2005 annual review of transformation in the financial sector

Financial Sector Charter Council

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Foreword

It gives me great pleasure to submit this review, the first annual review on transformation black economic empowerment in the financial sector.

The review covers the period 1 January 2005 to 31 December 2005 and tracks the performance of the financial sector in transforming itself into a sector of the economy that 'reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment into targeted sectors of the economy'. This quotation is taken from the objectives of the Financial Sector Charter, a voluntary sectoral charter established in terms of the Broad-Based Black Economic Empowerment Act.

It is the first such review by any economic sector prepared for submission to the national Black Economic Empowerment Advisory Council and is unique in several other material aspects.

As the first review from the first sector of the economy to report to Black Economic Empowerment Advisory Council in terms of the Broad-Based Black Economic Empowerment Act, it represents a major milestone on the journey South Africa is undertaking from its starting point in pre-1990 South African society governed under the iniquities of apartheid, towards a just, equitable society in which, to quote from an earlier, more intensely contested, charter, 'the national wealth of our country, the heritage of all South Africans, shall be restored to the people'.

This review and the process by which it was compiled represents one small step on that long walk to freedom, but is an historic step, because it is a step taken voluntarily by one of the pillar sectors of South Africa's economy.

The process leading to the preparation of this review has not been easy: the Financial Sector Charter Council, the body charged with overseeing the implementation of the Financial Sector Charter, is a body representing the full social and economic diversity of our country. Disagreements on the route we should take and the pace at which we move are inevitable. But the commitment of all participants to achieve an often-difficult consensus on all matters relating to the Financial Sector Charter has ensured that the financial sector has begun the journey.

As the first review on the progress achieved in the first 12 months in which transformation has been monitored by the Financial Sector Charter Council, the review maps a pioneering process, providing lessons and experiences for the future direction of financial sector transformation. It – and all other sectors initiating their own transformation – will build on its successes and learn from any failings.

The review highlights key successes, not least the voluntary submission of comprehensive transformation reports to the Financial Sector Charter Council by well over 100 financial institutions representing an estimated 75% of the sector by market capitalisation, and more than 90% by designated investments held.

It marks the support by these institutions for nearly R50 billion in major black economic empowerment transactions in just two years – thus virtually achieving in two years the target set for five years of black economic empowerment transactions.

It demonstrates shortcomings, both in the monitoring and review process and in the performance of the sector against targets it set for itself. But these should not be regarded as failings. The financial sector is in the second year of a 10-year transformation process. Identifying shortcomings gives the sector the opportunity to consolidate, correct and move forward with greater certainty towards its mid-term and 10-year targets.

Several of these had already been recognised ahead of publication of this review, and had been the subject of negotiation and standard development within the Financial Sector Charter Council in preparation for the 2006 monitoring cycle. Others will need to be addressed in the months ahead.

Among these is the recognition that the Financial Sector Charter Council and the 10 trade associations representing financial institutions must urgently embark on an awareness and education process to ensure that all financial institutions covered by the Financial Sector Charter participate fully in transforming the sector and in the process of monitoring that transformation in the remaining eight years of this transformation cycle.

Similarly, the report has demonstrated that the Charter itself requires revision as does the process by which individual financial institutions must report to the Charter Council and must track their own transformation.

It has provided valuable lessons for all the partners in the transformation process, the financial institutions themselves, the Financial Sector Charter Council, and the Charter Council executive charged with preparing this report.

I am confident that these lessons will ensure that the report on transformation in 2006 in the financial sector will be more comprehensive and the transformation itself more substantial than the already real achievements of 2005.

This report and the database from which it has been drawn have also provided the Financial Sector Charter Council with a valuable snapshot of the state of the financial sector and an equally valuable baseline study against which to measure transformation performance in 2006. It is a solid foundation on which to build the process of monitoring transformation in the financial sector in the years ahead.

This alone would make the process of the last few months a useful one. But there are many other positive lessons and indications to be drawn from the process and from this report.

The challenge facing us in the next 12 months is to ensure we recognise our achievements for what they are and we build on them, and that we recognise our mistakes and learn from them so that we do not repeat them.

On behalf of all who have contributed to making this small step on our country's long walk to freedom, I present the annual review of transformation in the financial sector in 2005.

Enoch Godongwana
Principal Officer, Financial Sector Charter Council
31 September 2006

Glossary

ACI	Association of Collective Investments, a trade association signatory to the Financial Sector Charter
Basa	Banking Association of South Africa, a trade association signatory to the Financial Sector Charter
BBBEE Act (or the Act)	Broad-Based Black Economic Empowerment Act (Act 53 of 2003)
BEE Advisory Council	The Council established under the BBBEE Act to: review progress in achieving black economic empowerment; advise on draft codes of good practice which the Minister intends publishing; advise on the development or amendment or replacement of BEE strategies; advise on draft transformation charters; and facilitate partnerships between organs of state and the private sector.
Besa	Bond Exchange of South Africa, a trade association signatory to the Financial Sector Charter
Charter Council	The Council established in terms of 15.1 of the Financial Sector Charter to oversee implementation of the Charter
Designated investments	Any statutory or voluntary deposit, saving, investment or risk insurance placed or made by the South African public, whether of a wholesale or retail nature, but not by one financial institution in another.
Financial institutions	Banks, long-term insurers, short-term insurers, re-insurers, managers of formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public, including retirement funds and members of any exchange licensed to trade equities or financial instruments in this country and entities listed as part of the financial index of a licensed exchange
IBA	International Bankers' Association of South Africa, a trade association signatory to the Financial Sector Charter
Imasa	Investment Managers' Association of South Africa, a trade association signatory to the Financial Sector Charter
IRF	Institute of Retirement Funds, a trade association signatory to the Financial Sector Charter
JSE	JSE Securities Exchange, a trade association signatory to the Financial Sector Charter
LOA	Life Offices' Association of South Africa, a trade association signatory to the Financial Sector Charter
LSM	Living Standard Measure, a 10-tier category system of demographic segmentation. It is primarily used in this review to identify people in LSM 1-5. Unless the context indicates otherwise, it means people in households with a combined income of R2 500 a month or below.

Principal Officer	The official appointed by the Board of the Financial Sector Charter Council in terms of Section 11 of the Constitution of the Charter Council to head the executive of the Charter Council
Saia	South African Insurance Association, a trade association signatory to the Financial Sector Charter
Sarea	South African Reinsurance Association, a trade association signatory to the Financial Sector Charter
Seta	Sector education and training authority.
The Charter	The Financial Sector Charter, effective from 1 January 2004 to 31 December 2014

Introduction & summary

This is the first annual review of transformation in the financial sector, covering 1 January 2005 to 31 December 2005, the second year of operation of the Financial Sector Charter.

As the first review, it was intended to provide a baseline study – a snapshot of transformation in the sector – to serve as the basis for future monitoring of progress in the industry towards achieving the transformational objectives of the Charter.

As the first review, it is also as much as test of the validity, integrity and reliability of the process itself and its ability to reasonably, accurately and with integrity assess transformational performance of the financial sector, as it is a review of the sector's performance.

The summary finding of this review on the process is that it represents a good start: the review was undertaken independently and was able to assess in detail the BEE status of the sector, highlighting both strengths and weaknesses, and identifying areas requiring attention and provisions within requiring amendment if the sector is to achieve its transformational goals.

The conclusion of this review on the sector's transformation was similar: in the two years in which the Charter was been in effect, the financial sector has made a reasonable start towards its transformation objectives. As was to be expected, performance varied in different areas of transformation.

The review is based on comprehensive reports by individual financial institutions reporting on the basis of a standardised questionnaire provided by the Charter Council. It has in the main achieved this objective: in most of the 22 performance categories and sub-categories the Charter Council now has a yardstick against which to measure progress in 2006 and each year thereafter until it reviews the continued necessity for the Charter in 2015.

As a first review and without the historical data from previous years from which to monitor progress in the sector and by individual institutions, it has not been possible to rate institutions on the basis of their progress in 2005. Rating will commence when reviewing progress in 2006.

The reporting and review process have also been extremely useful in identifying where interventions are necessary to align the financial sector with the broader national transformation initiative under the BBBEE Act and the Codes of Good Practice. Equally importantly it has highlighted several shortcomings in the reporting and monitoring process which will be adjusted ahead of future reviews.

Firstly, on the standard of reporting, the most important among finding is a clear tendency among reporting institutions to give priority to the scoring and rating aspect of the review process – a primary focus on the scorecard rather than on the transformation that is quantified in the scores and ratings. Although this may be inevitable in a sector which operates with numbers and Rand values as its common language, the effect is to give precedence to the mechanics over monitoring transformation over the transformation that is the founding objective of the process. This was compounded in the first review, when institutions were not submitting their reports for rating purposes: there has been a clear, although by no means universal, impatience among reporting institutions with the need to provide supporting documentation and explanations to verify the performance claimed by the institutions.

Although the review has identified a sufficient number of reporting errors to justify the need for supporting documentation, many institutions failed to provide it. As a result, the Charter Council has been unable to verify areas of their reported transformation.

A second negative factor identified in the first review has been a lack of awareness among a range of financial institutions of the need to involve themselves with the Charter and the Charter Council: just over half of the 372 institutions scheduled to report on 2005 transformation did so, or sought exemption from doing so. A major awareness and education programme is clearly necessary ahead of the next reporting-review cycle.

Despite these teething problems, the review has demonstrated that all major institutions in the sector have committed themselves to independent review by the Charter Council of sectoral transformation: participating institutions account for an estimated 65-75%-plus of the sector by market capitalisation and more than 85% by designated investments held. This gives the Charter Council a sufficiently reliable database to enable it to assess the sector's performance, and those of the nine trade associations whose members make up the sector's 2005 reporting pool in transforming itself (retirement funds, whose association is itself undergoing a transformation process, were not required to report as part of the process covered in this review).

Information received by the Charter Council is, in most categories, sufficient to be statistically reliable to give the findings of this review – and the baseline for 2006 – a reasonable to high degree of certainty. Other categories (notably the geographic distribution of originated loans for low-income housing, agricultural development and black SME) provide sufficient data to be indicative but not definitive. Data and information provided on low-income housing funding was, for the most part, not quantifiable against the requirements of the Charter. No reliable findings could be made in this area. Of less urgent concern, although still requiring attention, is the tendency among reporting institutions to give little attention (or ignore entirely) the six categories of 'unquantified responsibility' identified in the Charter but for which no scoring is allocated on the scorecard. This is further illustrates the tendency of institutions to prioritise the aspects of the Charter process that relate to commercial competitiveness (ratings) over the transformation itself.

On reporting standards, the lesson in this first monitoring and review cycle is this: although most institutions have demonstrated by their submission of reports to the Charter Council that they are committed to a formally monitored transformation process, a sizeable minority understand the review and BEE rating process and initiatives under the BBBEE Act more generally, primarily as an area of commercial competition, in terms of which the objective is to score more highly than their competitors. Interventions are needed to ensure that they recognise that sound business practices can be integrated with real, quantifiable, transformation, rather than simply box ticking.

Among the positive findings of this review of transformation in 2005 are:

- The institutions which reported represent an estimated three-quarter of the financial sector measured by market capitalisation, and upwards of 85% when measured by designated investments: the dominant components of the financial sector have committed themselves to independent monitoring of their transformation and to the transformation process more broadly,
- Progress has been rapid in areas of greatest familiarity for the sector, that is funding and financing reasonably conventional commercial transactions: by year-end 2005 the sector had virtually achieved its R50 billion target, set to be achieved only in 2008, for funding major BEE transactions, and bettered its R5 billion 2008 target for financing black SMEs.
- The sector averages 16% direct black ownership and appears set to meet its 2008 target of 25%.

- The financial sector spent a reported R15,9 billion with black or BEE accredited suppliers last year, 36% of its total combined procurement bill (although nearly three-quarters goes to companies in which black shareholders hold minority interests – a finding that will require further consideration)

Areas requiring intervention include:

- **Geographic concentration of Charter-targeted loans and investments**: Originated loans and targeted investments for low-income housing, agricultural development and black SMEs concentrate geographically around South Africa's major cities, Johannesburg, Cape Town and Durban. In all three categories, Gauteng, Western Cape and KZN dominate. A similar tendency is evident in the funding of transformational infrastructure, despite a weighting by the Charter Council favouring local authorities and projects away from South Africa's metropolitan centres where the need for infrastructure development is greatest. This appears to reflect a business-as-usual approach that will require active measures to ensure that, over time, the focus of the sector broadens to include all South Africans.

- **Drawing in entire financial sector**: There is and urgent need for initiatives that enable financial institutions which do not traditionally originate funding in the four areas of investment targeted by the Charter (transformational infrastructure, low-income housing, agricultural development and black SMEs) to contribute to the funding of these development in the targeted investment categories.

- **Housing**: Housing represents a particularly serious challenge for the sector, with urgent initiatives required if it is to achieve its 2008 target of R31,8 billion in low-income housing financed for households earning less than R7 900. The review points to this as a serious challenge for the banking industry in particular: institutions' reports strongly imply that a portion the R19 billion in reported housing finance allocated by 2005 year-end may have gone to income categories above the R7 900 ceiling set by the Charter. There are also indications that, even below the R7 900 household income ceiling, funding tends to concentrate in the upper household incomes brackets. Multi-lateral, innovative solutions are clearly necessary to ensure that the financial sector and the banking industry in particular, are able to meet South Africa's massive need for new and affordable housing stock.

- **Skills development**: The sector as a whole has underperformed against the annual target of expending 1,5% of total basic payroll on black skills development in the sector. Programmes within the financial sector, either at sectoral or industry level, are required to ensure institutions meet their skills development spend targets. Without skills development initiatives to maintain and expand the black skills pool, the progress made in the sector in the employment of black managers and black women managers may experience a demand-supply crisis in the medium term.

- A similar challenge faces the sector at its executive levels and in its boardrooms. Although the sector is on track to achieving its 2008 targets for black people generally and black women in particular, the Charter acknowledges that its 2008 targets are modest. When the Charter is aligned with the BBBEE Act derived codes of good practice in the near future, these targets are likely to increase significantly, creating a major challenge for the sector.

The 2005 review also spotlighted shortcomings in the reporting and tracking of initiatives to ensure access by the traditionally unbanked majority to affordable and appropriate retail banking and financial products, and in the tracking of consumer education initiatives. In both areas, however, initiatives already underway within the Charter Council are set to resolve them satisfactorily ahead of future reviews.

As noted briefly above, retirement funds belonging to the Institution of Retirement Funds (IRF), itself in the process of transformation, were not obliged to report on their 2005 performance, although three did so voluntarily. The IRF and retirements funds will be incorporated in future review processes.

Background to the report

This report has been prepared in terms of Section 15.1.2 of the Charter, which requires the preparation of an annual review of the progress made by the financial sector towards its primary objective of transforming itself into a sector that 'reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment into targeted sectors of the economy'.

South Africa's financial sector is both a cornerstone of the South African economy, and one of its most vital resources. It is made up of 10 sub-sectors or industries, each with a trade or industry association representing institutions operating in that industry. The industries and their respective trade associations are:

Asset management	Investment Managers' Association of South Africa (Imasa)
Banking	Banking Association of South Africa (Basa)
Collective investments schemes	Association of Collective Investments (ACI)
International banking	International Bankers' Association of South Africa (IBA)
Life assurance	Life Offices' Association of South Africa (LOA)
Reinsurance	South African Reinsurance Association (Saroa)
Retirement funds	Institute of Retirement Funds (IRF)
Short-term insurance	South African Insurance Association (Saia)
JSE	JSE Securities Exchange (JSE)
Besa	Bond Exchange of South Africa (Besa)

The financial sector was one of the first to formalise oversight and monitoring of sectoral transformation through the establishment of a sectoral charter, as contemplated in the Broad-Based Black Economic Empowerment Act (Act 53 of 2003). The Charter has its roots in the 2002 Financial Sector Summit, hosted by the National Economic Development and Labour Council (Nedlac), the multilateral social dialogue forum on social, economic and labour policy. The Nedlac partners – the government, business, labour and community constituencies – negotiated the Financial Sector Summit Agreements on transforming the financial sector and signed the Summit declaration on 20 August 2002. The declaration includes a commitment by the sector to establish a sectoral transformation charter. The Financial Sector Summit declaration is attached to this report as Appendix 1.

The Charter was signed on 17 October 2003 and came into effect on 1 January 2004 as a voluntary sectoral charter. It is currently awaiting approval by Minister of Trade and Industry, Mandisi Mpahlwa, and gazetting as the sectoral code of good practice for the financial sector under the same Act. It is binding on the financial institutions belonging to the 10 trade associations representing institutions in the financial sector.

The Charter:

- constitutes a framework and establish the principles upon which BEE will be implemented in the financial sector;
- provides the basis for the sector's engagement with other stakeholders
- establishes targets and unquantified responsibilities in respect of each principle; and
- outlines processes for implementing the charter and mechanisms to monitor and report on progress.

It commits financial institutions to transforming in the areas of:

- Human resource development (divided into employment equity and skills development);
- Procurement of goods and services and enterprise development;
- Access to financial services (including consumer education);
- Empowerment financing (including targeted investments in transformational infrastructure, low-income housing, agricultural development and black SMEs as well as BEE transaction financing);
- Ownership;
- Control; and
- Corporate social investment.

It sets targets, or provides for the setting of targets, in each of these areas. It also identifies a range of other areas in which, although no targets are set, financial institutions commit themselves to transforming.

Transformation in each of the seven areas is measured annually against targets set in the Charter or by the Charter Council. Performance is assessed from comprehensive reports submitted by each participating financial institution and is recorded on a scorecard. The reporting process has two outcomes:

- The Charter Council uses the information provided in the reports to review the annual performance of the sector as a whole and to prepare and publish a report on the sector's BEE performance; and
- It rates the BEE performance of each institution. Ratings confirmed by the Charter Council serve as confirmation of the broad-based BEE status of each institution. Ratings are recognised by organs of state when conducting business with the sector.

Scoring differs for different categories of financial institution, with those able to contribute to access to financial services by historically underserved communities through provision of first-order financial products and services calculating their annual ratings out of 100 (for banks), 96 (for life assurance companies) or 88 (for short-term insurers and collective investment schemes). Institutions whose business activities restrict their involvement in either contributing to providing greater access to financial services or to empowerment financing and targeted investments calculate their ratings of a base of 60.

The Charter provides for full exemption from either fulfilling the Charter obligations or reporting annually to the Charter Council for financial institutions with fewer that 50 employees and less that R10 million in designated investments, and partial exemption for financial institutions meeting various other exemption criteria.

The Charter provides for members of the International Bankers' Association (IBA) prevented by global policy from involving black shareholders to achieve ownership objectives through an 'equity equivalent' mechanism, in terms of which they finance additional BEE financial transactions.

The Charter is framed broadly in the same terms as the BBBEE Act Codes of Good Practice developed by the Department of Trade and Industry. This is evident in the similarities of approach to transforming the internal arrangements and composition of enterprises regulated by the Charter and the Codes respectively – matters of human resources, ownership, control and so on.

It differs most obviously in the unique emphasis placed by the Charter on the financial sector's contribution to social transformation of broader South African society. The Charter allocates 45 of its 100 points to:

- Progress in ensuring access to appropriate and affordable financial services (20 points),
- Empowerment financing – a combination of funding transformational infrastructure in historically disadvantaged areas, financing low-income housing, agricultural development and black SMEs, and financing black economic empowerment transactions (22 points), and
- Corporate social investment (3 points).

These activities – representing a combined reported investment in social transformation by the financial sector of at least R100 billion in 2005 – are grouped together in the Codes as 'residual' activities, with a combined score of 10 of the Codes' 100 points.

The challenge these unique Charter requirements pose for the financial sector is significant. But the potential benefit flow to the poorest 60% of South Africans, who are the focus of the bulk of these 'residual' initiatives, is potentially more significant than any other aspect of the transformation underway in terms of the BBBEE Act.

For Charter purposes, the population segments of greatest need is identified as those in categories 1-5 of the 10-tier Living Standard Measure (LSM). This covers approximately 60% of the South African population. For Charter purposes it translates into a household income measure of those households with household income of R2 500 of below in 2005.

The Charter's term runs from 2004 to 2014, subject to a major review of its achievements in 2015. A mid-term review is due in 2009.

The Charter provides for the establishment of a Charter Council to oversee its implementation. The Charter Council is made up of a Board and an executive, headed by the Principal Officer

The board of the Charter Council has 21 members from five constituencies:

Government: Four members from the Presidency, National Treasury (NT) and the Department of Trade and Industry (DTI),

Business: Six members from financial sector trade associations,

The Association of Black Securities and Investment Professionals: Three members of the Association of Black Securities and Investment Professionals (Absip) on behalf of the Black Business Council,

Community: Four members from the Nedlac Community constituency on behalf of Disabled People South Africa (DPSA); Financial Sector Campaign Coalition (FSCC); National Co-operatives' Association of SA (Ncasa); SA National Civics' Organisation (Sanco); SA National Youth Council (SAYC); Women's National Coalition (WNC)

Labour: Four members from the Nedlac Labour constituency on behalf of the Congress of SA Trade Unions (Cosatu); National Council of Trade Unions (Nactu) and Federation of Trade Unions (Fedusa).

Members of the Board as at 31 December 2005 were:

Chairperson (2006): Jan Mahlangu, (Labour)

Trade Associations: Derek Muller (Basa), Cas Coovadia (Basa, alternate), Martin Kingston (IBA), Donna Oosthuyse (IBA, alternate), Gloria Serobe (LOA), Gerhard Joubert (LOA, alternate), Leon Campher (Imasa), Nicky Newton-King (JSE, alternate), Di Turpin (ACI), Charmaine Soobramoney (ACI, alternate), Ronnie Napier (Saia), Leila Moonda (Saia, alternate)

Absip: Sello Moloko, Kennedy Bungane, Nomkhita Nqweni, Alternate Members, Thabo Leeuw (alternate), Rojie Kisten (alternate)

Government: Ismail Mononiat, Jonathan Dixon, Vusi Gumede, Polo Radebe, Nkosana Mashiya (alternate), Christian Prins (alternate)

Labour: Jan Mahlangu (chairperson), Isaac Ramputa, Neva Makgetla, George Strauss, Edwin Pillay (alternate), Bheki Ntshalintshali (alternate), Ruby Oliver (alternate), Ben Venter (alternate)

Community: Collette Caine, Ntombi Msimang, Sizwe Shezi, Phillip Dexter, Ntombi Ntshangase (alternate), Sabelo Mamba (alternate).

The Board meets quarterly. Between meetings its activities are coordinated by a Coordinating Committee, chaired by the Board chairperson and made up of five Board members. The Board also has 12 technical committees on which all Charter constituencies are represented. Those currently active are those dealing with: Access to financial services; Agriculture; BEE transactions; Black private equity funds; Human resources; Infrastructure; Low-income housing; Procurement; and Small and medium enterprises.

All powers of the Charter Council vest with the Board, which may delegate some of its activities to committees of the Board or to the executive. Decisions of the Board are taken by consensus.

The Charter Council executive, headed by the Charter Council Principal Officer, is responsible for the financial sector's annual reporting process and for preparing the annual transformation review. The Charter requires the executive to 'receive, consider and approve' annual reports submitted by participating financial institutions and to confirm provisional scoring and institutions' ratings. The executive is also required to prepare annual reviews of progress in transforming the financial sector and identifying new areas of intervention by the Charter Council. The Charter's allocation to the Charter Council executive of exclusive responsibility for coordinating the reporting process and for assessing and reviewing transformation in the sector and by individual institutions ensures the credibility, integrity and independence of the resulting review and report.

The current Principal Officer is Enoch Godongwana, former general secretary of the National Union of Metalworkers of South Africa and a former MEC in the Eastern Cape provincial government. He took office in October 2006 as the Charter Council's first full-time officer.

Mandate of the Charter Council

The mandate of the Charter Council is to oversee implementation of the Charter from 2004 to 2014. In 2015 the Charter Council will review progress to identify whether any further steps are necessary and whether the Charter Council will continue to operate until the additional steps have been taken. The Charter Council is also required to undertake a midterm review in 2009 to reassess performance by the sector and targets for the remainder of the Charter's term.

The Charter is responsible for annually monitoring transformation in the sector, through reports submitted by each participating institution on their annual performance. The executive of the Charter Council has direct responsibility for the monitoring process in terms of Section 15.1.2 of the Charter, which the executive must, inter alia: receive, consider and approve annual reports from each financial institution; confirm ratings of financial institutions; prepare an annual review which outlines progress and evaluates new areas of intervention and submit the annual review to the BEE Advisory Council for publication.

The term 'consider' has been accepted by the Charter council as meaning that the executive must interrogate the report and satisfy itself of the report's veracity and accuracy. Because of this, and to enable the Charter Council to prepare and submit a comprehensive review of the sector's performance annually, the Charter Council requires that institutions provide supporting documentation, additional data and associated appendices as part of their comprehensive annual reports.

The allocation by the Charter of exclusive responsibility for coordinating the reporting process and for assessing and reviewing transformation in the sector and by individual institutions to the Charter Council executive ensures the credibility and integrity of the resulting review and report.

The first reporting process should, in terms of the provisions of the Charter, been on transformation in the sector in 2004. For various reasons the reporting process was initiated only for transformation in 2005. These include delays in finalising standards, the agreed scope and protocols for financial sector annual reports, and the delay in the parallel process of finalising codes of good practice binding on the sectors which are the financial sector's primary suppliers of products and services,

The financial sector reporting process was initiated in 2006 for reporting on transformation in 2005, but is being phased in over two years. Institutions were obliged to report on their 2005 BEE performance, but have not been rated. Institutions will be rated only on 2006 their performance (ratings will be released by the Charter Council in approximately May 2006).

The intention of the 2005 reporting process was to establish a baseline study of the financial sector's BEE status from which to assess transformation performance in 2006 and annually thereafter.

Reporting process

As indicated in the previous chapter, the reporting process by financial institutions on 2005 transformation was to have provided the Charter Council and the BEE Advisory Council with a baseline study from which to assess annual progress in transforming the sector from 2006 and thereafter. As a baseline study without historic data against which to assess progress, the Charter Council recognised that the findings would be limited to a static, if comprehensive, snapshot of the sector's BEE status.

To ensure standardised reporting by all institutions, the Charter Council prepared and made available to all institutions bound by the Charter:

- A standard report form to be used by all reporting institutions
- A 32-page primary guidance note to assist institutions in preparing their reports.

In response to queries from participating institutions, it issued approximately 12 secondary guidance notes to clarify and elaborate on reporting requirements.

It also invited institutions which qualified for exemption from reporting on all or individual provisions of the Charter to apply for exemption.

The deadline for submission of reports was 17h00 on 31 May 2006.

The Charter requires that all institutions belonging to the 10 signatory trade associations report annually on their progress in implementing the transformational provisions of the Charter. Only institutions formally exempt by the Charter Council in terms of Paragraph 4.7 of the Charter are exempt from reporting.

Due to the special circumstances prevailing in 2005, the Charter Council, all members of the IRF were deemed to be exempt from reporting on all provisions of the Charter and were thus not required to submit reports unless they opted to do so. Three institutions belonging to the IRF opted to report.

The Charter Council received applications for exemption from all provisions of the Charter in terms of Section 4.6.3 from 51 institutions. It granted complete exemption from reporting to 50 institutions. These are listed in Appendix G to this report.

Exemption from reporting	
ACI	6
Basa	1
Besa	1
IBA	1
Imasa	1
JSE	39
LOA	0
Saia	1
Sarea	0
Sector	50

The Charter Council received 83 applications for partial exemption from reporting on specific provisions of the Charter, and granted 81 such exemptions. Partial exemptions were granted for the following Charter provisions:

Exemptions granted per Charter provisions	
All	50
Human resources	5
Procurement	0
Access to financial services	28
Consumer education	23
Empowerment financing	11
Ownership	7
Control	7
CSI	0

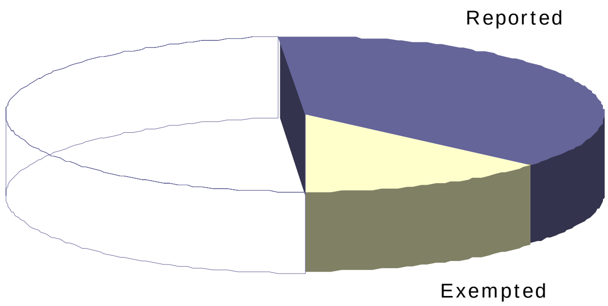
Institutions exempted from performing against and reporting on specific provisions of the Charter were also exempt from reporting on the associated unquantified responsibilities.

Institutions owned by foreign interests and which were prevented by global policy from entering into local ownership arrangements were required to provide evidence of the relevant global policy in the form of company documents or a communication from the foreign owner. They were not required to seek exempt-ion from reporting.

Institutions which had directors or staff imposed on them in terms of a global policy were required to provide details of the global policy and evidence of the relevant global policy in the form of company documents or a communication from the foreign owner.

The Charter Council was due to receive submissions from 372 institutions reporting on all provisions of the Charter from which they had not been exempted.

It received 116 such reports. As far as can be established 24 institutions, the majority of them collective investment schemes (ACI), prepared and submitted reports to their holding companies or to groups of which they are members, but these were not submitted to the Charter Council.



Reporting by financial institutions on 2005 transformation

An estimated 140 institutions, 38% of the total, complied with the Charter requirement that they submit a report on progress in 2005 on transformation. A further 50 (14%) were exempt from doing so.

Because several holding companies or institutions with subsidiaries did not submit their subsidiaries' reports, 116 (31%) of reports due were actually assessed by the Charter Council.

Failure by institutions to report, or report in sufficient detail, on various provisions of the Charter and omission of supporting documentation had a negative effect on the reliability of the 2005 transformation database, although not to the extent of that the database is no longer a reliable reflection of the sector's transformation in 2005.

The indicative status of the finding on the geographic distribution of low-income housing loans, agricultural development funding and black SME funding is a consequence of these omissions. Similarly, the omission by the four primary originators of low-income housing loans of actual uptake by the incomes segments specified in the Charter (households with incomes below R7 900 in the case of originated loans, and households with incomes between R1 600 and R7 900 in the case of targeted investments) prevented the Charter Council from making a finding on the extent of funding allocated to low-income housing as defined in the Charter. This too is one of the possibly inevitable teething problems at the start of an ambitious monitoring process of this sort: financial institutions do not historically track household income, relying instead for credit decisions on the income of individual borrowers. The omissions reflect tardiness in including the Charter-based household income criteria. Here too the problem has been identified early and is unlikely to be repeated.

This issue is addressed in greater detail in chapters 6 and 7 of this report, **Progress on transformation in the financial sector in 2005** and **Recommendations to the Financial Sector Charter Council**.

The combined effect of non-reporting and omissions of data from reports on the reliability of this review of financial sector transformation is significant. Factors affecting the reliability of the review are:

- Half the institutions required to report or seek exemption did so.
- Institutions that did report account for a conservatively estimated 75% of market capitalisation and a conservatively estimated 85%-plus of designated investments as 31 December 2006, providing a solid base for assessing the financial sector's performance.
- 10% of reports received by the Charter Council were partially exempted from reporting (taking account of the fact that institutions were granted partial exemption from more than one of he Charter provisions).
- 49% of institutions which were, for 2005 only, deemed compliant with the Access to financial services provisions of the Charter and were therefore not required to report in verifiable detail on this aspect.
- 34% of data provided in reports was fully verifiable or deemed compliant for 2005.

Financial sector transformation report 2005: reliability levels

Human resources	
Employment equity	*Can be used to infer sectoral performance*
Skills development	*Can be used to infer sectoral performance*
Procurement	
Procurement	*Can be used to infer sectoral performance*
Enterprise development	*Can be used to infer sectoral performance*
Access to financial services	
Access to 1st order services	
Product rollout to LSM 1-5 (+ Mzansi products)	*Deemed for 2005*
Physical access (coverage of LSM 1-5)	*Deemed for 2005*
Origination	
Low-income housing	*Baseline study in 2006*
Agricultural development	*Indicative of sector*
Black SMEs	*Can be used to infer sectoral performance*
Consumer education	*Indicative of sector*

Empowerment financing	
Targeted investments	
Transformational infrastructure	*Can be used to infer sectoral performance*
Low-income housing	*Baseline study in 2006*
Agricultural development	*Indicative of sector*
Black SMEs	*Can be used to infer sectoral performance*
Geographic distribution	
Low-income housing	*Indicative of sector*
Agricultural development	*Indicative of sector*
Black SMEs	*Indicative of sector*
Ownership	
Ownership	*Can be used to infer sectoral performance*
Control	
Directors	*Can be used to infer sectoral performance*
Executives	*Can be used to infer sectoral performance*
Corporate social investment	
CSI spend	*Indicative of sector*
Unquantified responsibilities	
	Baseline study in 2006

The 'deemed' status of the 'physical access (coverage) by LSM 1-5 to first-order transaction and banking points' sub-category is expected to be upgraded by the end of this year. A comprehensive initiative was undertaken by the relevant institutions to map LSM 1-5 concentrations throughout the country. Their 2005 rollout of transaction points (ATMs and equivalent) and banking points (branches, sub-branches and so on) is based on the findings of this initiative. This has not yet been submitted to the Charter Council by the institutions or by their trade association, Basa. This appears to be an oversight which the Charter Council expects to be remedied shortly. For the purposes of this report the institutions are assumed to have complied and the Charter Council. The findings of the mapping exercise will form the baseline study on which transformation in 2006 will be assessed.

Other factors to take into account when reading this review are:

- Only three members of the IRF opted to report on their 2005 transformation. Calculation and charts breaking down performance by industry do not include the IRF as a separate item. IRF members' contributions to transformation are, however, included in the sector totals.

- Approximately 25% of reporting institutions belong to more than one trade association. Where this report breaks down institutions and their transformation activities by industry, institutions which are members of more than one trade association are included in only one industry to avoid double counting. The effect of this is an apparent decrease in membership of Besa and Sarea. Besa is particularly affected because all but one of its members, the Bond Exchange of South Africa itself, are also members of other trade associations. As a result the report does not assess Besa as a separate industry. Besa's contribution to transformation is, however, included in sector totals.

This review, for submission to the Ministers of Finance and of Trade and Industry, to the relevant portfolio committees in parliament and to the Board of the Charter Council itself, does not include individual chapters assessing performance by industry. These will be included in the annual report on the financial sector submitted in due course to the BEE advisory Council.

Bar-charts used in the next chapter, **Assessment of report on transformation in 2005**, represent performance per industry (blue bars) and the sector performance (red bar), with relevant targets shown by a red line in front of the bar-chart.

Assessment of transformation in 2005

This chapter assesses the performance of the 116 financial institutions that reported against the requirements of the Charter.

The purpose of assessment of transformation in the financial sector in 2005 is primarily to provide a baseline study against which to assess future progress annually.

The fact that all standards and protocols had not been finalised by the end of the period under review (notably in the Access to financial services category), and that the Charter Council had to verify reported performance in several categories, substantially increased the amount of narrative reporting required from reporting institutions. The resulting complexity was compounded by the primary focus of many institutions on the scoring and rating aspects of the reporting process (which was excluded for 2005 reporting purposes) rather than as a means of assessing transformation. This is addressed in more detail elsewhere in the report.

Reporting for 2005 was primarily against the specific requirements of the Charter

With respect to human resource development, institutions not exempt from the relevant provisions of the Charter, are also required to:

- Promote a non-racial, non-sexist environment and to enhance cultural diversity and gender sensitivity within the sector;
- Invest in human resource development across the full spectrum of skills, with special emphasis on increasing the participation of black people in skilled, strategic and operational leadership in the sector;
- Invest in and equip current and future leadership incumbents in the sector with the appropriate knowledge and capacity to enable them to play a central role in driving the transformation programme.
- Develop and report on the following programmes:
  - career pathing through the provision of the necessary support to black people at all levels to facilitate progress in their agreed careers;
  - the implementation of appropriate mentorship programmes within companies in the sector to assist in the rapid development of black professionals;
  - targeted recruitment to expand the base of potential recruits;
  - cultural diversity and gender sensitivity programmes at various levels of management in the financial institution, with the intention of promoting a vibrant, enabling and diverse institutional culture; and
  - where possible, in conjunction with institutions of higher learning, introduce training programmes in line with the NQF requirements and establish undergraduate and post graduate diplomas and degrees in financial services.

With respect to access to financial services, institutions not exempt from the relevant provisions of the Charter, are also required to:

- the eliminate of discrimination in the provision of financial services;
- support the establishment of third tier community based financial organisations or alternative financial institutions.

With respect to ownership in the financial sector, institutions not exempt from the relevant provisions of the Charter, are also required, within the parameters of good corporate governance, to:

- promote increasing levels of influence of direct black owners at board level;
- encourage training and awareness programmes for all shareholders regarding the impact of indirect shareholding;
- encourage shareholder awareness through triple bottom line reporting, reporting on performance in terms of the charter and information about the institution and the sector; and
- facilitate, where possible, black companies or individuals voting on behalf of indirect owners.

Fund managers and asset consultants specifically required to comply with the provisions of and to improve their knowledge and that of union trustees regarding BEE transactions and targeted investment.

As indicated, 30% of institutions, or less than 10% of institutions in the sector, reported verifiably on the extent to which they met these unquantified responsibilities in 2005.

Human resource development: Employment equity

The employment equity provisions of the Charter focus on transformation at the levels of senior, middle and junior management. Transformation at executive level is addressed by separate provisions dealing with control in the finance sector.

- The three management categories are defined by annual income, adjusted annually for inflation. For 2005 reporting purposes:
- senior management is defined as all employees with a package (excluding bonuses) in respect of which the cost to the employer is R501 267 a year or more, but excludes all employees who fall within the definition of executive management;
- middle management as all employees with a package (excluding bonuses) in respect of which the cost to the employer is between R278 482 and R501 267 a year; and
- junior management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is between R167 089 and R278 482 a year. Half of any bonuses making up more than 50% of total annual remuneration may be included in the calculation of annual cost-to-company.

To measure progress for both gender and racial employment equity, the Charter sets targets for black people and for black women in each of the management categories. It makes not provision and sets no targets for people with disabilities. Pre-2004 estimates of black involvement in the sector at the three management levels are:

- Senior management: Black people 10%, black women 1,6%;
- Middle management: Black people 17%, black women 15%;
- Junior management: Black people 28%, black women 12%.

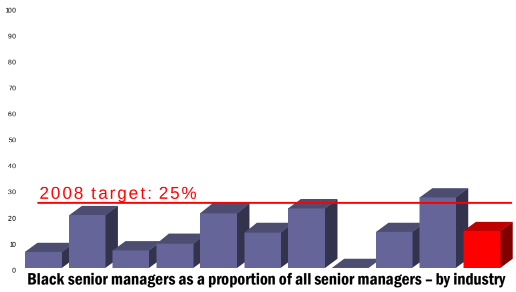
Targets set in the Charter for achievement by institutions in the five years to 31 December 2008 seek to approximately double the proportion of black people in the three categories, with the exception of black women in junior management, which moves from12% to 15%. Targets for 2008 are set as percentages of all managers in each category:

Employment equity targets: 2008			
Senior managers			
Black people	25	Black women	4%
Middle managers			
Black people	30	Black women	10%
Junior managers			
Black people	50%	Black women	15%

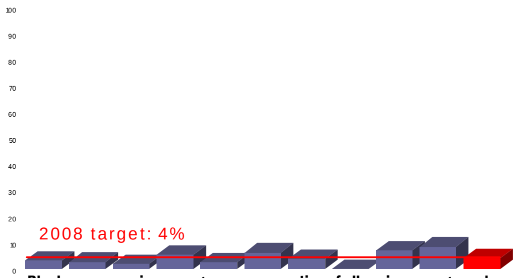
The Charter acknowledges that both starting points and five-year targets are low, and undertakes that 10-year targets will increase targets for black women proportionately to 33,3% of those set for all black people in each category.

By 31 December 2005, the reporting institutions collectively had bettered their end-2008 targets for black women in each category (reaching 4,07% in senior management, 14,92% in middle management, by 23,76% in junior management).

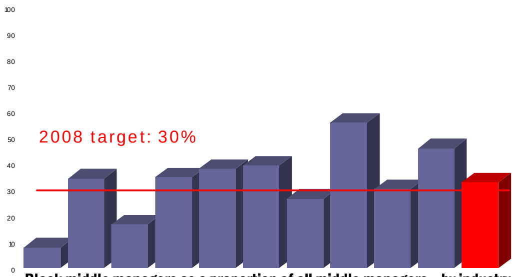
The institutions collectively were on course to achieve their 25% target in senior management, reporting that 16% of senior managers were black, and in middle and junior management, reporting sector averages of 32% and 45% respectively.



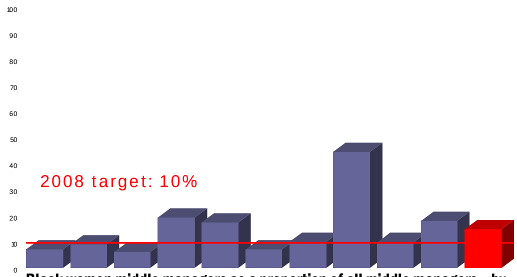
Black senior managers as a proportion of all senior managers – by industry



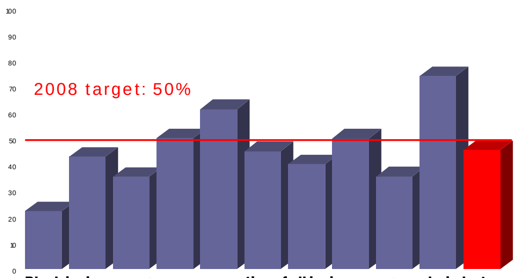
Black women senior managers as a proportion of all senior managers – by industry



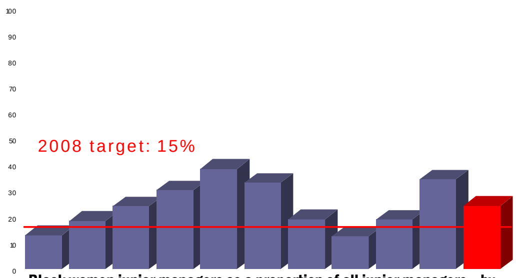
Black middle managers as a proportion of all middle managers – by industry



Black women middle managers as a proportion of all middle managers – by industry



Black junior managers as a proportion of all junior managers – by industry



Black women junior managers as a proportion of all junior managers – by industry

The charts above set out the sector's performance per industry against the 2008 targets, with each blue bar representing an industry's performance and the red bar on the right representing the sector as a whole.

Sector performance is based on total numbers of black people and black women in their respective categories, rather than on institutions' and industries' average performance.

Although the sector's and industries' performance appears extremely positive for 2005, this may represent a more bullish picture than may be justified – particularly in the figures for all black people in each of the categories. The presence, particularly in the banking industry, of institutions with wholly or largely black staffs (which are virtually unchanged from their pre-2004 composition) potentially distort each industry's performance and, to a lesser extent, that of the sector as a whole when assessed for a single year. As noted elsewhere, the accuracy of assessing transformation progress will increase with each year of reporting.

In addition, the pending alignment of the Charter with the Codes is of particular significance to the Charter's employment equity provisions, the targets of which the Charter itself acknowledges are low. Alignment with the Codes may result in an increase in these targets.

A combination of these factors may result in an apparent decrease in the pace of transformation in 2006 when compared to the year under review.

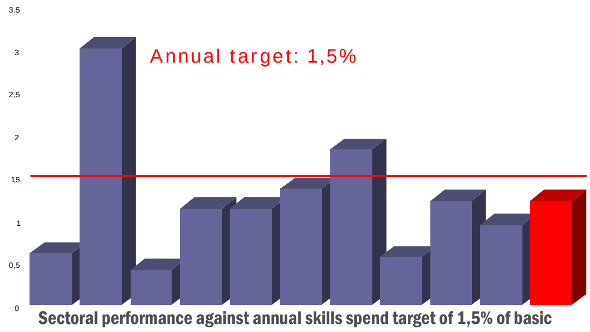
Human resource development: Skills development and learnerships

The Charter requires that financial institutions allocate 1,5% of total basic payroll, as defined by the Charter Council (using the Seta standard), to training of black personnel. It also requires financial institutions to 'employ up to 4,5% of its total staff in the form of black matriculants, or the NQF Level Four equivalent, in registered learnerships … over one learning cycle of three intakes'.

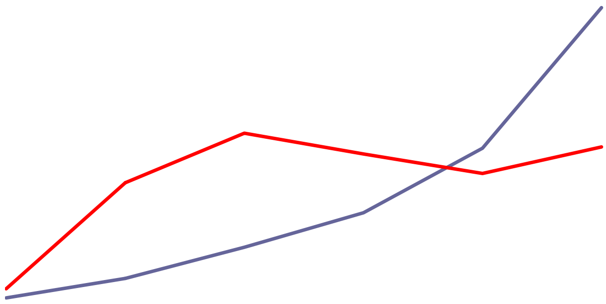
In the course of the Charter's first two years it has become clear that the learnership provisions are not practical in specific industries for which the entry-level qualification is a tertiary degree. Amendment is necessary to this provision to enable institutions in those industries to make an equivalent contribution. This is addressed in more detail in the chapter covering recommendations to the Charter Council at the end of this report.

Reports to the Charter Council on 2005 performance indicate there is a widespread view that performance against the learnership provision can be achieved by providing training for unemployed black matriculants without necessarily employing them thereafter. This does not accord with the wording of the Charter, which specifies unambiguously that 'each financial institution will *employ* (emphasis added) up to 4,5% of its total staff …' A similarly widespread misinterpretation is that this need only be achieved by 31 December 2008. The Charter specifies the 4,5% of total staff will be employed 'over one learning cycle of three intakes'. The Charter is thus clear that 4,5% of total staff will be young black people in learnerships, rather than an equivalent of 4,5% of total staff being placed in learnerships but not employed. The objective is thus not primarily to ensure a financial contribution to black upskilling, as is the case with the 1,5% of total basic wage bill, but in the number of black matriculants employed in learnerships.

In 2005 the sector the sector collectively and eight of the 10 participating industries under-performed against the target of 1,5% of total basic payroll , with a sector collectively underperforming by 20% (reporting 1,2% spend against the annual Charter target of 1,5%). As is noted in the previous section of this report, employment equity targets may increase when the Charter is aligned with the Codes, and that the apparently positive 2005 sectoral performance reported appears to have been positively skewed in this first reporting year by the presence of institutions with exclusively or predominantly black staff complements. In the medium term, financial institutions could thus face a far more significant challenge than they have in the past to make progress towards achieving representative staff complements. With demand for skills outstripping supply in all sectors of the economy, existing black staff complements will be a key resource in meeting these targets. The 2005 reports already indicate a loose correlation between skills spend performance and employment equity performance (see graph above), with higher skills spend by institutions performing best in employment equity. Based on just one reporting year's performance, this correlation is tentative. For 2005 the companies spending most on skills development are, on average, outperforming others in employment equity performance. Nearly half of the top one-third companies by skills spend have achieved racial parity in their junior management and are progressing towards representivity. More than 80% of them have junior management complements that are more than a third black. Comparatively, just 57% of the companies performing worst on skills development have achieved racial parity and only 36% have junior management complements that are more than a third black.

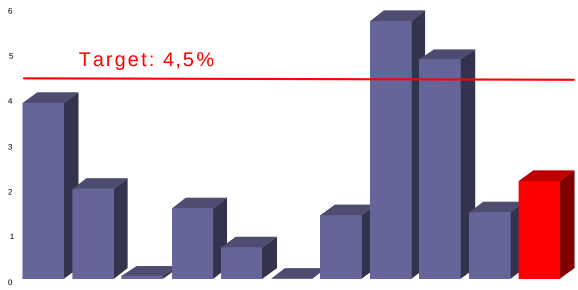


Sectoral performance against annual skills spend target of 1,5% of basic payroll and (below) skills spend (blue) against employment equity performance (red)



This apparently correlation suggests that to achieve Code-adjusted employment equity targets in future, financial institutions will necessarily have to optimise skills spend. Against this background, the sector's 2005 under-performance against the skills spend provisions of the Charter is thus a matter of concern.

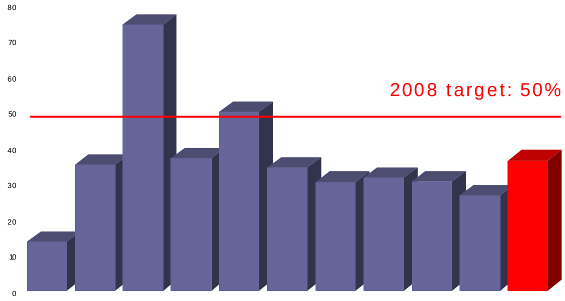
Reporting institutions have underperformed even more substantially against the learnership provisions of the Charter, achieving a reported collective 2,1% of learnerships to total staff. Because of the widespread misinterpretation already referred to, this reported learnership figure appears to reflect substantial over-reporting against the actual provisions of the Charter. Real performance appears to be in the region of 1%. A compounding influence on 2005 learnership performance, referred to above, is the conflict between the skills requirements in several industries and the Charter's learnership provisions, with two industries reporting little or no learnership performance, primarily because their entry-level posts require tertiary qualifications If institutions in these industries are offered alternative means of promoting entry-level black involvement in the sec-



Learnerships: sectoral performance against target of 4,5% of staff as black matriculants in learnerships tor, performance against this target is likely to improve.

Procurement and enterprise development

The financial sector spends in R44 billion annually in formal procurement of products and services. The Charter provides for procurement and enterprise development initiatives to promote transformation in sectors that provide products and services to the sector. It commits financial institutions to spending 50% of the value of all procurement from BEE suppliers by 2008 and 70% by 2014, the Charter's 10th year of operation. This commitment is subject to several conditions, most notably that charters have been established to oversee transformation in the ICT, advertising, automotive and building sectors, to ensure the availability of BEE suppliers in these sectors to meet the procurement demands of the financial sector.



It defines procurement as 'all expenditure to acquire goods and or services including capital expenditure, but excluding: broker commissions; reinsurance premiums; commissions paid to insurance intermediaries; property and rental purchases (although property management is specifically included); expenditure classes covered elsewhere in the charter e.g. salaries and wages. (Contract staff are regarded for this purpose as own staff and are excluded); procurement spending where there is a natural monopoly; any items of procurement where the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons; inter-entity charges for services rendered by other members of the group; social investment expenditure and donations; and VAT'.

It provides for weighting of procurement performance in direct proportion to the BEE credentials of suppliers – the better the BEE credentials of a supplier, the greater the weighting allocated, to a maximum of R1,25 for every R1 spent with an A rated (black owned) supplier. This follows in most respects the approach adopted in the Codes.

For 2005 reporting purposes, the financial sector's performance has been measured against the 2008 target of 50% of all qualifying procurement spend, although charters have not yet been established for all the specified supplier sectors, and although the generic Codes have not yet been promulgated as an alternative. If necessary, the target will be adjusted as part of the process of aligning the Charter with the Codes. Institutions reporting on 2005 transformation were only required to assess BEE credentials at the level of ownership.

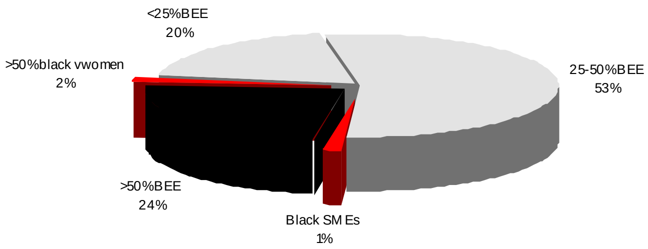
For 2005 the sector reported that 36,4% of its procurement, worth approximately R16 billion, was from BEE accredited suppliers.

In addition to those already referred to, several factors may affect the reliability of the reported performance and the sector's ability to achieve the 50% target by 2008.

Much of the reported BEE procurement spend is could not be confirmed because institutions relied on suppliers for assessment of their BEE status. Although a sizeable minority of financial institutions and groups reported introducing credentials-verification measures to limit inaccurate self-assessment by suppliers, this problem is unlikely to be remedied in the short term without a standardised approach by the financial sector. Establishment of charters in the financial sector's primary supplier sectors, as prefigured in the Charter, and finalisation and introduction of the generic Codes, will also contribute to the remedy in the medium term, as will the development of reliable verification and ratings systems in other sectors.

In the short term, the challenge of sourcing products and services in a manner that contributes to genuine supply-sector transformation will remain and may continue in various forms into the medium term. To achieve the 2008 target, the sector will need to increase its collective procurement spend with BEE accredited suppliers by nearly 7% of total procurement. To do so in circumstances in which the primary supply sectors are only at the start of their sectoral transformation cycles may prove challenging.

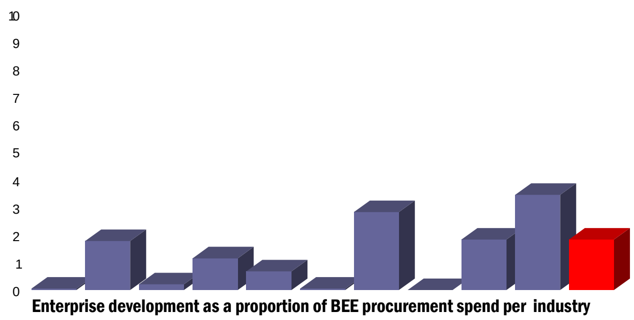
Among the initiatives introduced by a sizeable minority of financial institutions and groups to address this challenge are initiatives to transform existing suppliers. Among the consequences of these initiatives, however, is that a disproportionate share of procurement from BEE accredited suppliers is from suppliers with only minority black ownership involvement (see accompanying pie-chart): fully 73% of reported BEE procurement in 2005 is from companies with less than 50% black ownership – in practice, from companies which are white controlled.



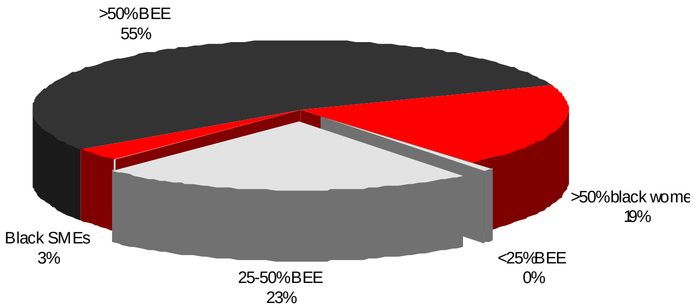
Although the initiative to transform established suppliers by encouraging black participation at ownership level has enabled the sector to achieve a reported 36% BEE procurement in the short term, in the medium to long term it may contribute to a situation that is the reverse of what the Charter, and the broader BBBEE Act initiative, intends: serving to create a large and stable pool of white-controlled suppliers in which black shareholders hold non-controlling, minority interests, which in turn may serve as an obstacle to the organic emergence of competitive, black-owned suppliers to meet demand.

The Charter itself offers as a solution the requirement that financial institutions undertake enterprise development initiatives.

As outlined in the **Reporting** chapter of this report there is strong circumstantial evidence to suggest that several institutions interpreted all BEE procurement as enterprise development and reported accordingly, resulting in a skewing of enterprise development reported for 2005. A countervailing trend is also evident: institutions failing to report fully on or to quantify their enterprise development initiatives because they had already achieved maximum points for procurement. This is a further indication of the shortcomings of the ratings-focused approach by many institutions. Enterprise development represents just over 2% of all BEE procurement spend (see adjacent bar-chart). Adjusted to take account of apparent over-reporting on enterprise development, this figure drops to 0,4%. Nearly a quarter of this (23%) goes to white-controlled companies (see pie-chart below).



Combined the trends evident in the review of the sector's 2005 procurement transformation and empowerment initiatives suggest their may be a danger that to achieve short-term BEE procurement performance levels, it is encouraging the '26% solution' in terms of which the structure and size of established supplier systems remains unchanged and other than to draw in black interests as minority, non-controlling shareholders. It is possible that this disproportionate sectoral reliance on white-controlled suppliers will ease with time. On the face of it, and taking account of the limited contribution to enterprise development (further diluted by the 23% of enterprise development funding going to white-controlled companies), this appears unlikely.



Enterprise development spend by BEE accreditation category

From 2006 onwards, the Charter Council is due to separate procurement and enterprise development for scoring and rating purposes. It will, at the same time, need to consider the implications of the disproportionate role of 'black influenced' companies in supplying products and services to the financial sector.

Access to financial services

Access to financial services and empowerment financing are the two unique and sector-specific provisions of the Charter contributing to broader social transformation. Access to financial services divides into three categories: access to first-order (retail) financial services; origination of loans for low income-housing, agricultural development and black SMEs; and consumer education.

Access to financial services: First order products and services

The Charter defines first-order products and services as:

- Transaction products and services (a secure means of accessing and transferring cash for day-to-day purposes);
- Savings products and services (a secure means of accumulating funds over time – savings accounts, contractual savings products such as endowment policies, collective investments and community-based savings schemes);
- Insurance products and services being the mitigation of impact of defined first order basic risks (life insurance, funeral insurance, burial society, household insurance and health insurance).

It commits institutions 'by 2008 to make available appropriate first-order retail financial services, affordably priced and through appropriate and accessible physical and electronic infrastructure such that:

- 80% of LSM 1-5 have effective access to transaction products and services;
- 80% of LSM 1-5 have effective access to bank savings products and services;
- a percentage (to be settled with the life assurance industry) of LSM 1-5 households have effective access to life assurance industry products and services;
- 1% of LSM 1-5 plus 250 000 have effective access to formal collective investment savings products

and services; and

- 6% of LSM 1-5 have effective access to short term risk insurance products and services'.

For 2005 reporting purposes the following meanings are assumed:

- LSM 1-5 is assumed to mean all people with a household income of R2 500 or less;
- 'Effective access to transaction products and services' means, inter alia, a transaction point within 10km;
- 'Effective access to banking products and services' means, inter alia, a banking facility within 15km.

The Charter commits the financial sector to have established by 2005 'standards to monitor access and to design a mechanism for the ongoing evaluation and review of the impact of its initiatives on access'. Standards and an ongoing evaluation mechanism were not finalised by 2005. In consequence, various factors which will in future be standardised and subject to performance assessment, are deemed compliant for 2005 reporting purposes. The appropriateness of 'appropriate first-order retail financial services' is deemed compliant for 2005, as is the 'affordability' referred to in the reference to 'affordably priced', and the appropriateness of 'appropriate and accessible physical and electronic infrastructure'.

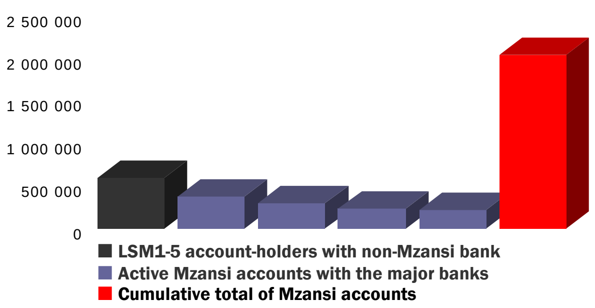
Mzansi accounts and services provided by banking institutions are deemed to comply with Charter requirements as being appropriate and affordable to people in LSM 1-5.

Banks offering Mzansi products were therefore required to demonstrate only that in 2005 their progress in achieving physical coverage levels required by the Charter. Other banks were required to demonstrate use by people in LSM 1-5.

Products offered by institutions offering life assurance products and services, collective investment savings products and services and short term risk insurance products and services were similarly deemed to comply with Charter appropriateness and affordability requirements.

Although providers of insurance, assurance and collective investment products and services were required to report on initiatives to achieve penetration and coverage set by the Charter, mechanisms and the availability of products complying with the Charter provisions were not universally available to institutions in 2005. Active performance evaluation will thus only begin in 2006.

The Mzansi product providers reported a roll-out of more than 1,3 million Mzansi accounts by the end of the 2005 reporting period. Other banking institutions targeting LSM 1-6 contributed a further 500 000 accounts of all types, including bond accounts for low-income housing outside of the R1 600 and R7 900 household income range that is the focus of the Charter's low-income housing targeted investment provisions and which thus fall within the Charter's first-order products definitions. PostBank, which is not subject to the Charter, is not included in the sector's performance assessment for 2005. Meaningful assessment of actual access by people in LSM 1-5 from 2006 onwards may necessitate the Charter Council requesting a form of voluntary input reporting by PostBank and other contributors.



The Charter Council has adopted a cautious approach in recognising the reported performance of the Mzansi accounts' uptake in 2005 as providing a benchmark against which future performance can or should be assessed. There are several factors supporting this caution. Among them is the fact that Mzansi product providers did not track LSM 1-5 uptake of Mzansi products for 2005, although Paragraph 8.3 of the Charter commits the financial sector itself to 'substantially increase effective access to first-order retail financial services to a greater segment of the population, *within LSM 1-5*' (emphasis added).

Future performance measured against the specific requirements of the Charter may thus result in an apparent decline in Mzansi account use by LSM 1-5 users and, consequently, apparently declining performance by Mzansi account providers. When reporting is for scoring and rating purposes, this may negatively affect the institutions concerned.

Similarly, reports on 2005 performance indicate that Mzansi accounts are subject to unique provisions which have had the potential effect of inflating 2005 performance and which do not necessarily fall within the deemed compliance agreed by the Charter Council for 2005 purposes: for example, Mzansi accounts are active for a period of 12 months, rather than for three months as is the case with other accounts. This and other provisions introduced unilaterally and not subsequently considered or accepted by the Charter Council as part of the Charter performance regime, may, when standards are introduced as required by the Charter, have the effect of further eroding apparent performance by the relevant institutions against the 2005 benchmark. It is also apparent from 2005 reports that existing Mzansi account arrangements may not comply with standards set strictly in term the 'affordable' and 'appropriate' criteria specified in the Charter.

The Charter Council takes the view that it would be preferable if the Mzansi initiative, which it recognises a unique innovation by the banking institutions, formed the basis of future retail access initiatives.

For the sake of accuracy and in the interests of the institutions which launched the Mzansi initiative themselves, the Charter Council therefore believes it is prudent to accept the Mzansi rollout figures with the following qualifications: the penetration of the LSM 1-5 focus market will only be definitively quantified in 2006; and that compliance of the various Mzansi products with the requirements of the Charter will be tested for 2006 reporting purposes. Thus 2006 performance will be set as the performance standard against which future performance is measured, avoiding the possible appearance of declining penetration of the LSM 1-5 population segment.

As already indicated, there were major, although apparently unintentional, gaps in the reporting on the physical access to transactional and banking facilities (coverage). As a result, the Charter Council is not at present able to make a finding on progress towards meeting the 2008 objective of 80% coverage. The Charter Council expects to be in a position to do so before the start of the 2006 reporting cycle.

With respect to life assurance industry, collective investment and short term risk insurance products and services, the appropriateness and affordability of which are deemed for 2005 reporting purposes, a quantifiable finding is similarly impractical. Several institutions, particularly but not exclusively within the life assurance and short-term insurance industries, provided comprehensive detail on their products and rollout and sought to infer uptake by LSM 1-5. Most institutions did not, however, track household income of their client-base (or, if they did, did not report adequately). As expected at the start of the process, no quantifiable finding on uptake by the target social segment is possible for 2005.

For 2006 reporting purposes methodologies and standards accepted by the Charter Council will enable the three industries, life assurance, short-term insurance and collective investments, to quantify their performance against the requirements of the Charter. The database against which progress thereafter will be assessed will derive from the 2006 reporting process.

In making these findings, the Charter Council emphasises, as it did in the opening pages of this report, that South Africa is in the opening stages of an ambitious national project of transformation, and that the initiative to give all South Africans access to first-order financial products represents a significant departure from past practices by the financial sector. While assessment of the 2005 reports identifies real and material shortcomings in the initiative, the initiative itself is to be commended. Refinement – in some aspects substantial refinement – of the oversight and implementation of the initiative may be necessary, but the initiative itself has demonstrable value and is likely to make major and quantifiable contributions in the future to access to first-order financial products by historically unbanked strata of South African society.

Access to financial services: Origination

This aspect of the Charter deals with origination of loans made in terms of three of the four targeted investment categories: low-income housing, agricultural development and black SMEs.

For purposes of assessing origination of low-income housing loans, institutions are required to include all housing loans to households with incomes of between R500 and R7 900 a month. This differs from assessment of low-income housing under targeted investment, where the household income range is R1 600 to R7 900.

Agricultural development for both origination and targeted investment assessment purposes is defined as involving integrated support for resource-poor farmers, through enabling access to and the sustainable use of resources.

Originated loans to SMEs qualify if the SME is ‘a black or black empowered company’ – is more than 50% black-owned – and has a turnover of less than R20 million a year. Targeted investment of black SMEs targets only companies with annual turnover of between R500 000 and R20 million.

For 2005, reported originated funding in the three loan categories is similar to the equivalent targeted investment categories. Only banks reported originating loans, topped up to some extent by other industries, notably the life assurance industry, the equivalent targeted investments. Institutions did not report in sufficient detail to assess the different performance requirements of loan origination and black SME financing – housing finance for household with incomes between R500 and R1 600, and financing of black SMEs with annual turnovers of less than R500 000.

Because of this, the two areas of Charter performance are addressed jointly under **Empowerment financing: target investments** below.

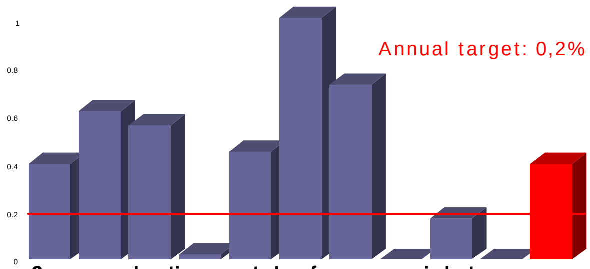
Access to financial services: Consumer education

The Charter commits all financial institutions to invest 0,2% of post-tax operating profits in consumer education every year between 2004 and 2008, and specifies that ‘consumer education will include programmes that are aimed at empowering consumers with knowledge to enable them to make more informed decisions about their finances and lifestyles’. In the context of Paragraph 8 of the Charter, which deals with ensuring people in LSM 1-5 have access to financial services, the Charter indicates that qualifying consumer education must be directed at LSM 1-5. Investment in consumer education is an annual target until and including 2008. Thereafter its continuing need will be assessed by the Charter Council.

As already indicated, no reporting institution tracked the extent of their consumer education's penetration of or use by people in LSM 1-5. Only short-term risk insurers which contributed to the Saia consumer education initiative in 205, are thus deemed to be compliant. Non-compliance by other institutions for 2005 is primarily a consequence of the absence of agreed assessment protocols and Charter standards. This is in currently being addressed. The 2006 reporting and review process will provide the baseline study on consumer education.

Institutions nevertheless reported investing R55 million in consumer education in 2005, with an average across the sector of 0,39% of post-tax operating profit, nearly double the 0,2% committed by the Charter.

No institution tracked consumer education audiences to demonstrate LSM 1-5 focus and few provided the content to demonstrate that their initiatives were, in fact, consumer education as defined: 'empowering consumers with knowledge to enable them to make more informed decisions about their finances and lifestyles'. Reported consumer education initiatives ranged from loud-hailers at taxi- and bus terminals to funding radio and television serials and soap-operas. The absence of any information on potential or actual audiences or on content prevented any meaningful interrogation of reported performance – whether, for example, funding the radio and televisions dramas achieved the objectives of Paragraph 8.4 of the Charter or a form of product placement.



Consumer education: reported performance per industry

The Charter Council has adopted a cautious approach to acceptance of the reported investment in consumer education for the same reasons as it has exercised caution in accepting the reported Mzansi accounts' rollout as meeting the requirements of the Charter: when more rigorous criteria are applied in the future to consumer education initiatives to ensure that reported performance complies with the provisions of the Charter, institutions could appear to be decreasing their commitment to consumer education even if their actual consumer education spend is increasing.

Empowerment financing

The empowerment financing provisions of the Charter divide into two distinct categories: targeted investments and BEE transaction financing.

The Charter Council has set cumulative investment targets for the sector as a whole into the four targeted investment categories, transformational infrastructure, low-income housing, agricultural development and black SMEs. Individual institutions are required to contribute to meeting the combined 2008 targeted investment target of R63,3 billion in direct proportion to their share of the total of designated investments held by the financial sector.

For BEE transactions, the Charter Council has set a cumulative 2008 target of R50 billion.

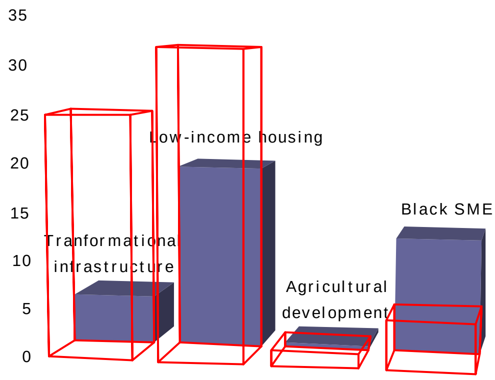
Empowerment financing: targeted investments

The Charter commits the financial sector to targeted investment in four investment areas (with 2008 investment targets for the sector in brackets): transformational infrastructure (R25 billion); low-income housing (R31,8 billion); agricultural development (R1,5 billion); and black SMEs (R5 billion). Individual institutions are not required to investment in each category of targeted investment in proportion to their designated investment holdings: they are only required to contribute proportionately to the total targeted investment target, and may 'choose to participate to a greater or lesser extent in each of the components of targeted investment, depending on where they are relatively better positioned to do so'.

With 35,5% of designated investment, domestic banks are set a combined 2008 target of R22,5 billion, retirement funds (which have not reported for 2005) a target of R21,5 billion, the life assurance industry a target of R13,5 billion, the collective investments industry a target of R4 billion, and international banks and short-term insurers R1,2 billion between them.

The four investment categories are:

- **Transformational infrastructure**: Transformational infrastructure projects are defined as those that support economic development in underdeveloped areas and contribute towards equitable access to economic resources. Such infrastructure projects could be in the following sectors: transport; telecommunications; water, waste water and solid waste; energy; social infrastructure such as health, education, and correctional services facilities; and municipal infrastructure and services. Transformational infrastructure may not include commercially productive infrastructure. The Charter Council has approved an infrastructure index which quantifies levels of development in each local authority area using access to water, sanitation, electricity and housing as criteria. When reporting is for rating purposes, the index is designed to incentivise investment in areas of least development.



R billions: The sector's reported targeted investments (2008 targets are in red outline)

- **Low-income housing**: Housing for households with a stable income of between R1 600 and R7 900 for 2005.
- **Agricultural development**: Integrated support for resource-poor farmers, through enabling access to and the sustainable use of resources.
- **Black SMEs**: Companies that are more than 50% black owned and have an annual turnover of between R500 000 and R20 million.

The financial sector reported R33,4 billion on its books in targeted investments on 31 December 2005: R19 billion in low-income housing (compared to a target of R31,8 billion); R7,45 billion in black SME financing (R5 billion); R6,6 billion in transformational infrastructure (R25 billion); and R 516 million in agricultural development (R1,5 billion).

There is strong direct and circumstantial evidence in the institutions' submissions that reported low-income housing, transformational infrastructure and agricultural development investments are over-claimed by the sector. This is dealt with in greater detail in the category sub-sections below. Total target investment figures are to be treated with caution and indicative of trends only.

There are also indications that in all targeted investment categories investments are geographically skewed towards Gauteng, the Western Cape and KZN. Low levels of reporting on the geographic breakdown of targeted investment prevent a clear finding on this, however. This is also addressed in greater detail in the category sub-sections below.

2005 targeted investment by industry (R millions)					
	All targeted investment	TI	Housing	Agriculture	Black SMEs
ACI	61	61	0	0	0
Basa	28 580	2 472	18 862	473	6 773
IBA	437	109	0	0	328
LOA	4 559	4 017	162	43	336
Saia	14	0	0	0	14
Sector	33 651	6 660	19 024	516	7 450
Target	**63 300**	25 000	31 800	1 500	5 000
Origination (R millions)					
Basa			18 647	633	6 794

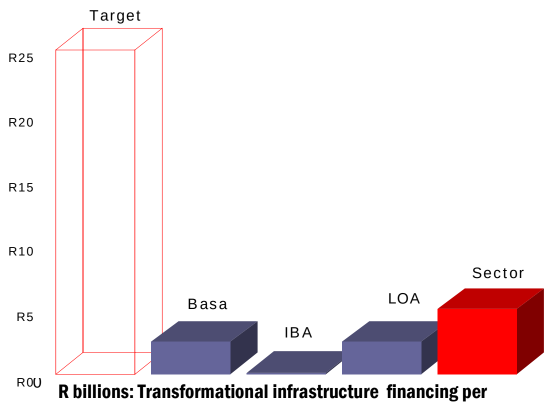
Note on the 2005 targeted investment table: The difference in the 2005 housing and black SME targeted investment figures for Basa and those its members reported for origination derive from the fact that origination is for 2005 only. Targeted investments are based on loans on the institutions' books on 31 December 2005 and may thus include loans origination prior to 2005. The difference between the agricultural development targeted investment figures and that for originated agricultural development loans is assumed to derive from the involvement of non-Charter institutions.

As the originator of loans for low-income housing, agricultural development and black SMEs, the banking industry was the most active and substantial contributor to targeted investments, reporting combined investments of R29 billion – R19 billion in low-income housing, R6,7 billion in black SMEs, R2,4 billion in transformational infrastructure and R473 million in agricultural development.

Other industries cited low levels of originated loans and non-availability of appropriate investment opportunities for poor levels of performance against the Charter's targets.

The sector reported its most positive performance in black SME financing, with 7,45 billion in financing, comfortably ahead of the R5 billion target for 2008. It performed most poorly in financing transformational infrastructure (R6,6 billion against a target of R25 billion) and agricultural development (R516 million against a target of R1,5 billion).

Collectively, the sector has reported R33,6 billion invested in targeted investments against the 2008 target of R63,3 billion. Even without the strong circumstantial evidence of over-claiming for 2005, the sector will need to generate R9 billion a year in new investments to meet its targets. When the discrepancy between reported performance and actual investment is reconciled, the actual annual figure appears likely to be between R12 and R15 billion. The major stretch will be in transformational infrastructure.



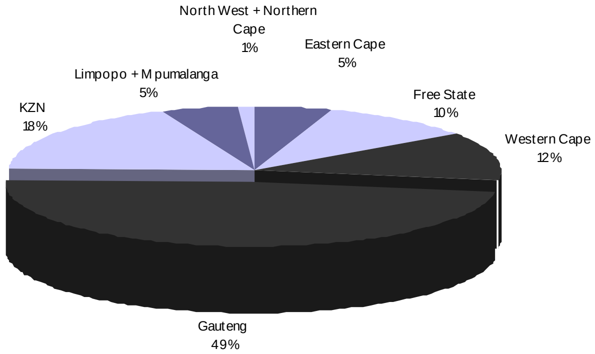
R billions: Transformational infrastructure financing per contributing industry

Transformational infrastructure

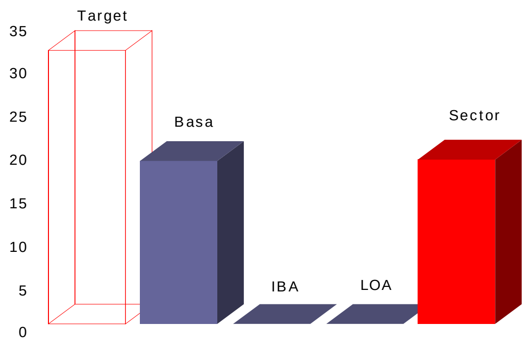
Reported 2005 performance reflects a serious gap in meeting the acknowledged shortfall in infrastructure. The omission of detail on the intended use of infrastructure funding from 2005 reports has prevented meaningful interrogation of this aspect of performance. Transformational infrastructure funding appears to follow a similar geographic trend to those of other targeted investment categories, with investment tending to cluster around South Africa's main urban metropolis, Johannesburg, Cape Town and Durban.

Low-income housing

The 2008 target for low-income housing finance is R31,8 billion. To qualify as low-income housing finance, loans and other forms of credit-granting must be to households earning between R1 600 and R7 900 in 2005 (this represents a CPIX-linked increase from the R1 500-R7 500 household income referred to in the Charter). The bulk of the R19 billion reported for 2005 came from the domestic banking sector, with minor contributions from the life assurance industry and international bankers. The report has already referred to non-tracking of household income of loan recipients. Reporting institutions did not distinguish between the criteria for qualifying origination (minimum R500 household income a month) and targeted investments (minimum R1 600). Only two institutions, neither of them among the leading housing financers, attempted to track the household income and LSM status of borrowers. Most of the reported housing finance is thus unconfirmed for 2005. A reliable baseline study based on strict Charter criteria will form part of the 2006 reporting and review process.



Low-income housing finance by provincial share



R billions: low-income housing investment per industry

For 2005, the major credit-granters in the banking industry opted to assume household income based on unit cost (the cost of the house), setting R180 000 as the ceiling for qualifying loans. As indicated, insufficient information was provided on loan size and none on actual household income to assess the impact of the targeted housing finance initiative with a high level of statistical confidence.

Such information as was provided by credit-granters suggests that the primary lending and funding focus is at the upper end of the house income band set by the Charter. Lower-income households (R1 600-R4 500 monthly household income) appear from the reports to represent a disproportionately small proportion of borrowers. This effect is compounded by delay by institutions in introducing household income as the basis for lending decisions. Most institutions continue to base decisions on the income of individual borrowers, although continuing to use the R1 600-R7 900 Charter qualifying bracket.

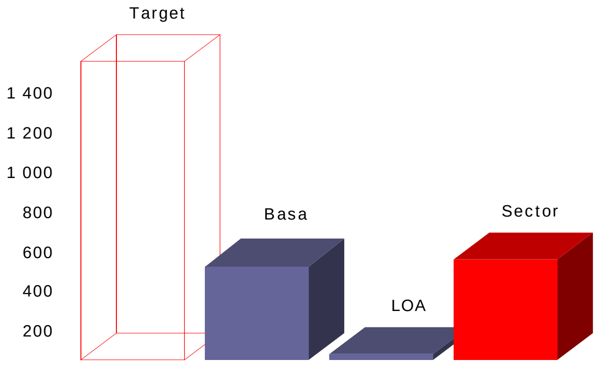
The potential result of this approach is significant bracket-creep: loans being made to households in which one earner (the borrower) is at or near the ceiling of R7 900 and the income of second or third earners are not taken into account, although the combined income pushes the household above the

Charter's R7 900 ceiling, moving the household up one or more earning brackets. Charter-designated housing finance is thus potentially being allocated to income brackets not provided for in the Charter.

Paralleling the trend in all financing covered by the Charter in which information on geographic spread was requested, the bulk of housing loans was in Gauteng and the Western Cape (61% combined), with KZN borrowers receiving 18%, and the remaining provinces 21% between them. As has been noted, the assessment of the geographic spread of housing finance and the reliability of the conclusion is restricted by the omission from the reports of several major credit-granters of the underlying information.

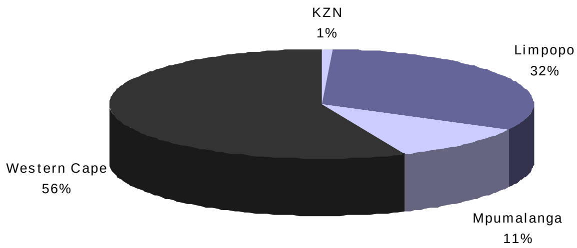
Agricultural development

The 2008 target for agricultural development is R1,5 billion, to be made available in the form of integrated support for resource-poor farmers, through enabling access to and the sustainable use of resources. Two years into the operation of the Charter, the financial sector has barely reached a third of the five-year target, with reported loan origination of loans in the year under review for agricultural development at R633 million.



Reported targeted agricultural development investments from the banking industry was R472 million, with LOA members investing R43 million.

Geographic distribution of agricultural development financing appears to be even more sharply skewed than is the case with low-income housing: more than half of agricultural development funding reported by the sector in 2005 went to the Western Cape, arguably the country's most agriculturally developed area, with just 1% going to KZN, and less than 1% each to the Free State, Eastern Cape, North West and Northern Cape. These proportions are base on extrapolations from reported geographic distribution of financing of agricultural development and are indicative only. The Western Cape's disproportionate claim on agricultural development funding has, however, been skewed by the inclusion of agricultural development investments which do not fall within the Charter definition.



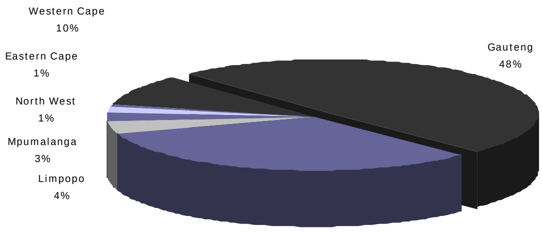
Black SMEs

Black SMEs are black-owned (50%-plus) or black influenced (25-50% black-owned) small or medium enterprises with a turnover of between R500 000 and R20 million a year. The sector's 2008 target for black SME funding is R5 billion.

The sector has collectively comfortably bettered the black SME targeted invest-ment for 2005.

Although this represents a significant achievement, the reported patterns of black SME funding in the period under review continues to reflect historic distortions of access to finance in South Africa.

Nearly all (91%) of the funding granted to black SMEs in 2005 was allocated in the provinces with the country's three major cities: Gauteng, Western Cape and KZN. More than half went to the two wealthiest provinces, in which financing is most readily available, Gauteng and the Western Cape. A third went to black SMEs in KZN. The remaining six provinces, including all the country's poorest, received less than 10% of the total reported black SME financing between them.

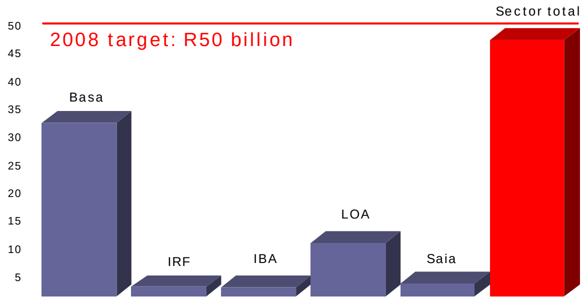


Black SME investment by province

Empowerment financing: BEE transaction financing

BEE transactions are defined by the Charter as all transactions for the acquisition, by black people, of direct ownership in an existing or new entity (other than an SME) in the financial or any other sector of the economy; and joint ventures with, debt financing of or other form of credit extension to, and equity investments in BEE companies (other than SMEs).

BEE transaction financing is one of the financial sector's two most notable performances against its 2008 Charter target. Set to provide R50 billion in financing to BEE transactions after five years, the sector has virtually achieved its target within two years, with cumulative reported BEE transaction financing at the end of 2005 of R47 billion-plus. For several of the major institutions, this included vendor financing transactions to bring in black shareholders.



R billions: Contribution to BEE transaction financing per industry

For the period under review, no standards had been agreed for the assessment for broad-base shareholding. Transactions, including vendor-financing transactions by institutions, were therefore assessed purely on narrow-based factors.

In line with this approach, few institutions reported on the extent to which they had taken account of the requirements of the Charter (Sections 9.2.1-92.6) that:

- BEE ownership initiatives should be aimed at promoting the productive and sustainable participation of black companies and black people in each sector of the economy;
- Ownership will be particularly encouraged if it adds value to the companies involved and includes meaningful participation in management and control;
- The funding structures should facilitate the transfer of full economic interest to the BEE partner and longer-term shareholder-type relationships, as opposed to short-term portfolio investments (especially where the transaction has been facilitated);
- If the acquisition of equity by the BEE company is facilitated in terms of the provisions of this charter or Government assistance, the retention of the shareholding as a BEE share should be promoted to the greatest extent possible;
- Initiatives aimed at achieving broad-based empowerment will be promoted. This would include em-

ployee ownership, community and collective ownership; and

- Joint ventures or partnership arrangements should be meaningfully structured with equitable portions of the responsibility and benefit to each party.

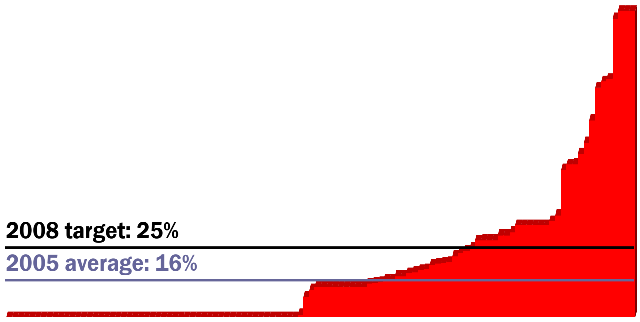
Ownership and control: ownership

The Charter requires that each participating institution has 25% black ownership by 2008, measured as holding company level. At least 10% must be by way of direct ownership by black people.

A maximum of 15% of the target may be by way of indirect ownership by black people at group or subsidiary level.

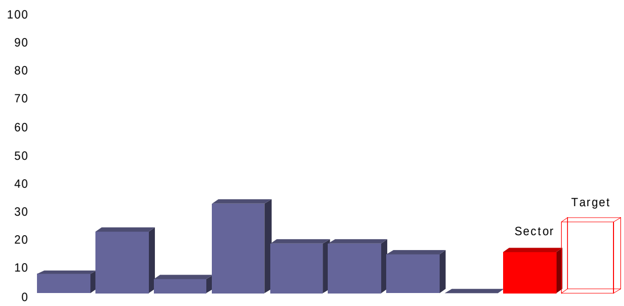
The sectoral performance outlined in this section is not weighted by market capitalisation of individual institutions or any other factors. A 25% black ownership average does not therefore necessarily translate into black control of 25% of the financial sector.

Black ownership is calculated as the agreed standard valuation of the black interests expressed as a percentage of the agreed standard valuation of the South African operations of the financial institution on the date of the transaction.



Black ownership in the sector

Below: Black ownership per industry



Average direct black ownership of reporting institutions at 31 December 2005 was 16%. But only 54% of institutions which reported claim any black ownership at all. Among these, the average is 30%. The remaining 46% reported no black ownership.

Just over 25% of institutions report having achieved the 2008 direct ownership target. A further 25% report between 10% and 25% black ownership in 2005.

The presence of black-owned institutions whose BEE credentials pre-date the Charter (notably in the banking and investment management industries) also positively distorts the perception of progress by pushing up the sectoral and industry averages by approximately 3,5%. A more realistic perspective on the pace of ownership transformation will only be achieved when year-on-year assessment is possible after 2006.

Ownership and control: control

Transformation at the level of control is quantified by the number of black directors, black women directors, black executives and black women executives. The 2008 directorship targets are, respectively: 33% and 11%. Executive targets are, respectively: 25% and 4%.

Reported performance against the 2008 targets suggests the sector will comfortably achieve all four targets in the five years allocated:

- Black directors: 29,8% (target: 33%)
- Black women directors: 7% (11%)
- Black executives: 22% (25%)
- Black women executives: 4,9% (4%)

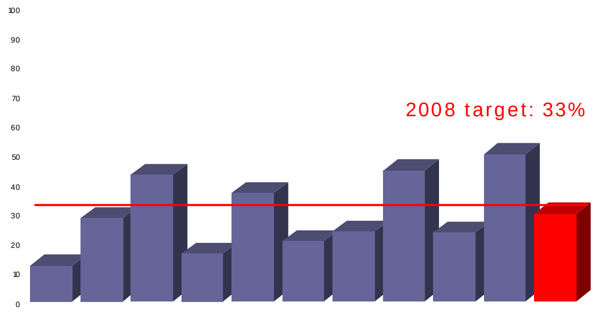
These proportions do not take account of executive directorships.

Multiple directorship by black directors in the sector make up 37 of the 178 reported black directorships. The effect of multiple directorships, almost exclusively non-executive, is to inflate the apparent sectoral performance from 16% (141 out of 896) to 20% (173 out of 896).

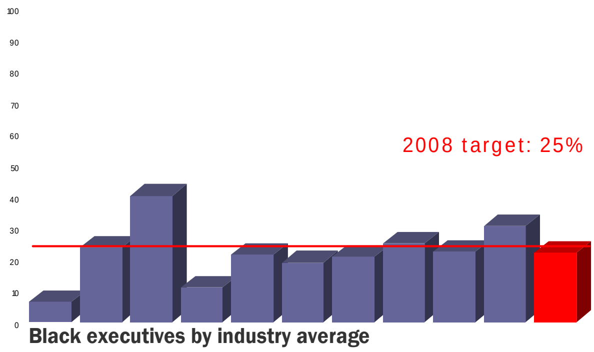
Even taking this into account, black directors outnumber black executives. The average level of black directors for the 10 reporting industries is 29%, against a 22% average of black executives. Directorships held by black women outweigh black women executives in similar proportion, although the eight women holding multiple directorships positively distort the actual presence of black women in financial sector boardrooms. The number of black women executives and black women sitting as non-executives thus appears to be similar.

Multiple directorships also lower the sector's relative performance against that of the industries within it.

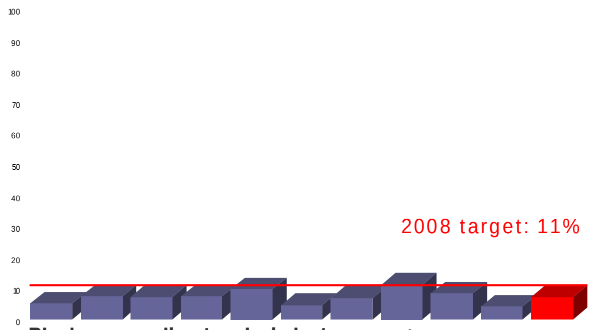
As is the case with black managers, the Charter acknowledges that both the starting points (2% in the case of black women executives) and 2008 targets are low. The Charter undertakes that the next set of targets, to be achieved by 2014, for black women will be 33,3% of those for black people generally in executive positions. Alignment of the Charter with the Codes, once these are codified into regulation, may pre-empt this process. In either case, both the Charter Council and the sector need to give urgent attention to increasing the involvement of black women at executive level in the financial sector and, to a lesser but still urgent, extent to their presence in the sector's boardrooms.



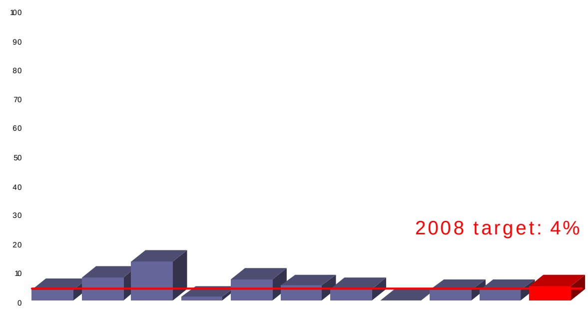
Black directors by industry average



Black executives by industry average



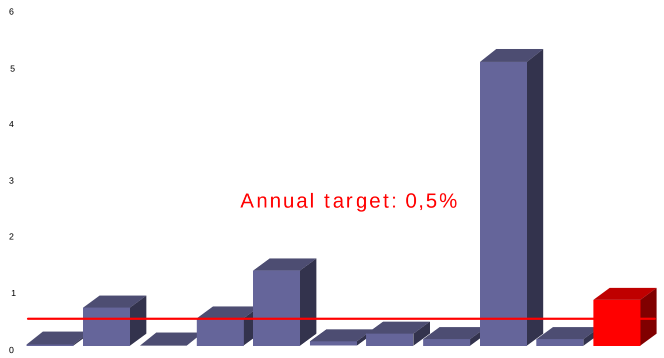
Black women directors by industry average



Black women executives by industry average

Corporate social investment

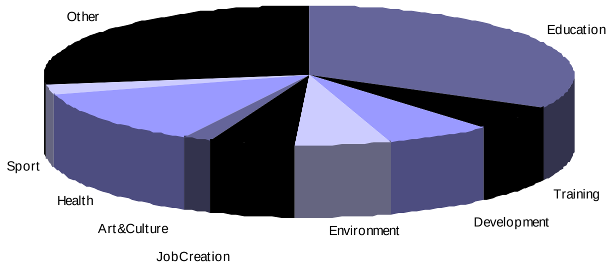
The Charter requires each financial institution to invest 0,5% a year of post-tax operating profits in CSI projects. It defines CSI projects as those 'aimed primarily at black groups, communities and individuals that have a strong developmental approach and contribute towards transformation' which may include:



Average CSI spend per industry

Education: support for community education facilities; programmes at secondary and tertiary education level aimed at promoting the industry; bursaries and scholarships, which are oriented towards the hard sciences;

Training: community training; skills development for unemployed; adult basic education and training in communities; financial literacy programmes in communities;



CSI allocations by category

Development programmes for youth and other target groups;

Environment: support of conservation projects; community clean up projects; food garden initiatives;

Job creation: job creation projects external to the workplace or any commitments contained in empowerment financing;

Arts and culture: support of development programmes; development of new talent;

Health: support of community clinics; health programmes in the community; and

Sport: support of developmental programmes.

As indicated above, reporting standards on CSI projects provided only limited detail on projects to enable the Charter Council to approve reported performance of 0,31% of post-tax operating profit for the sector. Reporting institutions reported a combined R280 million invested in CSI initiatives in 2006.

Unquantified responsibilities

The Charter requires institutions to report annually on the extent to which they have fulfilled a range of unquantified responsibilities it imposes on them. The responsibilities relate to the human resource development, access to financial services and ownership and control provisions of the Charter. For reasons set out in detail in the previous section of this report, the quality of most reports on this provision of the Charter limited the extent to which the Charter Council could assess progress in fulfilling these responsibilities. As has been noted elsewhere, many reporting institutions interpreted the fact these responsibilities are unquantified for scoring purposes into an approach which provided little detail on the extent to which they had complied with them. No findings on this provision of the Charter were therefore possible.

The 2006 reporting and review process will provide the baseline study for unquantified responsibilities. This is addressed in greater detail in the Recommendations to the Financial Sector Charter Council chapter of the report.

Conclusions from the 2005 review

In drawing conclusions from the review of transformation in the financial sector in 2005, it is useful first to assess the process itself.

Despite the many challenges, this document, which will form the core of the first-ever annual report on sectoral transformation submitted to the BEE Advisory Council, demonstrates the robustness and rigour of the process and institutions underlying it.

Paradoxically, so too does the fact that the review identified shortcomings, gaps and omissions in the reporting process. These are operational matters, open for correction, improvement and refinement as the full review process is phased in over the coming 24 months. The fact that the process could and did identify these issues demonstrates its validity and integrity, and demonstrates that is more than a box-ticking exercise.

At the same time, the process has shown that the Charter Council and the transformation objectives underpinning it enjoy wide endorsement in the financial sector. Reporting institutions account for more than two-thirds of the sector by market capitalisation and the overwhelming predominance of designated investments held. They submitted their reports voluntarily to the Charter Council unsure, in this first year, how harshly their 2005 performance would be assessed. The Charter Council combines representation of the financial sector – sector representatives comprise a minority on the Council Board – with an independent review system provided for by the Charter itself, through the exclusive allocation of responsibility to the Charter Council executive and Principal Officer. This exclusive responsibility runs from the receipt of reports through to the submission of the annual report to the BEE Advisory Council.

This combination of sectoral representivity and review-independence has been a key contributor to what must be adjudged a successful first year of operation.

Assessment of the progress towards the financial sector's transformation in 2005 identifies both strengths and weaknesses.

In its first two years of operation, the financial sector has contributed nearly R50 billion to major BEE transactions and a further R6,7 billion to black SME financing. Measured against the targets set for 2008 (R50 billion and R5 billion respectively) this is a concrete achievement.

Importantly, it is in one of the Charter's unique areas of transformation assessment: contribution by the financial sector to broader South African social and economic transformation. When institutions are scored on their performance in future, nearly half their points will flow from their contributions to BEE transactions, black SMEs, transformational infrastructure in underdeveloped areas of South Africa, housing for South African households with incomes of below R7 900, funding for resource poor farmers, and provision of retail financial services to this country's historically unbanked.

As has been noted, this is the start of a process – not the end, or even the beginning of the end, but the end of the beginning.

Assessed from this perspective, the finding of this review is that both monitoring and review process under the aegis of the Charter Council and the transformation of the sector have made a reasonable start in the 10-year process of achieving the Charter objective of achieving 'a transformed, vibrant, and globally competitive financial sector that reflects the demographics of South Africa, and contributes to the establishment of an equitable society'.

Recommendations to the Financial Sector Charter Council

The Charter requires as part of the annual monitoring process, the executive of the Charter Council 'prepare an annual review which outlines progress and evaluates new areas of intervention'. This chapter identifies 'new areas of intervention' to be tabled to and considered by the Charter Council. The issues are raised in the sequence in which they are identified in the review.

Participation and reporting

The Charter seeks participation by the entire financial sector. To draw in those institutions which did not report on 2005 performance, it is recommended that the Charter Council and the trade associations in the sector embark on an awareness-raising programme reaching and drawing in all financial institutions, including the retirement funds falling under the IRF, which were excused in the current reporting cycle.

To raise the reporting standard and ensure institutions optimise their reported performance when reporting results in BEE ratings, it is recommended that the Charter Council and the trade associations embark on an education programme accessible to all financial institutions before institutions are required to prepare their reports on transformation initiatives in 2006.

The review identified continuing uncertainty in financial groups over the reporting responsibilities of the groups and their subsidiaries and members. A similar education programme is necessary to clarify these issues and ensure comprehensive reports from all institutions overseen by the Charter council in future reporting cycles.

Human resource development

The review identified both widespread underperformance in black skills development and an apparent correlation between institutions' annual expenditure on black skills development and progress in achieving employment equity at the levels of senior, middle and junior management. To avoid the development of a situation in which existing skills are rotated, in a cycle of ever-increasing cost in which black skills remain a scarce commodity, it is recommended that the Charter Council consider an initiative to encourage and, possibly, incentivise greater expenditure on black skills development.

It also identified both widespread underperformance on the employment of black matriculants in learnerships and widespread misinterpretation over the Charter's requirement that institutions employ 4,5% of their staff black matriculants in learnerships. The education programme referred to above can address this issue.

At the same time, it is clear from the 2005 review that the learnership provisions of the Charter are inappropriate for at least two of the industries in the sector. It is recommended that the Charter Council solicit proposals from these industries and consider alternative mechanisms, including the award of scholarships, to facilitate entry-level black participation in these industries.

Procurement

The review identified several aspects of the sector's procurement practices requiring reconsideration by the Charter Council:

- Generally low levels of enterprise development, possibly resulting from the Charter provision linking procurement scoring with that of enterprise development. The Charter Council needs urgently to finalise its plans to separate the points allocation of enterprise development from BEE procurement,
- Potential medium term difficulties arising from the fact that the generic Codes of Good Practice are not yet promulgated or operational and that sector charters have not yet been established in several of the primary supply sector, as a consequence of which financial institutions rely on self-assessment by suppliers and vendors of their BEE credentials.
- Predominant BEE spend with suppliers and vendors that are BEE accredited but majority white-owned. Nearly a quarter of enterprise development funds go to suppliers and vendors that are BEE accredited but majority white-owned.

It is recommended that the Charter Council address these issues as soon as possible.

Access to financial services

- **First order financial services**

It is recommended that the Charter Council facilitate rapid resolution of unresolved issues concerning standards and criteria on the appropriateness and affordability of first-order products and services must be concluded as soon as possible.

The Charter Council needs to engage the banking industry to ensure that, in all future reporting processes, institutions track penetration of LSM 1-5 strata.

It is recommended that the Charter Council facilitate access by its executive to the banking industry's physical access (coverage) mapping initiative of LSM 1-5 population concentrations, essential to enable the executive to conclude its 2005 baseline study and to assess progress in 2006.

- **Origination**

It is recommended that the Charter Council engage the banking industry to ensure that, in all future reporting processes, it tracks low-income housing loans by household income and that, in doing so, it takes account of the differing minimum household incomes applicable to originated and targeted investment low-income housing funding.

Similarly, it is recommended that the Charter Council engage the banking industry to ensure that, in all future reporting processes, it takes account of the differing minimum turnover requirement of black SMEs applicable to originated and targeted investment

It is recommended that the Charter Council consider the trend in all three originated loan categories of clustering loans around the country's three major urban areas.

It is recommended that the Charter Council address sector's comparative underperformance in the allocation of loans and funding to resource-poor farmers.

Additional recommendations affecting these categories are included under the heading 'targeted investments'.

- **Consumer education**

It is recommended that the Charter Council facilitate the conclusions of unresolved issues concerning standards and criteria for qualifying consumer education expenditure must be concluded.

Empowerment financing

- **Targeted investments**

  The review indicated that transformational infrastructure received proportionally lower levels of investment than the other targeted investment areas. It also indicated a tendency to concentrate transformational infrastructure investment in traditional investment areas (Eskom, Telkom and so on) or in relatively developed local authority areas. It recommended that the Charter Council consider incentives, including the Charter Council development index, to encourage more geographically diverse transformational infrastructure investment.

  It is recommended that the Charter Council consider the implication of the repeated report that the lack of appropriate projects restricted their investment in the four targeted investment categories, and requests from smaller institutions for the development, at sector or industry level, of investment instruments in which they could invest. Similar requests were made on transaction financing.

  As part of this review by the Charter Council, it is recommended that the related issues of risk sharing and risk mitigation are addressed.

  It is further recommended that the Charter Council consider the differing targets for low-income housing and black SME funding provided for under origination and targeted investments. These effectively discourage funding for low-income housing for the poorest segment of households and of black SMEs earning turning over less than R500 000 a year and crucially, of start-up black SMEs. The consequences of this do not appear to have been those intended in the Charter.

- **Transaction financing**

  The Charter currently provides that members of the IBA restricted by global policy may achieve their ownership targets through ‘equity equivalent’ transaction financing, but does not offer this mechanism to other institutions similarly restricted. This anomaly allows non-IBA members to seek and receive exemption from Charter ownership requirements, rather than incentivising additional ‘equity equivalent’ transaction financing from these institutions. The differing requirements for IBA and non-IBA members is inconsistent. It is recommended that the Charter Council review this inconsistency and consider amending the Charter to provide for ‘equity equivalent’ investments by all institutions restricted by global policy.

Ownership and control

Although the Charter’s allocates more points to the employment of black executives than it does for the involvement of black directors, it sets lower targets for black executives than for black directors. This is more consistent with first-generation, narrow-based BEE approaches than it is with the broad-based approach that prevails in the rest of the Charter. It is recommended that, whatever the outcome of the process of aligning the Charter with the Codes, the Charter Council consider incentivise the appointment of black executives by raising the target for black executives and black women executives.

Unquantified responsibilities

The review indicates that there is little motivation for reporting institutions either to meet or to report comprehensively on the unquantified responsibilities identified in the Charter and that institutions do not therefore report comprehensively on these responsibilities. It is recommended that the Charter Council consider introducing mechanisms to ensure institutions pay greater attention to meeting the unquantified responsibilities, possibly through the award of bonus points for doing so, or the deduction of points for failure to do so.

Appendix 1: Financial Sector Summit Declaration

Pretoria: August 20, 2002

1 The Government, Business, Community and Labour constituencies at Nedlac began meeting at the beginning of 2002 in order to agree on strategies to ensure the financial sector is more efficient in the delivery of financial services, which will enhance national savings and direct them to developmental purposes. The proposed strategies should assist the financial sector:

1a To provide sustainable and affordable banking services, contractual savings schemes and credit for small and micro enterprise and poor households,

1b To support higher levels of savings and investment overall,

1c To expand developmental investments that create jobs, raise living standards and strengthen the economy, and

1d To encourage broader and more representative ownership, control and employment within the financial sector itself and in the economy as a whole.

2 To achieve these aims requires a financial sector which is more diverse in terms of the nature, size and ownership of institutions. All its different components must assume a strong developmental role.

3 Today, on the anniversary of the launching of the United Democratic Front, the parties agree on the following proposals. These agreements must be seen as a package.

3.1. **Ensuring access to basic financial services:** To engage effectively in the economy, encourage savings and improve the quality of life, every South African resident should have access to affordable and convenient payments and savings facilities. Both the public and private sector financial institutions must play a role in achieving these aims.

3.2. The parties will jointly research the economics of basic financial services and on that basis establish mechanisms and timeframes for achieving universal access.

3.3. **Development of sustainable institutions to serve poor communities.** While the large formal financial institutions have an important role to play in providing services for the poor. They must interact with and support smaller institutions, especially co-operative banks and NGOs that can provide micro-credit to the poorest households. We need to harness the energies of the existing institutions in our communities, such as stokvels and burial societies, in order to mobilise our people's savings. The smaller financial institutions serve to increase the diversity of the sector and broaden ownership.

3.4. The parties agree on the need for new enabling legislation for so-called second and third tier deposit-taking financial institutions. As a start, they have agreed key principles for legislation for financial co-operatives. The legislation should ensure that these institutions operate according to co-operative principles and enjoy adequate prudential oversight.

3.5. Following the Summit, the parties will also make proposals on ways to enhance the developmental impact of the regulatory framework.

3.6. The parties also agree that all the constituencies should seek to support financial co-operatives and micro-credit providers. After the Summit, they will engage on a concrete support programme.

3.7. In the absence of realistic alternatives, many wage-earners have had to resort to micro-lenders when they need credit. In too many instances, the result has been an accumulation of excessive debt at a high price. Following the Summit, the parties will propose appropriate regulation for micro-lenders to minimise the negative effects of usurious practices.

3.8. **Regulation of credit bureaux**. Credit bureaux should play a positive role by providing creditors with necessary information on potential borrowers, which will reduce information asymmetries in the market. The parties have proposed elements of a regulatory framework to ensure that they supply only reliable information that is relevant to a person's creditworthiness; that they are more open to consumer complaints; and that there is no scope for unfair discrimination in their operations.

3.9. **Discrimination.** The parties have agreed that, within the context of the Equality Act of 2000, every sub-sector within the financial sector should establish or strengthen a code to end unfair discrimination. Government should legislate uniform norms on disclosure of financial services by race, gender, location and categories of amount. People who face unfair discrimination should have an effective route for adjudication.

3.10. **HIV/Aids.** The parties are particularly concerned about the need to end unfair discrimination against people with HIV and develop appropriate services for them. Following the Summit, they will work together to achieve this end, and especially to ensure that people with HIV have improved access to housing finance and other services.

3.11. **Capital markets and investment.** The parties agree on the need to increase overall investment and in particular projects that strengthen infrastructure, create jobs, meet basic needs, stimulate economic activity in the poorest regions and communities of South Africa and/or support development throughout southern Africa. They agree on the need to establish a system to identify these projects. On that basis, they will engage around the establishment of realistic targets and monitoring mechanisms. In addition, they will develop training for fund managers and retirement-fund trustees to enable them to adopt more informed and appropriate investment strategies.

3.12. **Development finance institutions (DFIs) and other state-owned financial institutions.** Following the Summit, the parties will make proposals around the developmental impact of these institutions and, if necessary, recommend improvements. A particular concern is to ensure that the PostBank should maintain and expand its services to poor communities.

3.13. **Savings initiatives.** The parties have agreed on activities to promote a savings culture, mobilise our people around the need to increase savings and improve the savings facilities available to all our people.

4 The parties recognise that the proposed measures require a great deal of work following the Summit. We have agreed to meet at least once a month to review progress and strengthen our proposals. To ensure our success in this process, the NEDLAC constituencies commit to providing the necessary capacity, time, energy and enthusiasm.

Appendix 2: Financial Sector Charter

1. Preamble

1.1 In August 2002, at the Nedlac Financial Sector Summit, the financial sector committed itself to the development of a Black Economic Empowerment (BEE) charter. We made this commitment noting that:

despite significant progress since the establishment of a democratic government in 1994, South African society remains characterised by racially based income and social services inequalities. This is not only unjust, but inhibits the country's ability to achieve its full economic potential;

BEE is a mechanism aimed at addressing inequalities and mobilising the energy of all South Africans. It will contribute towards sustained economic growth, development and social transformation in South Africa;

inequalities also manifest themselves in the country's financial sector. A positive and proactive response from the sector through the implementation of BEE will further unlock the sector's potential, promote its global competitiveness, and enhance its world class status;

equally, the financial stability and soundness of the financial sector and its capacity to facilitate domestic and international commerce is central to the successful implementation of BEE.

1.2 We, the parties to this charter, therefore commit ourselves to actively promoting a transformed, vibrant, and globally competitive financial sector that reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment into targeted sectors of the economy.

1.3 This financial sector charter

was voluntarily developed by the sector;

is a Transformation Charter as contemplated in the Broad-Based BEE legislation;

- constitutes a framework and establishes the principles upon which BEE will be implemented in the financial sector;
- represents a partnership programme as outlined in Government's Strategy for Broad-Based BEE;
- provides the basis for the sector's engagement with other stakeholders including Government and labour;
- establishes targets and unquantified responsibilities in respect of each principle; and
- outlines processes for implementing the charter and mechanisms to monitor and report on progress.

2. Interpretation

2.1 Affected institution means every financial institution that takes designated investments.

2.2 Agreed standard valuation means a valuation of an asset (valued in terms of the context in which this term appears) based on normal valuation methodologies (representing standard market practice) given the nature and stage of development of the asset being valued provided that:

the principles set out in the table hereunder will serve only as a guide to possible valuation methodologies that could be employed:

Operation valuation methodologies

Banking

- Discounted cash flow
- Price to book
- Capitalisation of earnings
- Net asset value

Insurance

- Discounted cash flow
- Embedded value
- Price-to-embedded value
- Capitalisation of earnings
- Net asset value

Brokerage firms

- Discounted cash flow
- Capitalisation of earnings
- Net asset value

Asset managers & collective investment schemes

- Discounted cash flow
- Capitalisation of earnings
- Percentage of funds under management
- Net asset value

where the financial institution is listed on the JSE Securities Exchange South Africa the market capitalisation of the financial institution concerned shall serve as an overall benchmark for the individual valuations of the underlying assets and businesses of such financial institution such that, on a sum -of-the-parts basis, these would represent a value no higher than such market capitalisation.

Cash flows to a beneficiary or shareholder will be valued on an after -tax basis.

2.3 BEE, as defined in the Broad-Based Black Economic Empowerment legislation, 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.

2.4 BEE accredited means being validated in terms of this charter as a BEE company, or being validated as having achieved a certain standard of BEE contribution in terms of a recognised BEE charter scorecard or accreditation system.

2.5 BEE transactions means:

- all transactions for the acquisition, by black people, of direct ownership in an existing or new entity (other than an SME) in the financial or any other sector of the economy; and
- joint ventures with, debt financing of or other form of credit extension to, and equity investments in BEE companies (other than SMEs).

2.6 BEE companies refers to companies as defined in paragraphs 2.7, 2.8, 2.9, and 2.12.

2.7 Black companies mean companies that are more than 50% owned and are controlled by black people.

2.8 Black empowered companies mean companies that are more than 25% owned by black people and where substantial participation in control is vested in black people.

2.9 Black influenced companies mean companies that are between 5% and 25% owned by black people and with participation in control by black people.

2.10 Black people means all Africans, Coloureds and Indians who are South African citizens and includes black companies. However, in paragraphs 5 and 11 the term shall include permanent residents of the Republic of South Africa. The word “black” when used in conjunction with other words shall have the same implications.

2.11 Black SME means a small or medium enterprise (with a turnover ranging from R500 000 per annum to R20-million per annum) which is a black company or a black empowered company.

2.12 Black women-empowered enterprise means companies that are more than 30% owned by black women, and where substantial participation in control is vested in black women.

2.13 Broad-based ownership is where an empowerment shareholder represents a broad base of members such as employees (to the extent that the options have actually been exercised), collectives and/or communities, or where the benefits support a target group, for example black women, people living with disabilities and the youth. Shares are held directly or indirectly through non-profit organisations and trusts. At the same time, directors and management of the groups should predominantly comprise black people.

2.14 Charter Council means the Charter Council established in terms of paragraph 15.1.

2.15 Company means an enterprise registered in terms of the Companies Act, 1973, close corporations, trusts and any other such enterprise formed for business purposes.

2.16 Control centres on the authority and power to manage assets, the determination of policies and the direction of business operations. Indicators of control may include:

- participation in control structures of a business unit or of the company (such as shareholder meetings, the Board of directors, board subcommittees, and divisional boards), the exercise of voting rights on the board of directors and committees thereof, and controlling equity;
- participation in executive management.

2.17 Discrimination: means discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act.

2.18 Designated investment means any form of statutory or voluntary deposit, saving, investment or risk insurance placed or made by the South African public (whether of a wholesale or retail nature, but not by one financial institution in another).

2.19 Development Finance Institutions or DFIs means finance entities created or funded by a tier of Government. These include, but are not limited to, the DBSA, IDC, PostBank, NEF, Land Bank, Khula, NHFC, the PIC, the Umsobomvu Fund, and Provincial Development Corporations.

2.20 Direct ownership means ownership of an equity interest together with control over all of the voting rights attaching to that equity interest.

2.21 Empowerment financing means the provision of finance for or investment in:

- Targeted investment; and
- BEE transactions.

2.22 Effective access means

2.22.1 being within a distance of 20km to the nearest service point at which first-order retail financial services can be undertaken, and includes ATM and other origination points, except in the case of the products and services of the long term assurance industry, where effective access, including physical access will be in terms of the availability of these products and services, and in terms of proximity or accessibility of financial advisers to community-based infrastructure;

2.22.2 being within a distance of 20km to the nearest accessible device at which an electronic (other than ATM) service can be undertaken;

2.22.3 a sufficiently wide range of first-order retail financial products and services to meet first order market needs and which are aimed at and are appropriate for individuals who fall into the All Media Product Survey (Amps) categories of LSM 1-5;

2.22.4 non-discriminatory practices;

2.22.5 appropriate and affordably priced products and services for effective take up by LSM 1-5; and

2.22.6 structuring and describing financial products and services in a simple and easy to understand manner.

2.23 Enterprise development means support for existing, or the fostering of, new black SMEs and BEE companies in the financial and other sectors of the economy.

2.24 Executive management means X number of people identified by the Board of Directors by name and position as the top managers of that financial institution, where X = 0.4% of the total staff of the financial institution employed in South Africa, with a minimum of 9 people and a maximum of 50.

2.25 Financial sector means all the classes of financial institution defined in paragraph 2.26.

2.26 Financial institutions means banks, long -term insurers, short -term insurers, re-insurers, managers of formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public, including retirement funds and members of any exchange licensed to trade equities or financial instruments in this country and entities listed as part of the financial index of a licensed exchange. Any other institution in the financial sector, including licensed exchanges, may opt in.

2.27 First-order retail products and services means

2.27.1 transaction products and services, being a first order basic and secure means of accessing and transferring cash for day-to-day purposes;

2.27.2 savings products and services, being a first order basic and secure means of accumulating funds over time. (e.g. savings accounts, contractual savings products such as endowment policies, collective investments and community-based savings schemes);

2.27.3 credit for low-income housing (as defined in paragraph 2.34.3, but with a minimum income of R500 per month), financing agricultural development, or establishing, financing or expanding a black SME (as defined in paragraph 2.11, but with no minimum turnover);

2.27.4 insurance products and services being the mitigation of impact of defined first order basic risks. (eg life insurance, funeral insurance, burial society, household insurance and health insurance).

2.28 Global policy means a globally and uniformly applied restriction, regulation, or directive imposed on a foreign owned financial institution by the parent company or on any financial institution by a regulator which governs that financial institution.

2.29 Indirect ownership occurs where an institution or other investor owns equity in a company on behalf of beneficiaries and there may not be direct participation by the beneficiaries in the voting rights.

2.30 Management

2.30.1 Management is divided into senior, middle and junior levels, and

- Senior management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is R450,000 per annum or more, but excludes all employees who fall within the definition of executive management;
- Middle management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is between R250,000 and R450,000 per annum;
- Junior management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is between R150 000 and R250 000 per annum.

2.30.2 If the bonus is in excess of 50% of total remuneration then 50% of the bonus will be included as part of the package.

2.30.3 The salary bands will be increased in line with the consumer price index ("CPIX") on the 1st of January each year commencing on 1st January 2004.

2.31 Procurement means all expenditure to acquire goods and or services including capital expenditure, but excluding

- broker commissions;
- reinsurance premiums;
- commissions paid to insurance intermediaries;
- property and rental purchases (although property management is specifically included);
- expenditure classes covered elsewhere in the charter e.g. salaries and wages. (Contract staff are regarded for this purpose as own staff and are excluded);
- procurement spending where there is a natural monopoly;
- any items of procurement where the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons;
- inter-entity charges for services rendered by other members of the group;

- social investment expenditure and donations; and
- all VAT payable.

2.32 Regulation or regulate when used in this charter shall have a common law or economic meaning depending on the context in which it is used.

2.33 Sound business practice means business practice which is conducive to the establishment, maintenance and promotion of:

- domestic and international confidence in the financial sector;
- best international practice and prudential and other regulations relating to the custody and investment of the nation's savings and the acceptance of risk;
- the right to underwrite in both the long and short-term insurance industries;
- sustainable sources of finance, which take cognisance of the different resources available;
- level playing fields and competition between the different sub-sectors of the financial sector, and hence the avoidance of arbitrage between the sub-sectors; and
- BEE transactions taking place on a willing buyer and a willing seller basis.

2.34 Targeted Investment means debt financing of, or other form of credit extension to, or equity investment in South African projects in areas where gaps or backlogs in economic development and job creation have not been adequately addressed by financial institutions. It specifically means financing of or investment in:

2.34.1 transformational infrastructure projects that support economic development in underdeveloped areas and contribute towards equitable access to economic resources. Such infrastructure projects could be in the following sectors:

- transport;
- telecommunications;
- water, waste water and solid waste;
- energy;
- social infrastructure such as health, education, and correctional services facilities; and
- municipal infrastructure and services.

2.34.2 agricultural development involving integrated support for resource-poor farmers, through enabling access to and the sustainable use of resources.

2.34.3 low-income housing for households with a stable income in excess of R1 500 per month and less than R7 500 per month. This income band will be increased in line with the CPIX on the 1st of January each year commencing on 1 January 2004.

2.34.4 Black SMEs.

2.35 All references to a year mean 31 December of that year (e.g. 2008 means 31 December 2008).

3. The challenges facing the financial sector

3.1 In most economies the financial sector plays a central role in enhancing growth and development. The South African financial sector is generally recognised as world class in terms of its skilled workforce, adequate capital resources, infrastructure and technology, as well as a conducive operating, regulatory and supervisory environment. However, the financial sector is confronted by a number of challenges which include the fact that:

- it is characterised by the presence of a few very large institutions. Many of the smaller and foreign institutions have exited the market in recent years;
- there are low levels of black participation, especially of black women, in meaningful ownership, control, management and high-level skilled positions in the sector;
- there has been an inadequate response by the sector to the increasing demand for access to financial services;

- the sector has not effectively provided credit to entrepreneurs, particularly black businesses;
- the national level of savings and investment is inadequate to support sustained economic growth and individual financial security;
- there is insufficient investment of the savings pool under the control of the sector into targeted investments of national priority;
- a large pool of funds circulates outside the formal financial system, including but not limited to funds held by stokvels, informal traders and in other forms of short-term savings;
- there has been limited support for new black firms in the financial sector by Government and the private sector; and
- they need to find meaningful ways to support the Proudly South African Campaign.

3.2 By addressing the abovementioned challenges, the financial sector will make a significant contribution towards economic growth, development, empowerment and reduction of inequalities and poverty in our society. The initiatives envisaged will also promote growth in the financial sector.

3.3 The growth and development of the financial sector is central to the successful implementation of BEE and is an overriding principle and objective of this charter. In order to enhance the financial sector's global competitiveness and to address BEE, the following imperatives must be satisfied:

- the long term financial stability and soundness of the sector and its capacity to finance economic growth and to facilitate domestic and international commerce must be maintained;
- the sector's ability to provide appropriate and effective access to financial services for a greater segment of the population must be substantially enhanced;
- a savings culture must be developed in South African society;
- the pool of intellectual capital in the sector must be improved by focusing on attracting new entrants and continually investing in the skills development and training of existing and new black professionals and managers;
- the development of black strategic and operational leadership must be fostered within the sector;
- diverse organisational cultures must be promoted to cater for a wide range of customers and to reflect the principles of inclusivity;
- the financial sector must promote triple bottom line accountability, including principles of good corporate governance;
- the representation of black women and black people living with disabilities in the sector as employees, managers, suppliers and owners of equity must be increased;
- champions who understand and are committed to transformation are required at the highest level within each organisation ;
- the number and quality of black firms providing services and products to the financial services industry must be increased and competition amongst domestic firms improved;
- entrepreneurial development must be promoted and enhanced by supporting black entrepreneurs;
- the financial sector, which controls significant pools of savings, must be cognisant of the impact it has on directing savings towards targeted investments of national priority; and
- the regulatory environment and architecture of the sector must promote the empowerment objectives of this charter, lower the barriers to entry and facilitate competition.

4. Application of the financial sector charter

4.1 This charter applies to the South African operations of the financial sector.

4.2 The targets in this charter will be applied from 1 January 2004 (the "effective date") until 31 December 2014.

4.3 In 2009 (based on the reports for the year ended 31 December 2008), the Charter Council will undertake a comprehensive mid-term review and make decisions regarding the implementation of the charter in its second term. The ownership provisions will be reviewed in 2011 to address identified shortcomings. The ownership provisions will be reviewed by the Charter Council in 2011 to decide what further steps (if any) to address identified shortcomings should be taken at individual financial institution, sub sector, sector or national levels.

4.4 The parties to this charter agree that the principles contained in the charter will be relevant beyond 2015.

In 2015 (based on the reports for the year ended 31 December 2014) the Charter Council will undertake a second comprehensive review of progress in terms of the charter, and draw conclusions as to the impact of the charter on the sector and the economy, and make decisions as to what further steps (if any) to address identified shortcomings should be taken at individual financial institution, sub sector, sector or national levels.

4.5 All the provisions of the charter are to be achieved in a manner consistent with sound business practice.

4.6 Certain of the provisions of the charter will not apply in the same manner to all financial institutions. The following qualifications are provided for:

4.6.1 **Exemption from the Human Resource Development provisions** If the financial institution has less than 50 staff members, it will be exempt from the provisions of paragraphs 5, 11.3 and 11.4 of the charter unless it opts to be so bound. But it will nevertheless remain bound by all labour legislation (and specifically the provisions of the Employment Equity, Labour Relations and Skills Development Acts).

4.6.2 **Exemption from the Empowerment Financing provisions** If the financial institution has less than R10-million of designated investments it will be exempt from the provisions of paragraph 9 of the charter unless it opts to be so bound.

4.6.3 **Exemption from all the provisions** If the financial institution has less than 50 staff members and less than R10-million of designated investments, it will be exempt from all the provisions of the charter unless it opts to be so bound.

4.6.4 **Qualifications if there is a global policy to which the financial institution is subject** If, in terms of a global policy to which a financial institution is subject, – · any board members, executive or senior managers are imposed on the local operation, those personnel will not be taken into account for the purposes of calculating ratios in terms of paragraphs 5 or 11 of the charter; · it is precluded from accommodating local ownership participation, it will be exempt from the ownership provisions of paragraph 10 of the charter.

4.6.5 **Exemption from the Access provisions**

- If the financial institution is a wholesaler, in the sense that it is not a provider of first-order financial products and services, it will be exempt from the provisions of paragraph 8 of the charter unless it opts to be so bound.
- If the financial institution is a retailer of first-order financial products and services but, on grounds presented to and accepted by the Charter Council, it would be inconsistent with its business model for it to extend those products or services to low -income communities, it will only be responsible for the consumer education component of access (paragraph 8.4), and the points will be adjusted accordingly.

4.6.6 **Qualifications in respect of retirement funds** If a retirement fund has less than 50 staff members, it will be exempt from all the provisions of the charter other than paragraphs 9 and 12. If a retirement fund has more than 50 staff members, it will be exempt from all the provisions of the charter other than paragraphs 5, 11.3 and 11.4, and paragraphs 9 and 12.

4.7 All financial institutions claiming exemptions in terms of this paragraph must submit a return to the Charter Council providing motivation and evidence supporting the exemption.

4.8 The participation of DFIs in certain aspects of the charter is required in order to give full effect to the intent of the charter.

4.9 If a financial institution is a member of a group, it will be measured and reported on as part of the South African group unless –

- the financial institution is a listed company; or
- the financial institution opts in.

4.10 Notwithstanding the provisions of paragraph 4.9 above, the boards of directors of all financial institutions will ensure that transformation plans are rolled out through all the divisions and subsidiaries of the group, and that measurement mechanisms are put in place, responsibility given and performance evaluated at all levels and in all areas.

4.11 The parties to this charter agree that the public and private sectors, when sourcing products and services from the financial sector, should apply the charter and its scorecard. Accordingly –

4.11.1 the financial institutions specifically agree that, when competing for business, they will use their charter rating to explain their BEE contribution;

4.11.2 in adjudicating tenders for the provision of financial services, all tiers of Government will base their adjudication of BEE contribution on the charter rating which has been accorded in terms of this charter; and

4.11.3 the parties to this charter agree that the private sector should base its evaluation of the BEE contribution of members of the financial sector on the charter rating which has been accorded in terms of this charter.

5. Human resource development

5.1 Disparities in the South African workplace resulting from past discriminatory practices and laws are not only unjust, but also have direct negative implications for economic efficiency, competitiveness and productivity. It is therefore in the country's long-term national interests that a broad-based and diverse pool of skills is developed for the sector to unleash the potential of all South Africans.

5.2 Consequently, each financial institution undertakes to:

5.2.1 promote a non-racial, non-sexist environment and to enhance cultural diversity and gender sensitivity within the sector;

5.2.2 invest in human resource development across the full spectrum of skills, with special emphasis on increasing the participation of black people in skilled, strategic and operational leadership in the sector;

5.2.3 invest in and equip current and future leadership incumbents in the sector with the appropriate knowledge and capacity to enable them to play a central role in driving the transformation programme.

5.3 In addition to the obligations of the financial sector in terms of Employment Equity and Skills Development legislation, and -

5.3.1 based on an estimated ratio of 10% for 2002, each financial institution will have a minimum target of 20% to 25% black people at senior management level by 2008;

5.3.2 based on an estimated ratio of 1.6% for 2002, each financial institution will have a target of a minimum of 4% black women at senior management level by 2008;

5.3.3 based on an estimated ratio of 17%% for 2002, each financial institution will have a target of a minimum of 30% black people at middle management level by 2008;

5.3.4 based on an estimated ratio of 5% for 2002, each financial institution will have a target of a minimum of 10% black women at middle management level by 2008;

5.3.5 based on an estimated ratio of 28% for 2002, each financial institution will have a minimum target of 40% to 50% black people at junior management level by 2008;

5.3.6 based on an estimated ratio of 12% for 2002, each financial institution will have a target of a minimum of 15% black women at junior management level by 2008.

5.4 In recognition of the low starting points and targets, and the need for higher levels of black women representation at all three levels and at executive level, a 2014 target of 33% of the relevant total black representation target has been set for black women representation at all four levels. The financial sector commits, before 2008 and through a mechanism established by the Charter Council, to establish the other 2014 targets for all management levels and at executive level (dealt with in paragraphs 11.3 and 11.4).

5.5 Over and above any skills levies payable by a financial institution, each financial institution will, from the effective date of the charter to 2008, spend 1.5% of total basic payroll per annum on training of black employees.

5.6 This skills development initiative shall be directed at skills programmes that promote black skills in the sector in line with a skills audit for each sub-sector. These skills audits may be undertaken by the financial institution, the sub -sectors or by the respective SETAs and the programmes shall be formalised and commenced by 1 July 2005.

5.7 The financial sector undertakes to implement a Learnership Programme in terms of which, over one learning cycle of three intakes, each financial institution will employ up to 4.5% of its total staff in the form of black matriculants, or the NQF Level Four equivalent, in registered learnerships. Direct spending in excess of that recovered from the SETAs or Government will form part of the skills development targets in 5.5. The sector commits to review its matriculant learnership programme after the first cycle in consultation with the department of labour, with a view to implementing a second cycle. This commitment is subject to satisfactory resolution of the principles and funding of matriculant learnerships with Government and the relevant SETAs.

5.8 Each financial institution undertakes to develop and report on the following programmes:

5.8.1 career pathing through the provision of the necessary support to black people at all levels to facilitate progress in their agreed careers;

5.8.2 the implementation of appropriate mentorship programmes within companies in the sector to assist in the rapid development of black professionals;

5.8.3 targeted recruitment to expand the base of potential recruits;

5.8.4 cultural diversity and gender sensitivity programmes at various levels of management in the financial institution, with the intention of promoting a vibrant, enabling and diverse institutional culture; and

5.8.5 where possible, in conjunction with institutions of higher learning, introduce training programmes in line with the NQF requirements and establish undergraduate and post graduate diplomas and degrees in financial services.

6. Procurement policies

6.1 Financial institutions will implement a targeted procurement strategy to enhance BEE. Provided there are charters in the information and communications technology (“ICT”), the advertising and the automotive and building sectors, and that international suppliers are subject to those charters, the target will be 50% of the value of all procurement from BEE accredited companies by 2008 and 70% by 2014.

6.2 A minimum of two thirds of that expenditure must be spent with BEE accredited companies as the primary vendor. The residual one third may be channelled to BEE accredited companies via a primary vendor, which is not a BEE accredited company, with only the BEE portion of the expenditure counting towards the target. Where a supplier is a BEE accredited company, which also sources from other BEE accredited companies, only the expenditure at the first tier will count towards the target.

6.3 Financial institutions will:

6.3.1 provide support to black SMEs to enable them to benefit from targeted procurement programmes. Such support will include programmes designed to assist black SMEs in tendering for financial sector business, setting aside areas of procurement reserved or preferred for black SMEs only;

6.3.2 promote early payment for services provided by SMEs;

6.3.3 encourage existing suppliers to address BEE and become BEE accredited;

6.3.4 report on all spend as per the categories that fall within the definition of BEE accredited; and

6.3.5 explore meaningful ways of supporting the Proudly South African Campaign.

6.4 T he Charter Council will review the 2008 and 2014 targets in 2005, to assess the status of charters in other sectors, and to assess the impact of 6.1 on procurement of services from black-owned SME’S. The Charter Council will specifically review the targets for claims procurement in the short-term insurance sub-sector in 2005.

7. Enterprise development

7.1 The financial sector commits itself to fostering new, and developing existing BEE accredited companies through the following initiatives:

7.1.1 improving the levels of assistance provided to BEE accredited companies in the financial sector and other sectors of the economy through skills transfer, secondment of staff, infrastructure support, and giving technical and administrative support and assistance. Measurable financial support given in this connection will be scored under procurement;

7.1.2 supporting the establishment and growth of BEE accredited companies as broking agencies and/or enterprises in the financial sector through which the sector sells its products and services. Measurable financial support given in this connection will be scored under procurement; and

7.1.3 joint ventures with, debt financing of, and equity investments in BEE companies, in the financial sector and other sectors of the economy. Measurable financial support given in this connection for a Black SME may be scored under Targeted Investments, or, for a BEE company, it may be scored under BEE transactions financing, measured on the basis of Rand spend.

7.2 The financial sector will ensure that where appropriate, it refers business opportunities to, and procures financial services from, black owned financial institutions.

7.3 The financial sector's support for the development of second and third tier financial institutions may take, but shall not be limited to taking, the form of measures set out in paragraphs 7.1.1 and 7.2

8. Access to financial services

8.1 The financial sector acknowledges that access to first-order retail financial services is fundamental to BEE and to the development of the economy as a whole.

8.2 In terms of the Declaration of the Financial Sector Summit on 20th August 2002, it was agreed that strategies would be put in place to ensure that the financial sector is more efficient in the delivery of financial services, which enhance the accumulation of savings and direct them to development initiatives. Insofar as it relates to access to financial services, specific actions were agreed in relation to:

- ensuring the provision of first-order retail financial services including:
- sustainable and affordable banking services;
- contractual savings schemes; and
- credit for small and micro enterprise and poor households.
- the development of sustainable institutions to serve poor communities;
- the regulation of Credit Bureaux;
- discrimination;
- HIV/AIDS; and
- supporting higher levels of savings and investment overall.

8.3 In respect of this charter, the financial sector commits itself to substantially increase effective access to first-order retail financial services to a greater segment of the population, within LSM 1-5. The financial sector specifically undertakes:

8.3.1 by 2008 to make available appropriate first-order retail financial services, affordably priced and through appropriate and accessible physical and electronic infrastructure such that:

- 80% of LSM 1-5 have effective access to transaction products and services (defined in paragraph 2.27.1);
- 80% of LSM 1-5 have effective access to bank savings products and services (defined in paragraph 2.27.2);
- a percentage (to be settled with the life assurance industry) of LSM 1-5 households have effective access to life assurance industry products and services (defined in paragraphs 2.27.2 and 2.27.4);
- 1% of LSM 1-5 plus 250,000 have effective access to formal collective investment savings products and services (defined in paragraph 2.27.2); and
- 6% of LSM 1-5 have effective access to short term risk insurance products and services (defined in paragraph 2.27.4).

8.3.2 in accordance with the arrangements concluded with Government and the DFIs in terms of paragraph 9.1.3, to originate the low -income housing loans, agricultural development loans, and loans to black SMEs, necessary to achieve the desired breakdown of targeted investment established in terms of paragraph 9.1.3. For the purposes of determining the value of loans originated in terms of this paragraph, any loan which falls within the definition of a first-order retail financial service or product as set out in paragraph 2.27.3 will be taken into account.

8.3.3 Each sub-sector will determine, in consultation with the Charter Council how the sub -sector targets will be divided between the individual financial institutions in the sub-sector.

8.4 Each financial institution commits, from the effective date of the charter to 2008, to annually invest a minimum of 0.2% of post tax operating profits in consumer education. Consumer education will include programmes that are aimed at empowering consumers with knowledge to enable them to make more informed decisions about their finances and lifestyles

8.5 The financial sector furthermore commits to:

- the elimination of discrimination in the provision of financial services;
- supporting the establishment of third tier community based financial organisations or alternative financial institutions.

8.6 By 2005, the financial sector, together with Government, undertakes to establish standards to monitor access and to design a mechanism for the ongoing evaluation and review of the impact of its initiatives on access.

9. Empowerment financing

9.1 Resourcing

9.1.1 All the parties to the charter commit themselves to working in partnership with Government and its DFIs to mobilise resources for empowerment financing.

9.1.2 Based on preliminary calculations, it is estimated that the aggregate amount of new empowerment financing from the financial sector could exceed R75bn. All parties agree to working together to meet the objective of increasing the total amount of empowerment financing.

9.1.3 As part of the process, the parties will, by no later than 30 June 2004, establish:

9.1.3.1 the total amount of empowerment financing;

9.1.3.2 the desired breakdown between BEE transaction financing and the four components of targeted investment;

9.1.3.3 appropriate risk mitigating measures and risk sharing arrangements between Government and its DFIs on the one hand and the private sector on the other;

9.1.3.4 the period over which the empowerment financing will be done;

9.1.3.5 the institutional framework and financing models for the mobilisation of the various resources; and

9.1.3.6 the extent to which and how past empowerment financing transactions will be taken into account in terms of paragraph 9.1.6.

9.1.4 Investment in transformational infrastructure will, in part, depend on the establishment of a mechanism to identify and analyse potential projects (including appropriate skills and post funding care).

9.1.5 The total amounts to be invested in BEE transaction financing and targeted investments in terms of 9.1.3.2 will be calculated as percentages of the total designated investments in the financial sector as at 31 December 2003, and currently estimated to be of the order of R2 000-billion. Those percentages of designated investments in each affected financial institution will constitute the targets for BEE transaction financing and targeted investment respectively.

9.1.6 Without reducing the total amount for new empowerment financing by the sector, the targets of individual affected institutions might be adjusted to take account of empowerment financing which they have on their books on the effective date of the charter.

9.1.7 Different affected institutions within the sector may choose to participate to a greater or lesser extent in each of the components of targeted investment, depending on where they are relatively better positioned to do so.

9.1.8 For the purposes of calculating the targeted investment made by an affected institution:

- investments and financing made by the affected institution, and held on its own balance sheet, or any securitised financing or investments in or financing to institutions which themselves hold targeted investments or financing, will be taken into account; and
- any financing and investment which falls within the definition of a first-order retail financial service or product as set out in paragraph 2.27.3 will be taken into account.

9.1.9 Each affected institution shall annually report its investment into each of the four targeted investment areas so that the aggregate can be monitored and actions taken to ensure that the desired results are achieved.

9.1.10 The Charter Council will review the financial sector's impact on the four classes of targeted investments at the end of the period determined in terms of paragraph 9.1.3.4.

9.1.11 Pension fund trustees, fund managers and consultants play a critical role in influencing the flow of funds. Initiatives will therefore be developed to enhance their understanding of investments in general and specifically their participation in targeted investments and BEE transaction financing and to make a material contribution to shareholder activism as contemplated in paragraph 12.

9.2 Principles of BEE transactions

9.2.1 BEE ownership initiatives should be aimed at promoting the productive and sustainable participation of black companies and black people in each sector of the economy;

9.2.2 Ownership will be particularly encouraged if it adds value to the companies involved and includes meaningful participation in management and control;

9.2.3 The funding structures should facilitate the transfer of full economic interest to the BEE partner and longer-term shareholder-type relationships, as opposed to short-term portfolio investments (especially where the transaction has been facilitated);

9.2.4 If the acquisition of equity by the BEE company is facilitated in terms of the provisions of this charter or Government assistance, the retention of the shareholding as a BEE share should be promoted to the greatest extent possible;

9.2.5 Initiatives aimed at achieving broad -based empowerment will be promoted. This would include employee ownership, community and collective ownership; and

9.2.6 Joint ventures or partnership arrangements should be meaningfully structured with equitable portions of the responsibility and benefit to each party.

10. Ownership in the financial sector

10.1 Each financial institution will have a target of a minimum of 25% black ownership, measured at holding company level, by 2010.

10.2 A minimum of 10% of the target set in terms of paragraph 10.1 must be satisfied by way of direct ownership by black people, provided further that the financial institution complies with the provisions of paragraph 11.1 concerning the appointment of black directors. Should the balance or any part of the balance of 15% be achieved by way of direct ownership a maximum of four bonus points will be awarded.

10.3 Direct ownership as contemplated in 10.2 should where possible meet the principles outlined in paragraph 9.2 and may include:

10.3.1 direct ownership in the financial institution as a result of BEE transaction financing;

10.3.2 broad-based ownership;

10.3.3 disposal of any assets, operations, businesses or subsidiaries by the financial institution as a going concern to black people;

10.3.4 direct shareholding or ownership with control, commensurate with the level of ownership concerned, at subsidiary or divisional level; or

10.3.5 joint venture or partnership arrangements.

10.4 Any transaction which involves BEE parties acquiring equity on a conditional, deferred basis, with no issue of equity carrying upfront economic interest, shall, for the avoidance of doubt, not fall to be counted as direct ownership for the purposes of paragraph 10.3 until such time as the equity is actually transferred.

10.5 A maximum of 15% of the target set in terms of paragraph 10.1 may be satisfied by way of indirect ownership by black people at group or subsidiary level. Financial institutions may only score indirect ownership points if they have reached a level of 10% direct ownership, and if they have taken active measures to meet the responsibilities outlined in section 12 of this charter. Indirect ownership will be measured on a basis to be agreed and approved by the Charter Council.

10.6 For the purposes of this charter, black ownership will be calculated as the agreed standard valuation of the black interests referred to in paragraph 10.3 expressed as a percentage of the agreed standard valuation of the South African operations of the financial institution on the date of the transaction. Where a BEE transaction results in black people acquiring 100% of an asset, operation, business or subsidiary from a financial institution the agreed standard valuation of that asset shall be deemed to be the transaction consideration applicable to the BEE transaction concerned, and the aforementioned percentage shall be calculated based on the agreed standard valuation (as defined) of the South African operations on the date of the transaction.

10.7 Only historical direct ownership transactions, which remain wholly or partially current on the effective date, can be included in the calculations of direct ownership. After the effective date, all direct ownership transactions can be included in the calculation of direct ownership, even if they unwind, provided they meet the principles of BEE transactions as provided in paragraph 9.2.

10.8 Any direct ownership transaction, which unwinds, must be referred to the Charter Council for analysis as to whether, when it was originally concluded, the transaction genuinely complied with the intent of paragraph 9.2. If the Charter Council decides that it was not, it may not be taken into account in calculating direct ownership.

10.9 If a financial institution is at least 25% owned by another financial institution, it may, in the calculation of direct black ownership, take into account a portion of the direct black ownership in that other company based on the percentage shareholding of that other company in the financial institution concerned.

10.10 Due to their unique nature, foreign banking groups with a branch structure will have the same target as is set out in paragraph 10.1, but will be permitted to address that target either -

10.10.1 by transactions contemplated in paragraphs 10.2 and 10.3 of this charter; or

10.10.2 by financing identified BEE transactions in addition to the investment contemplated in paragraph 9.1.5. Points and bonus points for such financing will be scored in the same way as if the financing (calculated as a percentage of the agreed standard valuation of the South African operations of the foreign banking group) equated the same percentage of direct ownership in terms of paragraph 10.2. At least 25% of this financing must be committed to BEE transactions in the financial sector.

10.10.3 Not more than 18 points may be earned in aggregate in terms of 10.10.1 and 10.10.2. BEE transactions identified in terms of 10.10.2 will, for the purposes of this charter, be treated as if they were ownership transactions, and shall be governed by all the provisions of paragraph 10, and shall not be measured or treated interchangeably with BEE transactions in paragraph 9.1.5.

11. Control in the financial sector

11.1 Each financial institution will have a target of 33% black people on the board of directors by 2008;

11.2 Each financial institution will have a target of a minimum of 11% black women on the board of directors by 2008.

11.3 Based on an estimated ratio of 15% for 2002, each financial institution will have a target of a minimum of 25% black people at executive level by 2008;

11.4 Based on an estimated ratio of 2% for 2002, each financial institution will have a target of a minimum of 4% black women at executive level by 2008.

12. Shareholder activism

12.1 The financial sector recognises that shareholder activism is a critical component of continued confidence and long-term growth of the sector.

12.2 Financial institutions therefore undertake within the parameters of good corporate governance to:

12.2.1 promote increasing levels of influence of direct black owners at board level;

12.2.2 encourage training and awareness programmes for all shareholders regarding the impact of indirect shareholding;

12.2.3 encourage shareholder awareness through triple bottom line reporting, reporting on performance in terms of the charter and information about the institution and the sector; and

12.2.4 facilitate, where possible, black companies or individuals voting on behalf of indirect owners.

12.3 Fund managers and asset consultants commit, as part of their obligations in the charter, to comply with the provisions of 12.2 and to improve their knowledge and that of union trustees regarding BEE transactions and targeted investment.

12.4 Pension fund trustees are encouraged to play an increasingly active role in promoting the objectives of the charter on their respective boards and in the entities in which they have taken significant investments.

13. Corporate social investment

13.1 Each financial institution will have a target of directing 0.5% per annum of post tax operating profits to corporate social investment (CSI) between the effective date of the charter and 2014.

13.2 CSI means projects aimed primarily at black groups, communities and individuals that have a strong developmental approach and contribute towards transformation.

13.3 CSI projects may include, but will not be limited to –

- Education: support for community education facilities; programmes at secondary and tertiary education level aimed at promoting the industry; bursaries and scholarships, which are oriented towards the hard sciences;
- Training : community training; skills development for unemployed; adult basic education and training in communities; financial literacy programmes in communities;
- Development Programmes for youth and other target groups ;
- Environment: support of conservation projects; community clean up projects; food garden initiatives;
- Job Creation: job creation projects external to the workplace or any commitments contained in empowerment financing;
- Arts & Culture : support of development programmes; development of new talent;
- Health: support of community clinics; health programmes in the community; and
- Sport: support of developmental programmes.

14. Regulatory issues

14.1 The regulatory environment and architecture of the sector must promote the empowerment objectives of this charter, ensure appropriate standards of entry, operation and disclosure and facilitate competition.

14.2 The parties to this charter agree that, in consultation with Government, the relevant aspects of the regulatory environment which inhibit compliance with the provisions of this charter will be identified and amended to allow for compliance. By the effective date of the charter the specific areas of regulatory review will be defined and attached as an annexure to the charter.

14.3 A key principle informing this charter is that of support for community reinvestment. Any legislation aimed at giving effect to community reinvestment or which requires the setting of targets for the financial sector or any part of it should be brought within the framework of this charter.

14.4 The charter will be published as a Transformation Charter in terms of the Broad-Based BEE legislation. The Minister of Trade and Industry will be requested to publish a Code of Practice which will give effect to the provisions of paragraph 4.11.2.

15. Implementation

15.1 Charter council

15.1.1 Fundamental principles –

- A Charter Council will be established as an independent body with a mandate to oversee the implementation of the charter.
- The Charter Council will address the issues of principle and, in particular
- conduct the reviews and take the decisions referred to in paragraphs 4.3 and 4.4; and
- if there is a material change in the circumstances or the environment in which the charter has to be implemented, it will consider whether the targets and implementation strategies are still appropriate, and if not how they should be varied.
- There will be equality between industry association representatives and all others on the Charter Council. The Charter Council must fairly reflect the interests of all the financial institutions.
- Decisions of the Charter Council will be taken on a consensual basis. If, on any issue, the Charter Council is unable to achieve consensus, there will be a dispute-breaking mechanism in the Charter Council either by some agreed mechanism within the Charter Council, or by reference to arbitration or mediation.

15.1.2 The Charter Council will establish an executive to attend to its routine work and specifically to:

- receive, consider and approve annual audits from each financial institution;
- confirm ratings of financial institutions;
- issue guidance notes on the interpretation and application of the charter;
- prepare an annual review which outlines progress and evaluates new areas of intervention;
- submit the annual review to the BEE Advisory Council for publication;
- prepare interim reports at appropriate intervals;
- undertake the reviews identified in terms of the charter;
- accredit agencies to perform audits; and
- engage with Government, public sector finance institutions, the BEE Advisory Council and other regulatory agencies to promote the implementation of the charter.

15.1.3 There will be a right to take any decision of the executive on review or appeal to the Charter Council.

15.1.4 The Charter Council will ensure that the executive is adequately resourced, capacitated and supported to fulfil its mandate as envisaged in the charter. A business plan will be commissioned which will, amongst other things, outline a budget for the work of the Charter Council. Financial Institutions will be required to fund the Charter Council in accordance with the budget.

15.2 Reporting and review

15.2.1 Each financial institution will report annually to the Charter Council on its progress in implementing the provisions of this charter. If a financial institution is a member of a group, it should report as part of the group in the South African holding company unless –

- The financial institution is a listed company; or
- The financial institution opts in.

15.2.2 The first annual report will be for the year ending 31 December 2004, and must be submitted to by 31 March 2005.

15.2.3 Thereafter each financial institution will report as at 31 December each year thereafter, and submit the report by 31 March of the following year.

15.2.4 All financial institutions will publish, for general information, an annual BEE report. The BEE report will include the audited scorecard and an account of progress in discharging unquantified responsibilities as contained in paragraph 15.2.6.

15.2.5 Besides the general reviews outlined in 4.3 and 4.4, the following specific areas have been identified for review, and where necessary, the setting of targets:

- all targets for black women representation on the basis of the reports for 2006;
- 5.5 on employment equity targets for 2014 and 11 at board and executive management levels;
- 5.7 on learnerships;
- 6.4 on procurement;
- 8.6 on access;
- 9.1.3 on targeted investment; and
- 14 on regulations.

15.2.6 Progress on the following unquantified responsibilities (as set out in the charter) should be reported on annually by financial institutions and submitted together with the scorecard, to the Charter Council.

- 4.10
- 5.2
- 5.8
- 8.5
- 10.5
- 12

16. The scorecard

16.1 The scorecard set out in Annexure A forms an integral part of the financial sector charter and provides an objective and broad-based set of measurement indicators for purposes of measuring BEE progress in and between financial institutions, in different sub sectors and in the financial sector as a whole. It will be used by:

- each financial institution as a basis for self-assessment of its BEE endeavours;
- the Charter Council as a means of evaluating BEE progress in the sector;
- Government in the adjudication of contracts awarded to financial institutions; and
- the private sector in the awarding of contracts to financial institutions.

16.2 Financial institutions which are exempted from any paragraph in the charter in terms of paragraph 4 will not be required to complete the specific section in the scorecard, subject to paragraph 4. Under such circumstances, the points allocated to the paragraph from which the financial institution is exempted will be cancelled, and it will score out of the remaining points and calculate its score as a percentage of that reduced remainder.

Appendix 3: Constitution of the Financial Sector Charter Council

1 Name

The name of the Charter Council is **the Financial Sector Charter Council**.

2 Establishment of Charter Council

2.1 By signing this Constitution the signatories create the Charter Council, which will come into effect on the date on which it is signed or, if it is signed on different dates, then the latest of those dates.

2.2 The Charter Council has been established in terms of paragraph 15 of the Charter to oversee the implementation of the Charter with a view to promoting transformation and black economic empowerment within the financial sector of the South African economy.

3 Interpretation

3.1 For purposes of this Constitution, unless the context indicates a contrary intention, words and phrases defined in the Charter will bear a corresponding meaning and the following words and phrases will have the following respective meanings:

3.1.1 **the Board** means the board of the Charter Council to be appointed in terms of this Constitution;

3.1.2 the Charter means the Financial Sector Charter signed on 17 October 2003;

3.1.3 **Charter Council Chambers means the entities referred to in** 20**;**

3.1.4 **Charter Participant** means any entity, whether or not it is a Charter Council member, which is entitled in terms of 8 below to appoint persons to serve as members of the Board;

3.1.5 **Financial Sector** means all classes of financial institutions as defined in the Charter;

3.1.6 **Nedlac** means the National Economic Development and Labour Council

3.1.7 **The Trade Associations** means

3.1.7.1 Association of Collective Investments;

3.1.7.2 Banking Association of South Africa;

3.1.7.3 Investment Managers Association of South Africa;

3.1.7.4 Institute of Retirement Funds;

3.1.7.5 JSE Securities Exchange South Africa;

3.1.7.6 Life Offices' Association of South Africa;

3.1.7.7 South African Insurance Association;

3.1.7.8 International Bankers Association of South Africa;

3.1.8 **Trade Association Member** means a member of the Charter Council which is a Trade Association.

3.2 In this Constitution:

3.2.1 words importing any one gender include the other genders;

3.2.2 the singular includes the plural and vice versa; and

3.2.3 natural persons include created entities (corporate or unincorporated) and vice versa;

3.3 In this Constitution, except as set out in 16 and 17, wherever a decision must be arrived at by "consensus", consensus will be achieved only if all votes of those present and voting at the meeting (or their alternates) at which the matter is debated have been cast in favour of the matter in question, or in the case of a resolution in writing, the resolution has been signed by all persons entitled to sign it (or their alternates, where applicable).

4. **Legal personality**

4.1. The Charter Council is a body corporate with perpetual succession, capable of acquiring rights, incurring obligations and entering into legal transactions, and of suing and being sued, in is own name. The Charter Council shall be capable of performing such acts as are necessary for or incidental to the achievement of its objects, the exercise of its powers, and the performance of its functions and duties under this Constitution.

4.2. The affairs of the Charter Council will be managed by the Board, as more fully set out in 8.

5. **Mandate of the Council**

6. The mandate of the Charter Council, and the objects for which it has been established, are to oversee the implementation of the Charter, as more fully described in the Charter. Association not for gain

The Charter Council is not established for the purpose of gain and accordingly:

6.1. its income and assets, however derived, shall be applied only towards the promotion of its mandate and no part of its income and assets may be paid or transferred in any circumstances to any of its members;

6.2. the Charter Council may not pay any of its members, or any member of the Board or any of its committees, any remuneration or give that member any benefit of any nature for any services rendered by him or her to the Charter Council; but this provision will not prevent –

6.2.1. the Board's approving, if it considers it appropriate, the payment to a member of the Board or of any committee of the Board of out-of-pocket expenses incurred by him or her on behalf of the Charter Council and which out-of-pocket expenses are authorised or approved by the Board or any committee;

6.2.2. the payment of reasonable remuneration to any person bona fide in the employ of the Charter Council.

7. **Powers of the Council**

7.1. Subject to the provisions of 6, the Charter Council shall have all the powers necessary to enable it to carry out its mandate, objects and matters incidental thereto. Without limiting the generality of this provision the Charter Council shall have the powers in particular –

7.2. to invest and deal with any of its money on such terms and conditions as the Board deems fit;

7.3. to purchase assets on credit;

7.4. to open and operate banking accounts and for that purpose to draw, make, issue and endorse every kind of negotiable instrument;

7.5. to engage such employees at such levels of remuneration and on such other terms and conditions as the Board deems fit;

7.6. to engage professional advisers on their usual terms;

7.7. to institute and defend legal proceedings;

7.8. to sell, exchange or lease any of its assets and to hire premises or assets in such manner and on such terms and conditions as the Board seems fit;

7.9. to do everything else which is incidental to or conducive to the attainments of its objects or any purpose specified in this Constitution.

8. **Board**

8.1. The affairs of the Charter Council shall be managed by a Board, which shall consist of 21 persons.

8.2. All the powers of the Charter Council shall vest in the Board, whose responsibility it shall be to fulfil the mandate of the Charter Council as set out in 5.

8.3. The following entities, being Charter Participants, shall in writing appoint members of the Board as indicated in this clause 8.3:

8.3.1. four representatives of the Government of the Republic of South Africa, comprising -

8.3.1.1. two representatives of the National Treasury;

8.3.1.2. a representative from the Department of Trade and Industry; and

8.3.1.3. a representative from the Presidency;

8.3.2. three representatives of the Association of Black Securities and Investment Professionals (ABSIP);

8.3.3. four representatives from the Nedlac labour constituency;

8.3.4. four representatives from the Nedlac community constituency;

8.3.5. six representatives from the Trade Association Members.

8.4. Every Charter Participant which appoints a member of the Board shall appoint one alternate member for each representative. An alternate member so appointed, in the absence or inability to act of the member to whom that alternate has been appointed as alternate, shall exercise and discharge all the powers, duties and functions of such member. An alternate shall be permitted to attend board meetings as an ex-officio member, notwithstanding that the Board member for whom he or she is an alternate is also present, but in that event the alternate will have no vote.

8.5. A person shall not be eligible for appointment to the Board if -

8.5.1. he or she is declared incapable of managing his or her affairs;

8.5.2. he or she is convicted in South Africa or elsewhere of any criminal offence which in the opinion of the Board is of a disgraceful or dishonourable nature.

8.6. The appointment of a member or alternate member of the Board shall terminate *ipso facto* and that member shall cease to hold office on the happening of any of the following events:

8.6.1. if that person resigns office by notice in writing to the Board;

8.6.2. if that person and his alternate are absent for more than two consecutive meetings of the Board;

8.6.3. if that person is declared incapable of managing his or her affairs;

8.6.4. if that person is convicted in the Republic or elsewhere of a criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature; or

8.6.5. if the Charter Participant which appointed that person to the Board gives notice in writing to the Board terminating the appointment;

8.7. The appointment or removal of a member or alternate member of the Board shall take effect only on receipt by the Board of -

8.7.1. a letter signed on behalf of the Charter Participant appointing the member or alternate member concerned giving the name of the member or alternate member appointed or removed and the date from which the appointment or removal is to take effect; and

8.7.2. in the case of appointment, a consent to act as a member or alternate member of the Board signed by the person concerned.

8.8. All members of the Charter Council as well as all Charter Participants shall be advised of all appointments made to the Board.

8.9. The failure by a Charter Participant to make an appointment to the Board or to fill a vacancy shall not invalidate the proceedings of the Board. Likewise, all actions of the Board, notwithstanding that it is afterwards discovered that there was a procedural defect in the appointment of a member of the Board, shall be as valid as if the person concerned had been properly appointed.

8.10. In determining the composition of the Board the Charter Participants will endeavour between them to ensure that there is adequate representation on the Board of women and black persons.

9. **Committees**

9.1. The Board will have the power to delegate any of its powers to one or more committees consisting of such one or more of their number, or such outside persons, as the Board shall determine. In constituting a committee the Board shall have regard to the constitution of the Board itself and shall endeavour to ensure, as far as is possible, that the committee shall comprise at least one representative or nominee from each of the entities referred to in 8.3.1, 8.3.2, 8.3.3, 8.3.4 and 8.3.5. Any such committees shall, in the exercise of the powers delegated to it, conform to the rules that may be imposed on it by the Board.

9.2. In pursuance of the power in terms of 9.1 the Board will delegate some of its powers to a Co-ordinating Committee that will coordinate the activities of the Board between Board meetings. The Co-ordinating Committee will consist of a single representative of each of the five Charter Participants that have representatives on the Board nominated by that Charter Participant.

10. Chairperson

10.1. The Board shall elect from amongst its members the chairperson of the Charter Council, who shall act as chairperson of the Board and the Co-ordinating Committee. He or she shall hold office until the anniversary of his or her election and shall not be available for re-election.

10.2. The office of chairperson will rotate among the appointees of those Charter Participants referred to in 8.3 who are entitled to appoint members of the Board.

10.3. The chairperson shall not have a second or casting vote in addition to his or her deliberative vote.

11. Principal Officer

11.1. The Board shall appoint a Principal Officer of the Charter Council. He or she shall be a full time employee of the Charter Council and shall be responsible for the administrative functions of the Board and the day to day running of the Charter Council in accordance with paragraph 15.1.2 of the Charter.

11.2. The Board may delegate some of its powers and responsibilities to the Principal Officer.

11.3. The Principal Officer shall establish the secretariat of the Board, the Co-ordinating Committee and any other committee established by the Board in accordance with its mandate and objects.

11.4. The Principal Officer’s contract of employment must be ratified by the Charter Council.

11.5. The Principal Officer must at all times act in accordance with the directives of the Charter Council and the Co-ordinating Committee.

11.6. The Principal Officer will be responsible for keeping the minutes of meetings of the Board and of all committees of the Board. Copies of decisions of the Board and the Co-ordinating Committee, whether taken at a meeting or in writing, shall be sent to all members of the Charter Council and all Charter Participants as soon as those decisions have been recorded and approved.

12. Meetings of the Board

12.1. The Board shall meet at least four times during every year at such times and places as it may determine. A meeting of the Board may also be convened at any time by the chairperson or by any three members of the Board.

12.2. Not less than 14 days' notice shall be given to all members of the Board of each meeting of the Board, specifying the nature of the business to be transacted at that meeting. Copies of the notice shall be sent to all Charter Participants simultaneously with the notice being sent to members of the Board.

12.3. The quorum for meetings of the Board shall be -

12.3.1. at least one representative for each Charter Participant; and

12.3.2. a majority of Board members, namely eleven.

12.4. If a quorum for a meeting of the Board is not present within 30 minutes of the time appointed for the meeting then the meeting shall be adjourned to the same day in the following week at the same time and place or, if that day is a Saturday, Sunday or statutory public holiday in South Africa, then to the next day which is not a Saturday, Sunday or statutory public holiday. The members of the Board who attend that meeting shall constitute a quorum and shall be empowered to transact any business which was specified in the notice of the meeting which was adjourned. Notice in writing of the adjourned meeting should forthwith be given to all members of the Board by the Principal Officer.

12.5. The chairperson of the Board or in his/her absence a member of the Board present at the meeting and elected for that purpose by those present at the meeting shall act as chairperson of that meeting.

12.6. Every member of the Board present at a meeting of the Board shall have one vote.

12.7. A resolution in writing signed by all the members of the Board or, in the absence or inability of a member to act, by that member's alternate, shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and constituted. Such a resolution may be in the form of one or more documents, all in the same form and all signed by one or more members of the Board.

13. **Funding**

13.1. The financial year of the Charter Council shall be the period commencing on 1 January of each year and ending on 31 December.

13.2. Every Trade Association which is a member of the Charter Council and which has appointed a member of the Board in terms of 8 shall pay an annual contribution towards the costs of the Charter Council, the amount of which shall be determined in the manner set out in 13.3.

13.3. Prior to the commencement of each financial year of the Charter Council the budget of the Council for the following financial year shall be prepared by the appropriate committee of the Board following discussions with the Trade Association members. The annual budget will be prepared for Board approval at the last meeting of the Board in the then current financial year;

13.4. The budget determined in the manner referred to in 13.3 shall bind the Charter Council.

13.5. The costs of the Charter Council, as reflected in the budget or as amended from time to time by the Co-ordinating Committee, shall be borne by the Trade Association Members of the Charter Council in the proportions agreed upon between those Trade Association Members from time to time.

13.6. The annual contribution shall be payable to the Charter Council quarterly in advance, with the first payment being due as soon as possible after 1 January 2005 and thereafter on or before the first day of every calendar quarter.

14. **Indemnities**

14.1. Every member of the Board or of any committee of the Board, and every officer and employee of the Charter Council, shall be indemnified by the Charter Council against claims made against that person and any losses and expenses incurred by that person in or about the execution of his or her duties, save for claims, losses or expenses arising from fraud or wilful default.

14.2. No member of the Charter Council or any Charter Participant shall have any claim against the Charter Council, or against a member of the Board or of any committee of the Board, or against any officer or employee of the Charter Council, in respect of anything done *bona fide* by it or them or any of them in the execution of their duties.

15. **Limitations of liability**

15.1. No member of the Charter Council or Charter Participant shall have any liability for any commitments undertaken by the Charter Council. All persons shall be deemed to contract or deal with the Charter Council on this basis.

15.2. The liability of a member of the Charter Participant is limited to the payment to the Charter Council of any outstanding contributions and settlement of any other debts to the Charter Council which that member may have incurred.

16. **Dispute resolution**

16.1. Subject to the remaining provisions of this clause 16 and of 17, if at a meeting of the Board it is not possible to achieve consensus on any motion before the Board then that motion will fail.

16.2. If consensus cannot be achieved on any motion before the Board, then the following procedure shall be applied:

16.3. the chairperson of the Board shall forthwith give notice in writing to all members of the Board setting out the substance of the disagreement;

16.4. if within seven days of the giving of the notice referred to in 16.2.1 the chairperson of the Board has not been advised that the issue has been resolved, the chairperson of the Board shall notify every Charter Participant of that fact and any Charter Participant will then be entitled, by written notice to the chairperson of the Board, with a copy to every other Charter Participant, to declare that a dispute has arisen which that Charter Participant wishes to have resolved through the dispute resolution procedure set out in this clause 16.

16.5. On receipt of the notice referred to in 16.2 the chairperson of the Board will be obliged forthwith to inform every Charter Participant, by electronic means or by letter delivered by hand to every Charter Participant, that unless all Charter Participants inform him or her by a time which is not later than 72 hours from a time fixed by him or her in the letter that the dispute has been resolved to the satisfaction of all Charter Participants, he or she intends to implement the dispute resolution provisions referred to in this clause 16.

16.6. Unless all Charter Participants advise the chairperson of the Board, within the period referred to in 16.3, that the dispute has been resolved then the following procedure shall be followed:

16.6.1. the chairperson shall forthwith in writing call upon all members of the Trade Associations to nominate in writing within seven days of the date of the letter, whether by consensus or by a majority vote of their number, two persons to be members of the mediation committee of the Board;

16.6.2. upon nomination of the persons referred to in 16.4.1 the chairperson shall refer the matter forthwith to a committee of the Board, to be called the mediation committee, comprising the following persons:

16.6.3. a nominee from each of the other Charter Participants in the Board (that is, the Government of the Republic of South Africa, ABSIP, the labour constituency of Nedlac and the community constituency of Nedlac);

16.6.4. the two persons referred to in 16.4.1; provided that if the Trade Associations do not make the nominations within the seven day period referred to in that clause then the chairperson shall call upon two appropriate members of the Board appointed by the trade Association members;

16.6.5. the mediation committee shall without delay debate the issue and seek to achieve consensus thereon and may convene a meeting of the principals for the purpose of debating the matter with those principals;

16.6.6. if the mediation committee achieves consensus on the matter at issue that shall be the decision of the Board and the chairperson shall immediately inform every Charter Participant in writing of the decision.

16.7. If consensus on any motion before the Board cannot be achieved, as contemplated in 16.1, and the mediation committee has also not achieved consensus within ten business days after the dispute has been referred to the mediation committee, then unless the dispute is one on a matter which must be referred to adjudication as contemplated in 17 the motion will be deemed to have failed.

17. Adjudication

17.1. If at a meeting of the Board it is not possible to achieve consensus on any motion before the Board, and the mediation committee has also not achieved consensus within ten business days after the dispute has been referred to the mediation committee, and that motion relates to –

17.1.1. the interpretation of the Charter; or

17.1.2. any issue which will give rise to the adjudication of scorecards under the Charter then the matter shall be referred to adjudication in terms of this clause 17.

17.2. The adjudication shall be conducted by a panel of adjudicators (the panel) appointed from a list of 12 appropriately qualified individuals to be agreed upon and maintained by the Board at all times. In relation to the composition of the panel:

17.2.1. one person shall be selected by the Charter Participant that has raised the dispute; and

17.2.2. two people shall be selected by the majority of the Charter Participants represented on the mediation committee referred to in 16.4.2, disregarding the Charter Participant that has raised the dispute.

17.3. The members of the panel shall appoint one of their members to act as chairperson of the panel.

17.4. The procedure to be followed in resolving the dispute between the Charter Participants shall be determined by the panel, which shall inform all Charter Participants in writing of that procedure. It is recorded that the panel need not strictly observe the principles of law and may decide upon the matters submitted to the panel according to what the panel considers to be appropriate in the circumstances; provided that every Charter Participant must be given the opportunity of making representations to the panel, whether oral or in writing, as the panel may decide.

17.5. Having considered the representations of the Charter Participants and such other matters as the panel considers appropriate, the panel shall record its decision on the matter in writing, together with reasons for the decision. The decision shall not, however, be disclosed to any person but shall be delivered in a sealed envelope to a firm of attorneys nominated by the chairperson of the panel to be held in safe custody pending the completion of the further procedure set out in this clause 17.

17.6. As soon as the panel has arrived at a decision on the matter in dispute, has recorded its decision in writing and the reasons for the decision, and has delivered the decision to the attorneys to be held in safe custody, all as contemplated in 17.4, the chairperson of the panel shall inform every Charter Participant in writing:

17.6.1. that the panel has arrived at a decision, which has been recorded in writing together with the reasons for the decision;

17.6.2. that the document recording the decision and the reasons for the decision has been placed in safe custody with a firm of attorneys (which shall not be identified);

17.6.3. that the document recording the decision will be disclosed to all Charter Participants at 10h00 on the 10th business day after the date of the notice at a specified place, unless all Charter Participants of the Charter Council advise the chairperson of the panel in writing prior to that date and time that they have resolved the matter in dispute between themselves and that the written decision is not to be disclosed.

17.7. If all the Charter Participants inform the chairperson of the panel that they have reached agreement on the matters in dispute as contemplated in 17.5.3, then the decision of the panel will not be of any force or effect and the chairperson of the panel shall cause the document recording the decision, and all copies of that document, to be destroyed, without informing any person of the decision or its import.

17.8. If the Charter Participants do not all inform the chairperson of the panel that the matter in dispute has been resolved, as contemplated in 17.5.3, the chairperson of the panel will open the sealed envelope containing the decision in the presence of the representatives of the Charter Participants, or as many of them as are present, at the time, date and place specified in the notice referred to in 17.5.3.

17.9. The decision of the panel, or of the majority of the members of the panel if the decision is not unanimous, will be final and will bind all the Charter Participants. This decision will be deemed to be decisions of the Board and will be recorded as such.

18. **Amendment of Constitution**

18.1. This Constitution may from time to time be amended by the Board at a special meeting of the Board of which the requisite notice has been given, with full particulars of the proposed amendments.

19. **Winding up**

19.1. The Charter Council may be wound up by a resolution of the Board at a special meeting duly convened and constituted for that purpose.

19.2. Members of the Charter Council shall not have any claim in respect of any surplus which may arise on the winding up of the Charter Council.

19.3. Upon a resolution to wind up the Charter Council the Board shall appoint a liquidator or liquidators and may give such directions as to the method of winding up as the Board thinks fit.

19.4. Any funds or assets of the Charter Council remaining after the payment of the debts and expenses of the Charter Council and the cost of winding up shall be distributed to or amongst such associations, bodies or institutions as the Board shall decide; provided that such monies or assets shall not be paid to or distributed amongst the members of the Charter Council.

19.5. For purposes of this clause the liability of members of the Charter Council shall be limited to the amount of contributions due by them to the Charter Council at the date of the winding up.

20. **Members**

20.1. The members of the Charter Council are the following entities which, by signing this document, establish the Charter Council:

- Association of Black Securities and Investment Professionals;
- Association of Collective Investments;
- Banking Council, South Africa;
- Government of the Republic of South Africa;
- Investment Managers Association of South Africa;
- Institute of Retirement Funds;
- JSE Securities Exchange South Africa;
- Life Offices Association of South Africa;
- Organised Labour constituency at the Nedlac Public Finance and Monetary Policy Chamber;
- Organised Community constituency at the Nedlac Public Finance and Monetary Policy Chamber;
- South African Insurance Association; and
- International Bankers' Association.

20.2. A member may resign from the Charter Council at any time by delivering written notice to that effect to the Charter Council at its office, and that member shall thereupon cease to be a member of the Charter Council. A member which resigns shall not be entitled to the refund of any amounts paid by it to the Charter Council.

20.3. All Charter Council Members shall be notified in writing of the resignation or suspension or expulsion of a member.

20.4. Should the Charter Council be wound up then every Trade Association Member at the date of winding up and every Trade Association Member which was a member during the 12 months immediately preceding the commencement of the winding up shall contribute to the Charter Council's assets for the payment of its liabilities and for the costs of its winding up its share of those costs and liabilities in proportion to its contribution to costs determined accordance with 12.2, provided that a former Trade Association Member shall not be obliged to make that contribution in respect of any liability of the Charter Council arising after that member ceased to be a member.

Declaration of the Financial Sector Summit

Pretoria, August 20, 2002

1. The Government, Business, Community and Labour constituencies at NEDLAC began meeting at the beginning of 2002 in order to agree on strategies to ensure the financial sector is more efficient in the delivery of financial services, which will enhance national savings and direct them to developmental purposes. The proposed strategies should assist the financial sector:

   a To provide sustainable and affordable banking services, contractual savings schemes and credit for small and micro enterprise and poor households,

   b To support higher levels of savings and investment overall,

   c To expand developmental investments that create jobs, raise living standards and strengthen the economy, and

   d To encourage broader and more representative ownership, control and employment within the financial sector itself and in the economy as a whole.

2 To achieve these aims requires a financial sector which is more diverse in terms of the nature, size and ownership of institutions. All its different components must assume a strong developmental role.

3 Today, on the anniversary of the launching of the United Democratic Front, the parties agree on the following proposals. These agreements must be seen as a package.

3.1. **Ensuring access to basic financial services:** To engage effectively in the economy, encourage savings and improve the quality of life, every South African resident should have access to affordable and convenient payments and savings facilities. Both the public and private sector financial institutions must play a role in achieving these aims.

3.2. The parties will jointly research the economics of basic financial services and on that basis establish mechanisms and timeframes for achieving universal access.

3.3. **Development of sustainable institutions to serve poor communities.** While the large formal financial institutions have an important role to play in providing services for the poor. They must interact with and support smaller institutions, especially co-operative banks and NGOs that can provide micro-credit to the poorest households. We need to harness the energies of the existing institutions in our communities, such as stokvels and burial societies, in order to mobilise our people's savings. The smaller financial institutions serve to increase the diversity of the sector and broaden ownership.

3.4. The parties agree on the need for new enabling legislation for so-called second and third tier deposit-taking financial institutions. As a start, they have agreed key principles for legislation for financial co-operatives. The legislation should ensure that these institutions operate according to co-operative principles and enjoy adequate prudential oversight.

3.5. Following the Summit, the parties will also make proposals on ways to enhance the developmental impact of the regulatory framework.

3.6. The parties also agree that all the constituencies should seek to support financial co-operatives and micro-credit providers. After the Summit, they will engage on a concrete support programme.

3.7. In the absence of realistic alternatives, many wage-earners have had to resort to micro-lenders when they need credit. In too many instances, the result has been an accumulation of excessive debt at a high price. Following the Summit, the parties will propose appropriate regulation for micro-lenders to minimise the negative effects of usurious practices.

3.8. Regulation of credit bureaux. Credit bureaux should play a positive role by providing creditors with necessary information on potential borrowers, which will reduce information asymmetries in the market. The parties have proposed elements of a regulatory framework to ensure that they supply only reliable information that is relevant to a person's creditworthiness; that they are more open to consumer complaints; and that there is no scope for unfair discrimination in their operations.

3.9. **Discrimination.** The parties have agreed that, within the context of the Equality Act of 2000, every sub-sector within the financial sector should establish or strengthen a code to end unfair discrimination. Government should legislate uniform norms on disclosure of financial services by race, gender, location and categories of amount. People who face unfair discrimination should have an effective route for adjudication.

3.10. **HIV-Aids.** The parties are particularly concerned about the need to end unfair discrimination against people with HIV and develop appropriate services for them. Following the Summit, they will work together to achieve this end, and especially to ensure that people with HIV have improved access to housing finance and other services.

3.11. **Capital markets and investment.** The parties agree on the need to increase overall investment and in particular projects that strengthen infrastructure, create jobs, meet basic needs, stimulate economic activity in the poorest regions and communities of South Africa and/or support development throughout southern Africa. They agree on the need to establish a system to identify these projects. On that basis, they will engage around the establishment of realistic targets and monitoring mechanisms. In addition, they will develop training for fund managers and retirement-fund trustees to enable them to adopt more informed and appropriate investment strategies.

3.12. **Development finance institutions (DFIs) and other state-owned financial institutions.** Following the Summit, the parties will make proposals around the developmental impact of these institutions and, if necessary, recommend improvements. A particular concern is to ensure that the PostBank should maintain and expand its services to poor communities.

3.13. **Savings initiatives.** The parties have agreed on activities to promote a savings culture, mobilise our people around the need to increase savings and improve the savings facilities available to all our people.

4 The parties recognise that the proposed measures require a great deal of work following the Summit. We have agreed to meet at least once a month to review progress and strengthen our proposals. To ensure our success in this process, the NEDLAC constituencies commit to providing the necessary capacity, time, energy and enthusiasm.