regarded as a moral and social imperative, but also as a legislative one. BEE functions on two levels, namely the creation and sustenance of wealth, and the creation of opportunities, in order to widen the economic sphere.

If successful transformation is to be achieved in South Africa, it is of vital importance that practical suggestions for its implementation be investigated. The co-operative has been described by international organisations like the International Co-operative Alliance, as a business enterprise that develops and /or empowers people through self-help. Locally the co-operative both on SMME and large corporate scale has been identified as a potential vehicle to drive the social and economic upliftment of the people of the South Africa. The Co-operatives Act 14 of 2005 was promulgated to give effect to this. Co-operatives have the following characteristics that make them ideally suited to the current South African situation: they are versatile in their application, they are accessible enterprises as initial establishment is cost effective and they are generally easy to establish, they provide both a social and economic function (dual function) to their members, generally apply a one-member-one-vote-system in management thereby promoting democratic principles, and they promote the concepts of individualism and autonomy within their structures.

A successful co-operative enhances both individual and collective human dignity and promotes the values of ubuntu, which uplifts people on all levels, thereby complying with both the social and economic aspects of BEE in the creation of opportunities to widen the economic sphere. Furthermore, the co-operative as an enterprise complies with the BEE scorecard as well as with the Codes of Good Practice which were drafted by government in accordance with the provisions of the Broad-based Black Economic Empowerment Act 53 of 2003.

OPSOMMING

In Suid-Afrika word SEB nie net as 'n morele en maatskaplike noodsaaklikheid beskou nie, maar ook as 'n wetlike imperatief. SEB funksioneer op twee vlakke: die skepping en volhoubaarheid van welvaart sowel as die skepping van die nodige geleenthede aan alle Suid-Afrikaners om die basis van die ekonomie te verbreed.

Om suksesvolle transformasie in Suid-Afrika te bewerkstellig is dit gebiedend noodsaaklik om praktiese voorstelle te oorweeg om SEB te laat slaag. Internasionale organisasies soos die International Co-operative Alliance beskou 'n koöperasie as 'n onderneming wat in staat is om die breë publiek te bemagtig deur self-bemagtiging. Op plaaslike vlak word die koöperasie gekenmerk as 'n potensiële dryfveer vir die ekonomiese opheffing van die breë bevolking van Suid-Afrika. Koöperasies kan op KMMO- sowel as groot korporatiewe skaal gevestig word. In 2005 is die Koöperasie Wet 14 van 2005 gepromulgeer met die doel om registrasies van koöperasies te vergemaklik.

Koöperasies beskik oor die volgende kenmerke, wat hulle ideaal geskik maak vir Suid-Afrikaanse omstandighede: koöperasies is veelsydige ondernemings, hulle is toeganklike ondernemings omdat hulle stigting koste-effektief is en daarom maklik tot stand kan kom; hulle het beide 'n maatskaplike en ekonomiese funksie, 'n een-mens-een-stem stelsel is van toepassing op die bestuur van die koöperasie en hierdeur word demokratiese bestuursbeginsels bevorder en laastens, word die beginsels van individualiteit en outonomie ook deur 'n koöperasie bevredig.

'n Suksesvolle koöperasie bevorder nie net die menswaardigheid van die individu nie, maar ook van die hele groep volgens die waardes van ubuntu en derhalwe beantwoord die soort onderneming aan die maatskaplike en ekonomiese vereistes van SEB, aangesien dit ekonomiese geleenthede skep om die ekonomiese basis te verbreed. Die koöperasie as onderneming voldoen aan die SEB telkaart, sowel as aan die Riglyne vir Goeie Praktyk wat deur die regering opgestel is, volgens die riglyne van die Wet op Breë Basis Swart Ekonomiese Bemagtiging 53 van 2003.

KEYWORDS

- BEE
- Black Economic Empowerment
- Broad-based Black Economic Empowerment
- Broad-based Black Economic Empowerment Act 53 of 2003
- Business enterprise
- Co-operative
- Cooperative
- Co-op
- Co-operative enterprise
- Co-operative law
- Co-operative Societies Act 91 of 1981
- Co-operatives Act 14 of 2005
- Dual function
- Social benefits in business
- Stokvel
- Ubuntu
- Patronage proportion
- Scorecard
- Company

ANNEXURE 2
INTERVIEW – YEBO CO-OPERATIVE LTD
ERNEST BIYELA TREASURER:¹

1. What is YEBO co-operative Ltd? Please give me a brief explanation / outline.

“Yebo co-operative was formed by groups of businesses, i.e. farmers, bakeries, spaza-shops etc., with the objective of creating a support-rendering structure to their endeavours to succeed in business. These benefit structures are mainly the following: buying in bulk, collective savings and training of young upcoming accountants in order to provide services to the members of the co-operative. This structure would create a point of co-ordination for all co-operators to combine the power of their numbers to influence the business environment.”

2. Who are the member groups? Would you say that these groups (member groups of the YEBO coop) are a good combination to work with and why?

“The groups are made up of farmers, traders, bakeries who have organised themselves in such a way as to co-operate in matters of mutual interest. This is a good combination since, their different needs when mobilised at co-operative level becomes an effective tool when the co-operative engages in negotiations with suppliers of goods and services.”

3. YEBO is a very unique initiative, how did you come about the idea to starting such an initiative?

“The German Co-operative and Raiffeisen Confederation,² presented a workshop in which we realized the potential of co-operatives and unifying the small businesses and spaza - shops in the township; as they have the first hand experience in this type of co-operatives for over a century in Germany.³ Through the advantages of co-operation all the small businesses in the township area can reap the advantages of bulk buying, collective banking and other services we offer, while they

¹ This interview was conducted on 13 April 2006 and a personal follow-up interview was undertaken on 15 April 2006 in Pretoria with Mr. Ernest Biyela. All the remarks made were recorded and edited with the permission of Mr. Ernest Biyela.

² Hereafter referred to as the DGRV.

³ These so called Spaza Shops are businesses that are unique to Township structures. These are small businesses run from the home of the owner and which sells a little bit of everything – thus some kind of general dealer. Because the business is forced to buy stock from another retailer; the profit margin of these ventures are often very small and they struggle to survive. The purpose of these shops is more one of convenience than competitiveness, which illustrates the people’s commitment to community and one another.

are still free to run their businesses as they deem fit. More so, through the expertise and mentoring of DGRV, we have realised that co-operatives need to create an integrated system in order to benefit from the power of their numbers. If small businesses and individuals are operating in isolation from each other, no matter how big their numbers can be, they will only benefit the big businesses.”

4. How do you regulate your internal affairs, (how does your discussion making process work) how is it regulated or controlled?

“There is democratically elected board of directors which runs the internal affairs of the Yebo co-operative benefiting from the support and expertise of DGRV. A representative of DGRV is always present as observant member of the board, thus without voting powers. The board meetings are held every second month mostly telephonically (via a tele-conference system) as our board members are situated in seven provinces of South Africa.”

5. What is your vision and mission statements by which you run your business?

“Our vision and mission is to develop, promote and safeguard a sound self-help network of emerging business co-operators in South Africa capable of creating sustainable and decent job opportunities against the war of poverty which is undermining our communities.”

6. What would you say causes co-operative ventures to be successful / fail?

“Firstly, co-operative ventures like this only stand a chance to succeed, when they are really run and controlled by the members on democratic values. That means if the members have to be in control and need to devise strategies to be able to sustain their co-operative, themselves in the long-term rather, than perpetual financial dependence upon donors or governments. More so, if the board is not democratically elected the members will refuse to support and adhere to such a board’s decisions and ultimately will revoke their membership. It is As soon as members feel that the co-operative is not serving their needs they way they want, they see no reason to actively participate in its activities. Secondly, it is an imperative for the co-operative to become self-financing. At the Moment the DGRV are the donors/sponsors of Yebo. We are very thankful for this, but also realize that the co-operative must be self-financing in order to be successful in the long run and more specifically, without this self-financing capacity the members will not have a final say on how the co-operative should serve their needs.

We plan to become self-financing through the following ways:

firstly, through the bulk buying of baking ingredients the members save a substantial amount of money while a minimal fee of R5 or 4% per bag of flour is levied in favour of the co-operative; secondly, through collective banking the members of the co-operative are able to negotiate a better interest rate for the surplus funds in this account, here also a small percentage is retained for the co-operative's use.

Furthermore Yebo is also considering implementing another initiative in order to raise funds. The idea is to purchase maize meal in large quantity and to sell it to consumers in the township. Thus, the consumers will obtain the product at a much cheaper price and save on transportation costs as opposed to purchasing the same quality and quantity in the cities; more so a percentage can also be added and retained by the co-operative.

Much work must still be done in educating the community about what co-operatives are and the advantages thereof, but more so insufficient managerial and financial skills ensure the downfall of many upcoming businesses in South Africa. “

7. Why did you choose to start a co-operative instead of any other business enterprise?

“A co-operative proved to be a suitable vehicle to achieve our objectives because it allows an unlimited number of businesses to co-operate within the ambit of a specific Act of parliament which has been passed to facilitate legal support to emerging businesses.”

8. How has the existence of the YEBO made a difference to the lives of its members groups and employees?

“The bulk-buying strategy of Yebo has managed to reduce purchasing prices with the obvious benefit of increasing the profit margin of our members' businesses. This has a potential of giving our members, who are employers, additional money to retain/attract good quality staff for their businesses.”

9. Do you think co-operatives can be a valuable tool for social upliftment, BEE and even poverty alleviation? Why?

“Yes, because co-operatives, when belonging to an integrated system, can benefit from their numbers to influence the prices in the market to be favourable for their small businesses and customers. And since they are owned and run by members of the communities where they operate they can respond appropriately and effectively to the social development needs of the communities where they derive their business support. As they prosper and expand they can provide decent and sustainable source of employment for other community members. Thus, this concept can work for anyone and it is not a system in which management becomes rich while the employees and other members at the bottom remains in the same financial position as before, like in the case of franchises. Furthermore, the co-operative’s social structure is very unique but definitely an ideal vehicle for social upliftment as it often synonymous with African communal culture. This trend of growing small businesses can be an effective way to involve many previously disadvantaged individuals in BEE”

ANNEXURE 3

INTERVIEW – DR TOBIAS DOYER CEO OF THE AGRICULTURAL BUSINESS CHAMBER

1. Why do you prefer proportional voting rights as apposed to democratic voting rights, i.e. one person one vote?

“The proportional voting right system was instituted to motivate bigger members to remain members of the co-operative. Larger members contribute a larger share to the capital of the co-operatives through their membership interest. As a consequence these members have a higher risk exposure in the activity of the co-operatives versus other co-operative members. The proportional voting right system is implemented to give these members an increased control over the activities of the co-operatives. It was in all the co-operatives members’ interest to motivate these larger members to remain part of their co-operatives to ensure that the buying power and market presence of the co-operative is maintained and kept as big as possible. The objective of this system was to prevent larger members from starting their own companies because they wanted to reduce their capital risk exposure. One has to admit that this is a slight departure from fundamental co-operative principles and a hybrid company control system. This phenomenon was particularly prevalent in capital intensive co-operatives where members had a large share of their personal capital committed to the co-operative and also in co-operatives where there was a diversity in members in terms of their primary activities for example a grain co-operative which is capital intensive versus a livestock co-operative which is not as capital intensive. When these two are combined the grain co-operative members would through the proportional voting system have stronger control and say over their capital in the co-operative.”

2. Economic enterprise versus social enterprise

“First of all, one has to keep in mind that a co-operative is established to facilitate the economic activities of members, therefore through collective action, these co-operative members gain access to a certain market service or asset. The primary objective therefore is to facilitate economic interaction. To my mind there should be a clear distinction between a social enterprise for example a not for profit organization and an economic organization. A co-operative is not necessarily a profit organization but facilitate members to enable them to earn profits in their own right. Therefore social upliftment in the co-operative context is achieved through the facilitation of economic activities, the empowerment of people to

participate as businesses, and therefore create wealth in the process. An organization with a purely social objective would focus on service delivery for no gain. This is especially true for where the market system fails and does not provide a specific service and where the community consequently comes together to provide that service collectively and in this way also enhance the general livelihood and alleviate poverty within the community. This is the reason why I believe that there should be a clear distinction between co-operative, and for example Section 21 companies, because a Section 21 company does not trade and do business per sé. A co-operative is specifically created to enable members to participate in economic activity. To preserve the identity and the reputation of co-operatives it is always important to make a clear distinction between social activities and economic activities because co-operatives are usually formed by groups of people that want to gain access, these co-operatives usually has a fair social conscience it is done by the people for the people, but when you want to do something purely for the social objectives, for example providing free medicines or something like that, then you must clearly engage or use the Section 21 corporate form.”

3. The communist institution versus capitalist institutions

“Yes, I agree, that if you allow the socialist agenda to dominate co-operatives will become irrelevant as economic entities. That is why it is so important to maintain the point that co-operatives are primarily enterprises and not social institutions. Conversely, the biggest danger that we have noted in Africa is that co-operatives, because they have a social objective, get captured by government, and these turns into instruments of government where they get bureaucratized and in the end lose their efficiency and effectiveness.”

4. Do you think the 2005 Act included stokvel societies?

“Yes, the objective was originally to include stokvel societies, burial societies, etc in the Act or to enable them to register as co-operatives in terms of the Act. However, I think that these will eventually fall under the Co-operatives Banking Act when that gets approved by parliament and that special provision will be made for these. Originally it was envisaged that these stokvel societies should be included to enable government to support, and of course, to a certain extent also control these societies. Especially in terms of the banking the unbankable as politically terms sometimes.”

5. Any criticism on 2005 Act?

“The first main criticism from the Agricultural Business Chamber members of course is the loss of the proportional voting system which we discussed earlier. The second big problem that we have got with the Act is the fact that companies or legal entities are prevented from becoming members of primary co-operatives. This is especially a problem in the agricultural sector where farmers conduct their business in companies, trusts, close corporations, etc. This is where a close corporation cannot become member of a primary co-operative and therefore the members of this close corporation have to join the co-operative in their personal capacity. This creates problems where surpluses are distributed amongst the members and the surpluses are taxed in the hand of the private individual which remove her ability to manage tax within the legal entity in which she was conducting her business. This also creates problems in terms of estate planning where the transfer of the co-operatives shares will become more difficult because it is owned by individuals. We firmly believe that this was a serious mistake in the Act. We maintain that it is an advantage that the new Act is simpler and reduces the regulatory burden on co-operatives, however, we also have to recognize that the unintended consequence of that was that it opens up co-operatives to greater incidence of fraud, etc.”

6. Why do so many co-operatives convert or deregister?

“The primary reason why agricultural co-operatives converted to companies were because of economic realities. Because of the changes in regulation of state support it became easier for co-operatives to manage their affairs as companies.”

7. Why did the registration of co-operatives rise in 2005?

“I am personally quite concerned about this. Most co-operatives are being registered for the simple reason that the government is providing lots of support and grants for co-operatives. The result of this is that the communities are forming co-operatives with the sole objective of accessing government grants and government loans. Therefore, there is no real business imperative to establish that co-operative. As a consequence I believe that as co-operatives start to fail, it will tarnish the image of co-operatives and it will not be a popular or generally accepted form of enterprise in the economy in future.”

8. Co-operatives in BEE

“When we think about Black Economic Empowerment in co-operatives one should first consider the 7 elements of the BEE Scorecards being ownership; management control; skills development; employment

equity; preferential procurement; enterprise development and corporate social investment. In recognizing that co-operatives are primarily economic enterprises and secondary social enterprises, there are certain linkages that we can see. First of all equity transfer – this is difficult because a co-operative cannot necessarily supply or leverage capital to invest or buy parts of a business as this might fall without the ambit of the objective of a co-operative. One would usually expect that people would establish a trust or a company to engage in ‘equity investment’. If a company wants to transfer equity to the benefit of people, they would use a trust, but when the community would get together to invest in a company that would typically be a company. It is relatively difficult to see how a co-operative participate in B-BBEE equity. Management control is not relevant to the development of co-operatives because it specifically focuses on employment equity within management structures. Skills development would be relevant in the co-operative context either because skills development essentially focuses on people within the enterprise. The real opportunities however are preferential procurement and enterprise development where enterprises can use co-operatives as entities to supply certain goods and services where the community would get together to supply these services given this new economic opportunity within the ambit of the BEE Scorecards. Enterprise development also creates opportunities for enterprises to assist co-operatives and help them to establish economic activities within communities and finally corporate social investment where measured enterprises in the BEE Scorecards can engage in using co-operatives as vehicles to access members for corporate social investment activities.”

ANNEXURE 4

INTERVIEW – MR BERND HARMS GERMAN CO-OPERATIVE AND RAIFFEISEN CONFEDERATION

Question 1: The proportional voting right in a co-op versus one person one vote. Which of the two do you prefer and why?

Co-operatives are distinguished from shareholding firms by their democratic nature, with voting rights being assigned by person rather than by size of shareholding. In this sense they are 'not for profit', but they do produce surpluses that can be distributed to their members in the form of a patronage refund. Thus, the basic rule for primary co-operatives is 'one member - one vote'. This also applies to members being legal persons. Exceptionally, (a limited number of) plural voting rights may be granted through the constitutions/statutes. The volume of transactions with the co-operative or other criteria might be used when allocating these rights. In no case, however, may plural voting rights be granted on the basis of the amount of capital invested by a member. The plural voting rights may not be exercised when taking decisions on important matters, as specified by the law. In no case must one single member be in a position to take decisions by virtue of the number of voting rights the member is holding or representing. However, in secondary and higher level co-operative organisations, a system of plural voting rights may be applied without the above mentioned restrictions, but in line with democratic principles. In general, however, this is a tricky question. Active members with high transactions and multiple share holding are pressurizing to get more votes. To allow it or not, it might result in their withdrawal. However, one should not dream too much. The "basis democrats" are well advised to recognize the factual decision making power of the "big" ones. One could also think of a combination of plural voting rights with increased liability.

Question 2: The so-called dual function of a co-operative; namely the element of social upliftment and the economic element of the business enterprise, can it co-exist on equal footing in a co-op and still be a successful business enterprise?

Co-operatives mainly work as socio-economic and not as political organisations. But working together in co-operatives is a way to increase the power of small economic actors by co-ordinated action. Promoting co-operatives among the relatively poor means promoting their empowerment and enabling them to find their way out of poverty. Following the principle of co-operation among co-operatives, co-operatives tend

to network and to build up vertically integrated systems composed of primary, secondary and tertiary societies and federations. This integrated systems may further strengthen their buying power through economies of scale, or reduce transaction costs. Small and medium enterprise development could be strengthened through the creation and development of co-operative organisations. Co-operatives and their members have a small and/or medium business character. However, through their integrated structures they are able to compete with other enterprises without losing their independence, their ability to adapt to local capacities, their acceptance by members, their innovative potential and their individual risk taking capacity. Private and autonomous co-operatives are a tested model which persons affected by rapid economic, social, technological and ecological change can use to adjust to new requirements, to improve their situation by joint and coordinated efforts. If this approach is taken, co-operatives will only be formed, if the aims of the individual member can be achieved better in co-operation with others than alone, if access to knowledge, resources and markets can be facilitated, if transaction costs can be reduced and the position of the individual member as buyer or seller on the market can be strengthened.

Question 3: Do you think co-ops are effective vehicles for the implementation of black economic empowerment, why?

In many cases, governments have provided too many regulations and controls on the activities of cooperatives for them to be able to function effectively. Ideally, they should act only to create the general framework conditions needed so that cooperative autonomy, self-financing and self-reliance is strengthened and not undermined. This means ensuring that legally, groups are allowed to elect their own leaders; to market their own goods; to earn profits and to make their own decisions about distributing surplus and to carry out numerous other business activities in the members' interests. Government's should not otherwise intervene in the internal organisation or operations of a cooperative, and should leave all attempts to improve efficiency and to comply with cooperative principles and values to the members themselves.

It should be clearly understood that cooperative organisations should not act in any sense as agencies of government, and should not play a role as a governmental agency, or as an entity charged with special responsibilities by a government. The potential which cooperatives have for achieving desirable economic and social conditions must be understood as the potential they have for reaching the objectives of and for satisfying the needs and interests of their own members rather than directly influencing society in general.

Question 4: Can co-ops be developed into vehicles for profit – making alone or will it always remain a vehicle whereby the members of the co-op receives goods and services at a cheaper price alone?

There are a number of conditions which are essential if a cooperative is to continue to be successful after the initial enthusiasm of starting up.

- the cooperative needs to produce visible and tangible (economic and social) benefits for members, outweighing the costs involved in cooperation. Cooperatives can only develop as autonomous self-help organisations when they are able and allowed to operate as business institutions geared to succeed in market competition.
- the cooperative has motivated, experienced and dynamic managers who are able to plan and implement business policies. They must be able to provide the services and goods required by the members, taking into account both the interests and needs of members as well as the entrepreneurial goals of the cooperative enterprise.
- the structure and management of the organisation correspond to the capabilities of its members. If members' competence and motivation is low, the promotion of complicated and complex cooperative organisations does not make sense.

- members participate as both users and owners.

Cooperatives are participative self-help organisations in that the members are also co-owners and have both the rights and obligations of participating in goal-setting, decision-making and control or evaluation processes of their cooperative. Members decide upon the services to be provided and benefit from what is produced or obtained by the co-operative. There should be incentives for them to contribute their own resources (capital, labour, produce) to the development of the cooperative. A major reason for the failure of cooperatives is the lack of participation of members. It is extremely important that members act as both users and owners in the development of co-operative organisations through participation at three levels:

- participation in provision of resources (input participation) e.g. contribution of capital, labour, delivery of produce,

- participation in the decision-making processes of the cooperative organisation as a member in the general assembly, section meetings, work groups, committees or as an elected leader on the board, and
- participation in the produced benefits (output participation), by sharing the surplus earned during the year by the cooperative enterprise, in the form of a patronage refund, interest on share capital, or the use of joint facilities and services.

Cooperatives, as with any business organisation, also need to be flexible and able to change with the circumstances. At present, co-operative organizations are facing the task of transforming and adjusting themselves to a new economic and political environment, market oriented conditions and increasing member demands. This means a need to learn new production methods, new methods of organisation and management, and in particular, ways to help maintain or increase, member loyalty and commitment. This can be achieved through increased participation, communication and information. Cooperation is a method of working together with others having the same or similar problems. It is a method of pooling resources and human endeavour, acting in a disciplined manner, building up self-controlled and self-patronised business organizations. Modern co-operatives were invented to enable people to adjust their way of living and working to the requirement of a money and market economy, to survive as small actors in a world dominated by capital, and globalised markets. This is achieved by coordinated efforts, by joining forces, by building up countervailing power. Cooperation is a learning process in which members of co-operatives have to understand co-operative values and to know and to apply co-operative principles and use them as guidelines for the joint economic activities carried out through their own co-operative enterprise for their own benefit.

Cooperation cannot be created by transfer of assets or external aid. Co-operatives are created by teaching new ways and forms of economic and social collaboration and by convincing people that this is a reasonable way of meeting the challenges resulting from rapid economic, social and technological change. In general, co-operative organizations are service rather than capital orientated. Therefore, the economic result in a co-operative is often called surplus and not profit. It belongs to the members.

Question 5: What do you think of the Co-operatives Act 14 of 2005, is it better than the 1981 Act? Do you have any criticism on the 2005 Act?

The Co-operative Act 14 of 2005 is an important piece of enabling legislation as it creates opportunities for people to organise themselves in co-operatives in order to become active participants in economic growth and their own economic development and empowerment.

The Act reflects the state of international discussions, while at the same time preserving some South African particularities. It adopts the internationally recognized definition and cooperative principles. The Act follows the definition of the International Co-operative Alliance (ICA) as “An autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles” However, the definition of a primary co-operative reads as follows: "primary co-operative" means a co-operative formed by a minimum of five natural persons whose object is to provide employment or services to its members and to facilitate community development. This is in my view a clear deviation from the ICA definition which emphasizes that cooperatives are independent of government and not owned by anyone other than the members. They are associations of persons, which can mean individual people but also ‘legal persons’, organizations that may themselves have members. The Yebo Co-operative for example has only groups and co-operatives as members. This co-operative cannot be a primary co-operative any more. Yebo also work with a number of bakers who are often organized as Trusts or Closed Corporations. These bakers, too, cannot form a primary co-operative. This might have tremendous implications for the economic development policy as it is just these small and micro enterprises that only will survive in the market place if they co-operate with others to benefit from, for example, economies of scale. On the “plural voting rights” see above comments. In addition the Act should have dedicated some sections to the “Supervisory Committee” as it is quite new in the South African context. The restriction to primary cooperatives might not be justified. With regard to the vertical and horizontal cooperative integration (secondary, tertiary co-operatives and federations their powers and duties should have been spelled out. As with primary cooperatives, secondary and tertiary cooperatives also provide for self-control of the member cooperatives on a self-regulatory basis. Such self-control makes state control and influence redundant and constitutes therefore an application of the principle of cooperative autonomy. Especially, the rights and obligations of those structures should be spelled out in more detail.

Question 6: Why do you think so many co-ops fail in South Africa?

The failure of a relative high number of co-operatives is due to two main reasons:

1. Internal reasons:

- Lack of awareness about the principles and functions of a co-operative, the role, rights, duties and

responsibilities of members, leaders and management.

- Sometimes intervention of local authorities or traditional leaders in the internal affairs of co-operatives.
- Limited organisational development of co-operatives.
- Debts, large number of inactive members, lack of financial transparency, lack of management skills of co-operative leaders and lack of business plans prevents co-operatives from obtaining bank loans for co-operative development projects.
- Experienced leaders and managers are necessary; however, the educational levels are often below management requirements.
- In particular, lack of management capability results in:
 - Lack of knowledge about the co-operative, the preparation of own statutes as well as the revision of existing ones and co-operative principles;
 - Limited ability to run day-to-day business activities, to prepare business plans and setting up new business projects;
 - No proper co-operative accounting, auditing and financial reporting
 - Limited marketing skills for accessing markets, market information and knowledge, co-operative pricing, products, demand and new technologies;
 - Neglecting human resources management including job descriptions, delegation of work and responsibilities, staff training and conflict management.

External reasons

It is known from experience that state support for co-operatives is detrimental but nevertheless it is widely believed that without state support co-operative cannot survive.

It is said that co-operatives fail because they receive too little or too much external aid. Frustrated by bad examples, many development experts hold the view that governments and projects should stay away from co-operatives because they are per se inefficient and ineffective. At the same time they recommend to promote other forms of local organisations (farmers associations, saving groups, micro credit schemes) which are considered necessary for channelling external aid to large numbers of small beneficiaries, although such organisations often turn out to suffer from the same deficiencies as co-operatives.

These discussions are dominated by four wrong assumptions:

- Co-operatives are instruments for development.
- Co-operatives must help the poor.
- Co-operatives can be used to control supply, production and marketing of small producers especially

in agriculture.

- Co-operatives can be used by programmes and projects as distribution channels for inputs, credit and services to individual beneficiaries.

Furthermore, the role of the state with regard to co-operatives is often wrongly assessed:

- Governments assume the role of creator and destroyer of co-operatives.
- Governments see themselves as masters using co-operatives as servants.
- Governments take responsibility for the activities of 'their' co-operatives in terms of supervision and liability.
- This leads to the conclusion that when helping others to help themselves, the main question is not if but how this can be done. It appears that the intention behind external aid to co-operatives is the essential factor.

A positive way of promoting development of co-operative self-help organisations for the Government is to

- create a favourable climate for co-operative work,
- guarantee freedom of association and the right to exercise any legal economic activity in groups,
- protect the co-operative name against misuse,
- offer enabling legislation granting autonomy to adjust the by-laws of each co-operative society to the wishes and needs of its members,
- guarantee equal opportunities with other business organisations,
- protect co-operatives against unfair competition, and to
- provide a tax regime for co-operatives which takes their particularities into account.

To promote development means among other things to enable people to make choices and to let them chose for themselves. In the 1970s, co-operatives were criticised for not helping the poor. It was concluded by UNRISD and others that their failure to help the poor discredited co-operatives as change agents. This prejudice is repeated even today, although a closer look at the concept underlying co-operative action would reveal that asking whether cooperatives can help the poor is asking the wrong question. The right question would be: "Can the poor help themselves by forming or joining co-operatives?". In the 1970s (and in the minds of many development experts even today) poverty was mainly seen as a lack of material resources, of low and irregular income. It was thought that such poverty could be alleviated by transfer of resources, external aid, soft loans and secondment of technicians. In the worst case, clever (often self-styled) representatives of the poor use cooperatives to attract external aid for their own purposes. After discrediting co-operatives as a form of organisation by such practices,

the same techniques are currently used in South Africa to organise self-help organisations for the acquisition of external aid. Many people without detailed knowledge of local conditions and careful socio-economic surveys of their target area fall victim to such bogus co-operatives and become critical of all forms of "organised self-help".

Question7: What makes a co-op an unique business form, in your opinion?

Among all business organisations, co-operatives are those reaching down most to the low income groups. However, people below the poverty line usually have insurmountable problems to form viable co-operatives for lack of ability, mutual trust and resources. Only those who have something to pool, who develop the skills, discipline and trust essential for working together in groups and who are capable of managing their own affairs, can improve their lot by organised self-help the co operative way. Co-operatives are the type of formalised business organisation reaching down to the relatively poor, because they

- are mainly based on human endeavour, discipline and organised collaboration,
- require little or no initial capital,
- develop through learning by doing,
- generate social capital both in terms of skills and money over a period of time and
- operate with own resources without depending on external help.

ANNEXURE 5

STATISTICS COURTESY OF THE REGISTRAR OF CO-OPERATIVES NEW REGISTRATIONS IN 1988 TO 2005



COMPANIES AND INTELLECTUAL
PROPERTY REGISTRATION OFFICE

From: G. J. Schutte
Tel: (012) 394-527800 Fax: (012) 394-62780 e-mail: gsch
Ref: K5/3/1

a member of **thedti** group

To Whom It May Concern:

NEW REGISTRATIONS			
YEAR	TRADING	AGRICULTURAL	TOTAL
1988	14	18	32
1989	10	7	17
1990	8	4	12
1991	6	11	17
1992	6	16	22
1993	5	15	20
1994	7	16	23
1995	32	17	49
1996	50	10	60
1997	100	28	128
1998	141	16	157
1999	212	10	222
2000	312	16	328
2001	608	52	660
2002	1531	41	1572
2003	445	87	532
2004	N/A	N/A	511
2005	N/A	N/A	2829
2006	N/A	N/A	825

Yours faithfully

P/P G J SCHUTTE
REGISTRAR OF CO-OPERATIVES

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE
Private Bag X 237, Pretoria, 0001 • Republic of South Africa
Contact Centre: 0861 843 384 • <http://www.cipro.gov.za>

ANNEXURE 6

STATISTICS COURTESY OF THE REGISTRAR OF CO-OPERATIVES DE-REGISTRATIONS AND CONVERSIONS IN 1998 TO 2005



COMPANIES AND INTELLECTUAL
PROPERTY REGISTRATION OFFICE

a member of **thedti** group

From: G. J. Schutte

Tel: (012) 394-527800 Fax: (012) 394-62780 e-mail: gschutte@cipro.gov.za

To Whom It May Concern:

Co-operative	Date of liquidation	REASON	NUMBER
SENSAKO KOÖPERATIEF BEPERJK	12/1/98	CONVERSION	1585
KARAKOEL EN LEWENDE HAWE	15/1/98	CONVERSION	1586
KWV	22/1/98	CONVERSION	1587
KOÖPERATIEWE WYNBOUERS VERENIGING	30/1/98	CONVERSION	1588
CALEDON RIVIERSONDEREND	30/1/98	CONVERSION	1589
BOKOMO KOÖPERATIEF BEPERK	9/2/98	CONVERSION	1590
BOLAND WYNKELDER	02/03/98	CONVERSION	1592
MAMREWEG WYNKELDER	02/03/98	CONVERSION	1593
BEDRASDORPNAPIERSE KOOP	12/03/98	CONVERSION	1595
BNK GROEP KOÖPERATIEF BEPERK	12/03/098	CONVERSION	1596
BOSKO SITRUS KOÖPERASIE	24/3/98	SECTION 44	1597
LETABA ESTATES	24/3/98	SECTION 44	1598
MAGALIESBERG GRAANKOÖPERASIE	23/4/98	CONVERSION	1601
NOORDWES KOÖPERASIE BEPERK	10/6/98	CONVERSION	1603
SUIDWES KOÖPERASIE BEPERK	10/6/98	CONVERSION	1604
BOEREMAKELAARS	6/8/98	CONVERSION	1607
LANKO KOÖPERATIEF BEPERK	6/8/98	CONVERSION	1608
PATENSIE SITRUS	12/8/98	CONVERSION	1609
SUIDAFRIKAANSE DROEVVRUGTE	22/9/98	CONVERSION	1610
RAK 1996	23/9/98	AMALGAMATED	1612
SWLK 1996	23/9/98	AMALGAMATED	1613
MKTV	9/11/98	CONVERSIION	1618
NOBO GROEP	10/12/98	CONVERSION	1619
LIVESTOCK CENTRAL	23/07/98		1620
1999			
UNIE GRAANKOÖPERASIE BEPERK	22/01/99	SECTION 44	1621
ESKORT BACON	22/1/99	CONVERSION	1622
ESKORT HOLDINGS	25/01/99	CONVERSION	1623
KOELENHOF KOOP- WYNKELDER	25/01/99	CONVERSION	1624
STELLENBOSCH KOÖPERATIEWE VRUGTE	11/12/97	SECTION 44	1626
LANDFIN	08/02/99		1627
VETSAK KOÖPERATIEF BEPERK	09/02/99	CONVERSION	1628

LAEVELDSE KOÖPERASIE BEPERK	09/02/99	CONVERSION	1629
PLK KOOP BEHEREND	16/04/99	CONVERSION	1635
PORTERVILLE LANDBOU KOÖPERASIE BEPERK	16/04/99	CONVERSION	1636
ZIZAMELE PRIMARY AGRIC	30/4/99	CONVERSION	1637
GRAANBOERE GROEP KOÖPERATIEF	21/5/99	CONVERSION	1640
OOS VRYSTAAT KAAP	21/5/99	CONVERSION	1641
ALGOA CO-OPERATIVE LIMITED	03/06/99	CONVERSION	1643
IPELENG PRIMARY AGRICULTURAL	18/6/99	LIQUIDATION	1644
MOORREESBURG KORINGBOERE	28/06/99	CONVERSION	1645
TOWERKOP SUIWEL	19/7/99	AMALGAMATION	1646
KAAP SUIWEL KOÖPERASIE	19/7/99	AMALGAMATION	1647
VEEKOS	27/07/99	LIQUIDATION	1653
FRANSCHOEK WINGERDE	09/12/99	CONVERSION	1654
LANGEBERG KOÖPERASIE BEPERK	21/9/99	LIQUIDATION	1656
2000			
STOCK OWNERS CO-OP	07/01/2000	AMALGAMATION	1657
STOCKOWNERS CAPE EASTERN	07/01/2000	AMALGAMATION	1658
BKB FINANS	23/02/00	SECTION 44	1660
FRASERBURG KOÖPERATIEWE VLEISPRODUSENTE	07/03/00	AMALGAMATION	1661
FRASERBURG KOÖPERATIEWE MOTORHAWE	07/03/00	AMALGAMATION	1662
UNIVERSAL FRUIT TRADE	26/08/99	LIQUIDATION	1664
KLK KOÖPERATIEF BEPERK	15/5/00	LIQUIDATION	1667
BAMBANANI KOÖPERATIEF BEPERK	15/5/00	SECTION 44	1668
THUSANO KA MOKU CO-OPERATIVE LIMITED	12/9/00	SECTION 44	1671
MKUZI FALLS KOÖPERATIEWE SITRUS	28/9/00	SECTION 44	1672
SOUTH AFRICAN MASIVE PRODUCER	28/9/00	SECTION 44	1673
GROCANE FIRE INSURANCE	04/11/99	LIQUIDATION	1675
2001			
SOUTH AFRICAN FIRE AND GEN PROTECTION	2001/02/15	CONVERSION	1676
KOLOSUS FOOD TECH	2001/02/15	CONVERSION	1677
KOLOSUS LEATHER	2001/02/15	CONVERSION	1678
KOLOSUS BRAND INVESTMENT	2001/02/15	CONVERSION	1679
HUIDE EN VELLE	2001/02/15	CONVERSION	1680
G H HACKMANN	2001/02/15	CONVERSION	1681
SUNDAY RIVER CITRUS	2001/02/15	CONVERSION	1682
NOBE 1997 KOOP	2001/06/13	SECTION 44	1683
PATRYSLAAGTE VRUGTE PRODUSENTE	2001/06/13	SECTION 44	1684
HEXVALLEI KOOP BEPERK	2001/06/21	LIQUIDATION	1690
NATAL MIDLANDS CITRUS	2001/11/12	SECTION 44	1690
VALOR CENTRAL CO-OPERATIVE LIMITED	2001/11/19	CONVERSION	1693
2002			
GOEDEHOOP SITRUS KOÖPERAIE BEPERK	2002/01/10	CONVERSION	1696
HEXVALLEI KOPELKAMERS	2002/02/08	CONVERSION	1697
MERWIDA KOOP WYNMAKERY	2002/07/16	CONVERSION	1698
RUSTENBURG KOOP PAKHUIS	2002/07/16	CONVERSION	1699

CADISHI AGRICULTURAL CO-OPERATIVE	2002/08/19	SECTION45	1701
PLK KOÖPERASIE	2002/07/03	SECTION45	1706
CALA AGRICULTURAL CO-OP	2002/08/12	SECTION45	1709
CACADU AGRICULTURAL	2002/08/12	SECTION45	1711
BAREKI FARMERS	2002/08/19	SECTION45	1712
BUELAH FARMERS CO-OPERATIVE LIMITED	2002/08/26	SECTION45	1723
ELANDSKRAAL PEOPLES AGRICULTURAL	2002/08/23	SECTION45	1728
ASIBAMBISANE FARMERS CO-OPERATIVE LIMITED	2002/08/23	SECTION45	1730
BOTEKO PRIMARY AGRICULTURAL CO-OP LTD	2002/09/20	SECTION45	1734
DONDOTHA AGRICULTURAL AND CREDIT	2002/09/20	SECTION45	1736
GAUTENG FARMERS CO-OPERATIVE LIMITED	2002/09/25	SECTION45	1740
BALASI PRIMARY AGRICULTURAL	2002/10/10	SECTION45	1749
GROOT EILAND KOOP	2002/12/18	AMALGAMATION	1753
NUWEHOOP WYNKELDER	2002/12/18	AMALGAMATION	1754
	2003		
SIBAMBA UMNOTHO AGRICULTURAL CO-OPERATIVE LIMITED	2003/01/06	SECTION45	1760
KUTLWISISO FARMERS TRADING CO-OPERATIVE	2003/01/07	SECTION45	1766
NATAL KIWI FRUIT CO-OPERATIVE LIMITED	2003/01/15	SECTION45	1773
IPELEGENG ORGANIC AGRICULTURAL	2003/02/07	SECTION45	1778
IVORY ORGANIC AGRIC	2003/02/07	SECTION45	1779
IMMELMAN PRODUCERS CO-OP	2003/02/07	SECTION45	1781
UPPER TUGELA COMMERCIAL FARMERS	2003/02/18	SECTION45	1790
DELVILLE BANTU CANE GROWERS	2003/02/17	SECTION45	1794
DODKODWENI AGRICULTURE	2003/02/17	SECTION45	1796
PHOMA-MO REKOPANE ORGANIC AGRICULTURAL CO-OP	2003/03/05	SECTION45	1803
WPK 1997	2001/04/05	LIQUIDATION	1808
VUKUHAMBE FARMERS TRADING	2003/04/04	SECTION45	1810
ZAMA PRIMARY FARMERS	2003/04/11	SECTION45	1818
SEBENZANI FARMERS CO-OPERATIVE LIMITED	2003/04/11	SECTION45	1819
MASAKHANE AGRICULTURAL	2003/04/14	SECTION45	1820
SOUTHERN FARMERS	2003/04/14	SECTION45	1821
BOTHAS HOEK	2003/04/15	SECTION45	1829
ESIKHOWINI AGRIC & CREDIT	2003/04/17	SECTION45	1833
PONELOPHELE BEEF PROJECT	2003/04/17	SECTION45	1835
LUKHANYISO EMERGING FARMERS	2003/04/17	SECTION45	1836
REAHISANE FARMERS	2003/04/17	SECTION45	1837
MAGADE FARMERS CO-OPERATIVE	2003/05/22	SECTION45	1849
HLANEKI FARMERS	2003/05/22	SECTION45	1852
MGK 2000	2002/07/01	SECTION45	1856
NOORDWES 1998	2002/07/11	SECTION45	1859
SHOSANGUVE URBAN FARMING	2003/06/10	SECTION45	1861
PHEZUKOMKHONO	2003/06/10	SECTION45	1862
SOTANGA ORGANIC AGRICULTURE	2003/06/10	SECTION45	1863
UBONGWA FARMERS	2003/06/12	SECTION45	1869

BUBESI PRIMARY AGRICULTURAL CO-OPERATIVE LIMITED	2003/06/20	SECTION45	1873
UNQAMBOTHI TASTY CHICKEN	2003/07/10	SECTION45	1883
NDEBELE AGRICULTURAL	2003/07/24	SECTION45	1887
CERES FRUIT GROWERS	2003/08/13	CONVERSION	1895
MASITHANDANE FARMERS	2003/09/11	SECTION45	1911
KHUTSALA AGRIC	2003/09/11	SECTION45	1912
SAFIKA POULTRY	2003/10/10	SECTION45	1915
TSWANA LIVESTOCK	2003/09/12	LIQUIDATION	1932
SLAGDIENSTE KOÖPERATIEF	2003/11/12	SECTION45	1935
UBUNTU FARMERS	2003/11/21	SECTION45	1937
MASIMBONGE POULTRY	2003/11/21	SECTION45	1938
NSINGABANTU STOCK FARMING	2003/11/21	SECTION45	1940
THEMBENI MAIZE PROJECT	2003/12/02	SECTION45	1942
TSWELOPELE FARMERS	2003/12/02	SECTION45	1943
SMALL MILLERS	2003/12/10	SECTION45	1956
ZIZAMELE MAIZE CO-OPERATIVE LIMITED	2003/12/12	SECTION45	1964
GCINISA FARMERS	2003/12/17	SECTION45	1970
POTGIETERSRUS TABAK	2003/12/03	LIQUIDATION	1975
2004			
NCIPIZWENI AGRICULTURAL PRIMARY CO-OPERATIVE LIMITED	2004/01/14	SECTION45	1980
RIEBEEK WYNKELDER	2004/01/30	CONVERSION	1984
LIVESTOCK CENTRAL	1998/07/23		1987
TRAWAL WYNKELDERS	2004/02/26	AMALGAMATION	1989
KLAWER KOOP	2004/02/26	AMALGAMATION	1990
FRANSCHOEK WYNKELDER	2002/09/09	SECTION45	1992
NATIONAL CO-OPERATIVE DAIRIES	2001/04/08	CONVERSION	1994
INTUKHUKO FARMERS CO-OPERATIVE LIMITED	2004/04/20	SECTION45	2000
ZAMANI PIGGERY	2004/05/03	SECTION45	2005
PHAKAMANI TIKUNI FARMERS	2004/05/03	SECTION45	2007
TAIWANESE AGRICULTURAL	2004/05/03	SECTION45	2008
ORANGE FARM BUSINESS AND COMMUNITY	2004/05/26	SECTION45	2011
MASIBAMBISANE FARMERS	2004/05/26	SECTION45	2013
MVELAPANDE ORGANIC AGRICULTURAL CO-OPERATIVE LIMITED	2004/06/17	SECTION45	2021
MAFU FARMERS	2004/06/23	SECTION45	2023
STOCK OWNERS		LIQUIDATION	2031
RUST DE WINTER AGRICULTURAL CO-OPERATIVE LIMITED	2004/10/04	SECTION45	2043
SENTRALE KATOEN	2004/08/25	SECTION45	2054
2005			
CRK KOÖPERASIE BEPERK	2005/01/20	SECTION45	2055
NTLAMBE FARMERS	2005/02/18	SECTION45	2059
VUKA UTENTELE MSWATI AGRICULTURAL	2005/02/18	SECTION45	2062
TIYISELANE FARMERS CO-OPERATIVE LIMITED	2005/02/18	SECTION45	2063
BARRYDALE KOOP WYNMAKERY	2005/04/29	AMALGAMATION	2074

LADYSMITH KOOP WYNMAKERY	2005/04/29	AMALGAMATION	2075
KESTELL LANDBOU	2005/04/29	SECTION45	2076
EMHLABENI CO-OP	2005/04/29	SECTION45	2077
TZANEEN SITRUS	2005/05/06	SECTION45	2078
SIKHULANOLWAZI CO-OPERATIVE LIMITED	2005/05/23	SECTION45	2084
MAGALIESBERG SITRUS	2005/06/06	CONVERSION	2086
VREDENDAL KOÖPERATIEWE WYNKELDER	2005/06/06	CONVERSION	2088
MEDICINAL FLORA	2005/06/09	SECTION45	2090
MAKHATINI FARMRS	2005/06/10	SECTION45	2092
MASAKHANE MFINIZO PRIMARY AGRIC	2005/06/14	SECTION45	2101
SIYAHLANGANYELA COMMUNITY DEVELOPMENT	2005/06/14	SECTION45	2104
THEMBALETHU AGRICULTURAL PRIMARY CO-OPERATIVE LIMITED.	2005/06/17	SECTION45	2110
SPRUITDRIFT WYNKELDER	2005/06/22	CONVERSION	2120
SENTRAAL KOÖPERATIEWE TABAK BEURS	2005/09/08	SECTION45	2141
BAINSVLEI LANDBOU	2005/10/24	SECTION45	2143
AMATIKULU BANTU CANE GROWERS	2005/10/25	SECTION45	2149
BATHEMBU AGRICULTURAL PRIMARY CO-OPERATIVE	2005/10/25	SECTION45	2154
BA ALI AGRICULTURAL	2005/10/25	SECTION45	2155
ASIZAME AGRICULTURAL GARDENING	2005/10/25	SECTION45	2156
VALLEY PACKERS	2005/11/24	CONVERSION	2157
SANDPRO SENTRAAL	2005/12/19	SECTION45	2168
HEIDELBERG LANDBOU	2005/12/21	SECTION45	2176
SA DENDROGENETIESE ONTWIKKELINGS	2005/12/12	SECTION45	2178
TABLE MOUNTAIN CO-OPEARTIVE LIMITED	2005/12/22	SECTION45	2180
GOODHOPE AGRICULTURAL CO-OPERATIVE LIMITED	2005/12/23	SECTION45	2188
2006			
PORTERVILLE KOOP WYNKELDERS	2006/01/03	AMALGAMATION	2189
TULBACH KOOP WYNKELDER	2006/01/03	AMALGAMATION	2190
NUWE OOS VRYSTAAT KAAP	2006/01/12	SECTION45	2191
WINDMEUL WYNBOUERS	2006/01/17	SECTION45	2192
TLK KOÖPERATIEWE	2006/01/18	SECTION45	2197
OSTRIMARK SA	2006/02/17	SECTION45	2199
EASTERN CAPE SUGAR CANE	2006/02/22	SECTION45	2203
AMANGCWELESHE PRIMARY FARMERS	2006/03/02	SECTION45	2204
BAMBANANI VEGETABLE FARMING	2006/03/02	SECTION45	2205
SECTION 44&45 IS WHEN CO-OPERATIVE IS REMOVED FROM THE REGISTER			
DUE TO THE FACT THAT IT IS NOT DOING BUSINESS			

Yours faithfully
P/P G J SCHUTTE
REGISTRAR OF CO-OPERATIVES

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE
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