

BusinessDay

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FTSE-JSE indices	Close	% ch	FTSE-JSE all share daily close	Bonds/forwards	% ch	Currencies	IRESS	% ch	Commodities	Latest	% ch	Foreign Markets	Latest	% ch	
All Share	52396.40	▲ 0.00	56000 Close: 52396.4 ▼ 0.003%	R186	8.445	R/\$	13.2636	▼ 0.27	Gold PM Fix	1 339.40	▼ 0.95	Dow Jones	18560.45	▼ 0.41	
Top 40	45392.80	▲ 0.20	54000	R207	7.78	R/£	17.29465	▲ 0.94	Gold NY	1 354.80	▲ 0.54	S&P 500	2 180.48	▼ 0.44	
Findi 30	71 521.10	▲ 0.09	52000	3-mth NCD spot	338.49532	▲ 0.00	R/€	14.9574	▲ 0.55	Brent Future	49.03	▲ 1.64	FTSE 100	6941.19	▲ 0.36
Resources 20	15400.90	▼ 0.61	50000	R/\$ (6-mth)	4909	▲ 2.65	\$/€	1.127775	▲ 0.85	Platinum PM Fix	1 118.04	▲ 0.42	Nikkei 225	16 596.51	▼ 1.62
Goldex	2 624.51	▼ 3.64	May 17	R/\$ (12-mth)	9629	▲ 0.28	¥/\$	100.2105	▼ 1.02	Palladium Spot	703.13	▲ 1.61	Xetra Dax	10 676.65	▼ 0.58



Finding right BEE partner no easy ride

IN THE past, very few companies were compelled to have black ownership to be considered for business and supplier contracts. The mining and petroleum industries were the exception and their black ownership requirements were stipulated by the Mineral and Petroleum Resources Development Act and the Mining Charter.

Today, the black ownership requirement is becoming increasingly important as a result of a variety of factors, including the government's procurement policies, which give preference to black-owned suppliers.

In the past, black ownership of 25.1% was sufficient. Today, companies are looking to increase black ownership to 51%, with a 30% black female ownership component.

Verification professionals are often approached to find ownership solutions for generic entities (with an annual turnover exceeding R50m) irrespective of the scorecard level. This is because black ownership is preferred above a low level on the scorecard. For generic entities, black ownership also offsets the difficulties and costs involved in progressing to a higher level of compliance. Generic entities would rather opt for a low scorecard level and a high black and black female ownership combination.

For qualifying small enterprises with an annual turnover below R50m,



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BEE MATTERS

a 51% black ownership component would allow it to progress to a level 2 black economic empowerment (BEE) recognition level without having to complete a scorecard.

Qualifying small enterprises with 100% black ownership are catapulted to level 1 without the hassle and cost of donations, skills development and other scorecard elements. For small enterprises, black ownership can be a short cut to an appropriate level.

Finding a black partner or shareholder is complex. All business partners must build a relationship on trust and share the same business values and ethics. This doesn't happen overnight.

The ideal would be to find a compatible black partner or black company to buy a stake in the business. This would ensure a cash injection and a sustainable shareholder to fall back on should cash or further investment be needed. Such shareholders could bring skills and future business propositions to the table.

Unfortunately, this genre of black shareholders is not easy to find. An alternative is to enter into a joint venture or consortium arrangement with one or more black-owned companies. This is normally done for a specific tender or project, with each entity in the joint venture and consortium retaining its autonomy.

The BEE codes also provide for indirect shareholding, for instance through a co-operative, trust, employee ownership programme or broad-based ownership scheme. Many companies opt for these indirect structures and many businesses have benefited from an employee share ownership structure.

Employee-incentive or ownership structures are not unique to the BEE ownership fraternity, but emanate from section 97 of the Companies Act. Although no BEE ownership structures have any tax benefits, section 8B of the Income Tax Act rewards employee shareholder programmes in general and is often

used to benefit a BEE transaction.

Unlike a shareholder who pays for shares, such indirect shareholding structures often require financial assistance from the company, with some protection measures built into the arrangement. Financial assistance from a company is regulated by section 44 of the Companies Act and requires careful consideration as it might have a direct impact on the entity's balance sheet.

Some companies structure these financial assistance transactions as a sale of shares on credit, which is contrary to section 44(5) of the Companies Act, which would deem the transaction null and void. Any interest charged on such assistance could prove problematic under the National Credit Act.

Companies need to be aware that they should seek proper legal and tax advice when attempting such transactions. Rectifying an incorrect ownership transaction could prove to be a very painful and costly exercise.

It is similar to a cosmetic procedure that goes wrong — exciting at the outset, but requiring many further procedures to correct the botched result.

■ Gerber is an attorney and the founder and director of Serr Synergy, specialising in BEE structuring and compliance.