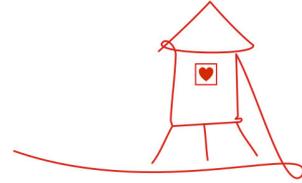


# CAF

## Southern Africa



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**CIVIL SOCIETY SUBMISSION ON**  
**REVISED BROAD-BASED BLACK ECONOMIC EMPOWERMENT CODES**  
**OF GOOD PRACTICE**  
**Submitted: November 2012**

**CAF Southern Africa Board of Directors**

Bea Devlin (UK), Joanne Donald, Kelvin Glen, Lusanda Jiya, Sheila Mokoboto-Zwane,  
Hema Morar, Jerome Mthembu, Jo-Ann Pohl (Chair), Ziaad Suleman

**Registered Section 21 Company: 2000/016493/08 Registered NPO: 014-831**

**Registered PBO with 18A status 930002036**

B-BBEE Status: Exempted Micro-Enterprise; Level 4 Contributor; CSO Beneficiary Analysis: 91%, 100% SED Recognition





**DEPARTMENT OF TRADE AND INDUSTRY**

I, **Dr Rob Davies**, Minister of Trade and Industry, hereby:

- (a) Issue for public comment, the **REVISED BROAD-BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE (THE CODES)** and the **B-BBEE TECHNICAL ASSISTANCE GUIDELINES (THE TAG)**; and
- (b) Invite interested persons and the public to submit comments within **60 days** from the date of this publication.

Interested parties are requested to forward their comments in writing for attention [XZondo@thedti.gov.za](mailto:XZondo@thedti.gov.za) and [LCMadonsela@thedti.gov.za](mailto:LCMadonsela@thedti.gov.za) respectively or forward to the following address (es)

**the dti Campus**  
77 Meintjies Street  
Sunnyside, Pretoria  
0002  
c/o BEE Unit

or

Private Bag X84  
Pretoria  
0002  
c/o BEE Unit

Enquiries: 012 394 1609/1941



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**Dr ROB DAVIES, MP**  
**MINISTER OF TRADE AND INDUSTRY**  
**DATE: 27/09/2012**

**CIVIL SOCIETY SUBMISSION by THE CHARITIES AID FOUNDATION SOUTHERN AFRICA  
AND ALL INDIVIDUALS AND ORGANISATIONS LISTED ABOVE  
Submitted: 15 November 2012**

**FOR THE ATTENTION OF:**

**Xolisile Zondo and Lindiwe Maadonsela**  
**The DTI Campus**  
77 Meintjies Street  
Sunnyside, Pretoria  
0002  
c/o BEE Unit

**COMMENTS ON DRAFT CODES**

**Introduction and Context**

The Charities Aid Foundation Southern Africa (CAF Southern Africa), together with all the organisations listed under '**Endorsements**' above, presents the comments below for the attention of the Minister of Trade and Industries, Dr Rob Davies and his B-BBEE advisors:

Our comments are specifically in respect to the following section of the draft codes which impacts directly on the sustainability of the South African civil society sector (variously referred to as the NPO/NGO/CBO/Charitable sector):

**3.2 Socio- Economic Development Contributions:**

- 3.2.1 Socio-Economic Development Contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by a Measured Entity with the specific objective of facilitating income generating activities for targeted beneficiaries.
- 3.2.2 The full value of Socio-Economic Development Contributions made to beneficiaries is recognisable if at least **[75%]** 100% of the value directly benefits black people.
- 3.2.3 **[If less than 75% of the full value of Socio-Economic Development Contributions directly benefits black people, the value of the contribution made multiplied by the percentage that benefits black people, is recognisable].**

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<sup>1</sup> Revised Broad-Based Black Economic Empowerment Codes Of Good Practice, Department of Trade and Industry, 27 September, 2012, p 3

CAF Southern Africa's mission is to encourage and increase all forms of resource mobilisation in support of South Africa's civil society sector. This includes the vital contributions of corporate South Africa. Our comments are offered to the Minister, and his advisors within the Department of Trade and Industry (DTI) in the spirit of nation building, and in accordance with the developmental governance policies of the Parliament of the Republic of South Africa.

### **The Problems with the proposed Amendments in regard to SED**

There are a number of potentially adverse implications for civil society within the draft Codes. The key problems are discussed below:

#### **THE FIRST ISSUE**

At present there are over 85 000 organisations formally registered as non-profit organisations (NPOs) by the Non-Profit Directorate in the Department of Social Development (DSD). The vast majority of these organisations are community-based organisations (CBOs) that provide a range of critical welfare and social development functions – often in partnership with government to millions of poor and marginalised people.

A majority of organisations receiving corporate sector support are also registered Public Benefit Organisations (PBOs) in terms of the Ninth Schedule of the Income Tax Act 2007. A large number of these are not in the business of facilitating '*income generating activities*' (although many do). Most organisations provide essential support in poor and marginalised communities across the length and breadth of South Africa. They work in critical poverty alleviation and developmental areas such as health, home-based care; education, childcare, child-headed households, care for the aged, disability, etc. They help to build social capital and facilitate social cohesion. Without the contributions of these organisations of civil society, government's developmental programmes would be very significantly compromised.

These organisations depend substantially on the contributions of the business sector. According to the latest Trialogue research, the corporate sector is currently the largest funder to the sector, providing approximately R7 billion over the 2011/12 financial year.<sup>2</sup> The implementation of this draft code in its present form will spell disaster for a sector already suffering the effects of a funding crisis. A recent survey of funding and employment within the civil society sector, completed by 690 organisations revealed:

- The vast majority of respondents (**85%**) described themselves as non-profit or public benefit organisations.
- The majority of organisations are involved in community development and education, providing welfare-type services primarily to vulnerable children, youth and in communities.

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<sup>2</sup> Trialogue, CSI in South Africa – GreaterGood Forum, 8 November 2012

- **80%** have experienced significant funding cuts in the last year. Two in five have had up to **50%** of their funding cut.
- Funding cuts have come from all major funding sources with the National Lotteries Board topping the list (**44%**), followed by corporate (39%) and individual donors (37%).
- Over **64%** of respondents reported having to cut services to their beneficiaries as result of funding cuts.
- More than **43%** of the organisations sampled said they had formally retrenched staff (permanent, contract, part-time and volunteers) and reported a **17%** overall contraction of the workforce as a result of the cuts.<sup>3</sup> (see Annexure One for an InfoGraphic of the survey findings)

## THE SECOND ISSUE

Much has been made in the media of the 'racialising' of the Codes: Given South Africa's demographics, together with the racialised patterns of poverty and inequality which still characterise South African society, it is a given that 99% of civil society organisations service and care for '**at least a 75% ratio**' of black people (as stipulated in the existing Codes). However changing this stipulation to '100%' is impractical, potentially damaging to the sustainability of organisations, and contrary to various aspects of South Africa's Constitution, most specifically the Bill of Rights which states:

### 3. Equality

*(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.*<sup>4</sup>

Already organisations that are struggling to deliver on their social purpose mandates are impelled to pay expensive consultants for certified 'Beneficiary Analysis'. This process takes time and scarce financial resources away from the important work of the sector.

<sup>3</sup> Non-Profits in Crisis, Survey Findings, Greater Good South Africa, givengain, South African Institute of Fundraisers, November 2012

<sup>4</sup> CONSTITUTION of the Republic of South Africa, No. 108 of 1996, p 12

## THE THIRD ISSUE – COMPLEXITY OF COMPLIANCE

The draft Codes themselves would be very difficult to implement and the entry level has moved from 30 points to 40 points. This is a significant matter for effective implementation of the principles of SED. Until now it has been relatively simple for companies to earn points through SED contributions to their chosen causes.

The proposed new Codes, if implemented, will make it practically much more difficult for companies to comply – especially in regard to SED and Enterprise Development. This potentially threatens the free and willing adoption of B-BBEE practice by business – which in turn threatens the associated resource flows to civil society via SED – to say nothing of the primary purpose of B-BBEE, i.e. broad-based empowerment and equality of opportunity for all.

### Current SED Requirement

Compliance with the principles and requirements of the B-BBEE Act is now accepted good practice for the South African business sector. In terms of the Socio-Economic Development (SED) requirement in the existing Act and associated Codes, corporates are encouraged to contribute the suggested one percent (1%) net profit after tax (NPAT) to activities specified as follows:

*7.7 The Socio-Economic Development and Sector Specific Contributions Element, as set out in Code series 700, measures the extent to which enterprises carry out initiatives that contribute towards Socio-Economic Development or Sector Specific initiatives that promote access to the economy for black people.<sup>5</sup>*

This specification encourages SA corporates to provide funding in accordance with B-BBEE/SED requirements to civil society organisations that are providing critical developmental and poverty-alleviation support.

The proposed new Codes, which stipulate ‘... *the specific objective of **facilitating income generating activities** ...*’ (our emphasis) has the potential to seriously damage the effectiveness, and indeed the survival of an already struggling sector. In addition the social responsibility practice of SA business is likely to degenerate.

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<sup>5</sup> Section 9(1): Codes of Good Practice, under section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003. p

## Recommendations

In the interests of furthering, and indeed leveraging the developmental policies of government, the valuable social investment contributions of business, and the ongoing effectiveness of the civil society sector, we urge the Minister to reconceptualise the Socio-Economic Development (SED) portion of the proposed new B-BBEE Codes.

We submit that organisations of civil society make developmental, transformative, capacity- and community-building contributions in regard to all of the specified Objectives of the B-BBEE Act of 2003, i.e. :

- *promoting economic transformation in order to enable meaningful participation of black people in the economy;*
- *achieving substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;*
- *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;*
- *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;*
- *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;*
- *empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and*
- *promoting access to finance for black economic empowerment.*

We therefore recommend that the SED section of the proposed new Codes are amended in a manner which harmonises with other relevant enabling policies and legislation of government designed to create an enabling environment for civil society. We remind the Minister of the following paragraph in the NPO Act:<sup>6</sup>

*'Within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions.'*<sup>6</sup>

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<sup>6</sup> Non-Profit Organisations Act of 1997, Section 3

We strongly recommend that the SED portion of the Revised Codes should be aligned with current relevant legislation, including the Income Tax Act of 1962 as amended; the Non-profit Organisations Act of 1997; the National Lotteries Act of 1997; the National Development Agency Act of 1998; the various Industry Sector Charters, the developmental principles contained in the new National Development Plan published in 2012 and the South African Constitution.

Since 1994 corporate South Africa has steadily developed good practice in accordance with internationally-recognised principles of corporate governance and citizenship. Indeed South Africa's internationally acclaimed King Report on Corporate Governance (now in its third incarnation as 'King III') stresses social responsibility and 'ubuntu' principles.<sup>7</sup> The (surely unintended) consequence of the proposed amendments to the SED Code would be regressive in the extreme for the social responsibility activities of SA business. In order to obtain the requisite B-BBEE scores, companies which have hitherto provided substantial and invaluable SED support to a vast range of civil society activities, would be forced to withdraw this support in favour of organisations facilitating income-generation only.

As mentioned above, civil society, and in particular public benefit organisations require donated funds in order to carry out their social purpose mandate. If the substantial contributions of business are withdrawn in accordance with these proposed Codes this would be the death knell for thousands of organisations that currently help to develop and preserve the social fabric of South Africa.

**Our recommendation is therefore simple** – either retain the SED requirements in their current form, or alternatively re-craft them in a manner which recognises and encourages SA corporates' social responsibility intentions and the principles enshrined in our Constitution.

Healthy democracies are founded on effective cooperation between the three sectors, government, business and civil society. Let these Codes be the embodiment of that aspiration.

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<sup>7</sup> The Third King Report on Corporate Governance (King III), Institute of Directors of South Africa, 2009

FINDINGS FROM THE JOB LOSSES & SERVICE CUTS SURVEY

# Non Profits in Crisis



## South African Non Profits

The majority are non profit or public benefit organisations involved in community development and education, providing welfare-type services primarily to vulnerable children, youth and in communities.

**695**  
NPOS SURVEYED



**36,128**

15,862 permanent staff, 3,464 contract staff, 1,726 part-timers and 15,130 volunteers.



**29,971**

12,245 permanent staff, 2,886 contract staff, 1,418 part-timers and 13,422 volunteers.

## 2 in 5 have had over half their funding cut



### Sources

Funding cuts have come from all major funders with Lottery, Corporate and Individuals topping chart.



## Current financial position



Have no operating cash at all



Have enough to cover OVER 6 months



Have enough to cover 1 month of expenses



Have enough to cover UP TO 6 months

"We are literally trying EVERY possible way of fundraising."

## Take action:

Get the full report & recommendations or add your comment at [greatergoodsa.co.za/posts](http://greatergoodsa.co.za/posts)



Survey conducted in October 2012 by GreaterGood SA, SAIF and the GivenGain Foundation

Piktochart