It is vital for business and investors to have a full and proper understanding of South Africa’s legal framework and policies on Broad-Based Black Economic Empowerment. The Broad-Based Black Economic Empowerment Commission actively investigates complaints and “fronting practices”, and misrepresenting B-BBEE status is a criminal offence, which may result in fines of up to 10% of turnover, imprisonment for up to 10 years and being prohibited from tendering for government/public entity contracts for 10 years.

B-BBEE is based on five key elements: ownership, management, skills development, enterprise and supplier development and socio-economic development. These elements should be measured annually by an independent verification agent that issues an annual certificate setting a firm’s B-BBEE status for that year.

Firms operating in certain sectors are regulated under a specific Transformation Charter and Codes of Good Practice for that sector. The mining industry has its own Mining Charter issued under the Mineral and Petroleum Resources Development Act. State and parastatal tenders take B-BBEE into account and are regulated under the Preferential Procurement Policy Framework Act. Affirmative action and skills development policies are regulated by the Employment Equity Act and the Skills Development Act.

B-BBEE is accordingly a complicated and specialist field of practice and our B-BBEE team has considerable experience and expertise in advising South African and international businesses to implement B-BBEE properly and in compliance with the relevant legislation.

Our experience and expertise includes advising on the B-BBEE Act and the Codes of Good Practice, Transformation Charters, Sector Codes and Regulations issued under the B-BBEE Act, State and public entity procurement laws and regulations (including the Preferential Procurement Policy Framework Act and the Public Finance Management Act) and the Employment Equity Act and the Skills Development Act.

We offer a wide range of advisory services covering all aspects of B-BBEE, including:

- Formulating B-BBEE strategy to align commercial goals with B-BBEE compliance and advising generally on B-BBEE compliance.
- Advising on B-BBEE ownership structures, and drafting all legal documents for implementing these structures, including documents required for broad-based ownership schemes and employee share ownership programs, sale and subscription agreements, shareholder agreements, trust deeds, call and put options and loan, preference share, security and other funding documents.
- Conducting B-BBEE due diligence investigations.
- Advising and representing clients on complaints and investigations by the B-BBEE Commission, preparing submissions to the Commission and advising on administrative reviews and other recourse regarding the Commission’s procedures and decisions.
- Advising on strategies to maximise a firm’s B-BBEE score for B-BBEE management, skills development, procurement/enterprise development and socio-economic development.
> Tax advice on B-BBEE strategies, including on preference share funding structures and ownership structures and transactions.
> Advising on compliance with the Employment Equity Act and Skills Development Act.
> Advising on the Mining Charter, including its provisions dealing with targets for mining companies and provisions relevant for suppliers of mining companies.
> Assistance in formulating potential B-BBEE partners’ selection criteria and managing the selection process.
> Project management in relation to B-BBEE ownership transactions and the implementation of B-BBEE strategies.
> Preparing submissions to B-BBEE rating agencies and regulators regarding a firm’s B-BBEE strategy.
Established in the early 1900s, Werksmans Attorneys is a leading South African corporate and commercial law firm, serving multinationals, listed companies, financial institutions, entrepreneurs and government.

Operating in Gauteng and the Western Cape, the firm is connected to an extensive African legal alliance through LEX Africa.

LEX Africa was established in 1993 as the first and largest African legal alliance and offers huge potential for Werksmans’ clients seeking to do business on the continent by providing a gateway to Africa.

With a formidable track record in mergers and acquisitions, banking and finance, and commercial litigation and dispute resolution, Werksmans is distinguished by the people, clients and work that it attracts and retains.

Werksmans’ more than 200 lawyers are a powerful team of independent-minded individuals who share a common service ethos. The firm’s success is built on a solid foundation of insightful and innovative deal structuring and legal advice, a keen ability to understand business and economic imperatives and a strong focus on achieving the best legal outcome for clients.