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Proposed R100 Billion Transformation Fund Will Have Significant Implications For Broad-Based Black Economic Empowerment (“Bbbee”) Regulation In South Africa

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On 19 March 2025, the Department of Trade, Industry and Competition (“DTIC”) issued a draft Transformation Fund Concept Document for public comment. The proposed Fund was first announced by the Minister of Trade, Industry and Competition (“Minister”) in January 2025 and involves raising R100 billion over 5 years for the purposes of supporting firms that are majority owned and controlled by black people as defined in the Broad-Based Black Economic Empowerment Act (“BBBEE Act”).

The concept document provides that the proposed Fund will be administered through a Special Purpose Vehicle (“SPV”). The SPV will be a tax-exempt entity and a registered Financial Services Provider in terms of the Financial Advisory and Intermediary Services Act. It will have an eight member board of directors appointed by the Minister which will include two representatives from the private sector. The Fund will be financed by the Government, public entities, donor agencies (including international organisations and development banks) and the private sector. Regarding funding from the private sector, two main sources are identified in the concept document –

1. the Equity Equivalent Investment Programme (“EEIP”) which allows the local subsidiaries of certain multinationals to score BBBEE ownership points without having an actual black shareholding. Funds are instead contributed to BBBEE initiatives approved by the DTIC. It is not clear if the DTIC will request changes to existing EEIPs to require them to contribute to the proposed Fund or whether contributions to the Fund will only be required for new EEIPs;
2. allowing firms to score Enterprise and Supplier Development (“ESD”) points for the purposes of their BBBEE rating by making a contribution to the proposed Fund. In this regard, the DTIC will amend the current Codes of Good Practice (“Codes”) issued under the BBBEE Act with regard to the measurement of a firm’s score for ESD.

The concept document does not give much detail regarding the proposed amendments to the ESD provisions of the Codes. In terms of the BBBEE Act, any amendments to the Codes must be published by the Minister in the Government Gazette for public comment for at least 60 days.

The current framework for measuring a firm’s ESD score in terms of the Codes involves assessing a firm’s supplier development (“SD”) and enterprise development (“ED”) contributions to firms which are at least 51% black owned and have a total annual revenue of R50 million or less (contributions to firms exceeding such threshold may be recognised for five years if they first received assistance while their annual revenue was under the threshold). A firm’s SD and ED score is measured having regard to targets based on its net profit after tax (2% for SD and 1% for ED). The key difference between SD and ED is that a SD beneficiary is an existing supplier whereas an ED beneficiary is not an existing supplier. The Codes provide that if a firm fails to score at least 40% of all the available points for SD and ED, its BBBEE rating will automatically be downgraded by one level if its total annual revenue exceeds R50 million. ESD accordingly constitutes a key part of determining a firm’s BBBEE rating.

The current framework involves establishing a direct business relationship between the firm seeking ESD points and ESD beneficiaries identified by it. This has several commercial benefits for the beneficiary especially as the Codes contemplate both monetary and non-monetary SD and ED contributions like investments, loans, grants, guarantees, credit facilities, training, mentoring, discounts and other preferential terms with a view to integrating the beneficiary directly into the firm’s supply chain. The contributions are made directly to the beneficiary and generally requires significant time and resources from the firm which develops and implements the ESD program. Significantly, the beneficiary must receive the contributions during the firm’s financial year in order to contribute to the firm’s ESD score for that financial year. This incentivises the quick delivery of contributions to beneficiaries.

The concept document however indicates that a firm could earn ESD points “immediately” by merely contributing to the proposed Fund. This could save the firm significant time and costs if it did not have to implement its own ESD program. The concept document is not clear on this point but states that a “participation agreement” will have to be concluded with the SPV. The terms and conditions of such agreement will have to be carefully considered especially if it seeks to impose obligations in addition to the contribution to the Fund.

The concept document states that contributions to the Fund will generally be exempt in terms of section 56(1)(h) of the Income Tax Act and would qualify for a deduction in terms of section 18(A) of the Income Tax Act. There may accordingly be a tax incentive in contributing to the Fund.

Compliance with the current SD and ED targets in the Codes are not obligatory and ESD points are scored on a pro rata basis having regard to whether or not a firm meets the target. This means that a firm has the flexibility to decide how much to spend on SD and ED (bearing in mind the risk of the automatic downgrade referred to above). It is not clear from the concept document whether a firm’s contribution to the Fund may be less than the target.

The concept document states that a firm may decide whether or not to contribute to the Fund ie contributions will be voluntary. Presumably a firm will be able to choose not to contribute and rather continue with its own ESD program although the concept document is not clear in this regard. Much will depend on the detail of the proposed amendments to the Codes.

The current framework envisages direct business relationships between private sector firms and ESD beneficiaries. The concept document envisages interposing the SPV as a third party between the private sector and ESD beneficiaries. The SPV will collect and distribute funds and implement its own ESD initiatives. This adds complexity to the delivery of ESD contributions to beneficiaries and may adversely affect the benefits for beneficiaries of such direct business relationships.

There are several existing entities and programs tasked with promoting BBBEE and supporting majority black owned and controlled business and small, medium and micro enterprises (SMMs) including the National Empowerment Fund, the Industrial Development Corporation, the DTIC's Black Industrialist Scheme, the Small Enterprise Development and Finance Agency (SEDFA) and the Department of Small Business Development. A key question is whether the funds earmarked for the proposed Fund should not rather be provided to existing entities and programs rather than establishing a new entity.

The proposed Fund should operate in conjunction with and supplement (rather than duplicate and overlap with) existing entities and programs. The effect of the Fund on existing ESD programs being implemented by the private sector should also be carefully considered. Ultimately the Fund's success will depend on its delivery, efficiency, credibility and good governance.



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