

TRANSFORMATION IN THE SOUTH AFRICAN MARITIME INDUSTRY  
- A BEE CASE STUDY -

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**ABSTRACT:**

SMIT Marine SA (Pty) Ltd and Dudula Shipping Co (Pty) Ltd formed a 50/50 joint venture company Smit Dudula Marine (Pty) Ltd in early 2000 as a proactive black empowerment entity at a time when 'black ownership' appeared to be the single driving force behind BEE. Over the course of the past 5 years, Smit Dudula experienced the highs and lows of navigating through uncertain waters and in an ever-changing business environment characterized by the emergence of a multi-faceted definition of true empowerment.

The paper describes the options black entrepreneurs had as to investment and/operational involvement at the time of Smit Dudula Marine's establishment, the financing of equity, the influence, or lack thereof, of shareholders and the impact of corporate structures. The critical role of financiers is also addressed. This paper will present the two sides of the coin by offering perspectives from both partners in the joint venture.

With the emergence in 2003 of several industry BEE Charters which gave life to the broader definition of BEE, Smit Dudula Marine and its shareholders faced the challenge once again of realigning the company within the changed parameters which included the identification of other core components of Black Economic Empowerment and transformation.

The case study will end with an outline of lessons learnt on the part of both partners in the joint venture.

## **1. SETTING THE SCENE:**

In 2003/2004, the advent of a number of enacted charters and scorecards provided Black Economic Empowerment with the momentum required to effect real change. With the appearance of a government initiated regulatory framework, in place there is now a clearer guide to all parties concerned with the business of BEE and transformation – and that should, as a matter of course, include all of us here in this room today.

Development in the maritime sector is now quite clearly one with a strong BEE perspective and the ‘deals of significance’ reported on in the media for the next few years in our industry are likely to be as much about new builds and strategic alliances as they are about groundbreaking BEE investment deals in what is a relatively small private industry. Future BEE equity ownership deals will be evaluated along with the investment’s broader BEE profile including the components of black management, procurement, skills development, employment equity, enterprise development and social development. On the part of the investor, it is no longer a case of who one can bring to the table, but how they can add value to the established organizations BEE profile and effect real transformation.

The process of BEE and transformation within our own industry has been able to achieve one unique characteristic: an appreciation for the fact that we can only do this together. Clichéd it may sound, but in an environment in which traditionally old guard intellectual capital and maritime know-how needs to be retained as a business imperative – especially in an industry that is intrinsically international in flavor – the strategy is to retain the “old” to facilitate knowledge transfer over time and to revitalize efforts to attract, employ and retain black talent and secure long term black investors. Notably, it is our opinion that any attempts to the contrary have not proven successful.

## **2. THE CONTEXT**

The SMIT BEE deal that occurred in this industry prior to the groundbreaking and affirming advent of scorecards and charters were navigated by the industry players in uncharted waters. The formation of a joint venture in 2000, in the absence of clear and legislated guidelines, relied on the goodwill and genuine intent of both parties to effect the change necessary to safeguard and grow specialist maritime business. The joint venture in question was called Smit Dudula Marine (Pty) Ltd and the 50/50 players – SMIT Marine South Africa (Pty) Ltd and Dudula Shipping Company (Pty) Ltd – each anticipated a meaningful partnership that would add value to established and complementary businesses.

The events we are going to address in this paper are not unique, nor are they isolated in anyway. In fact, they could be mistaken for an experience that any number of you in this room have had in the last few years with respect to Black Economic Empowerment and your company's transformation progress or your investment in an established business in the maritime industry. The bottom line is that successful or not, BEE ventures are great teachers and learning through experience often sets the ground rules for the future.

### **3. THE DEAL**

In 2000, Black Economic Empowerment in South Africa was gaining momentum. Other than establishing ships agency business, the biggest opportunity for black investment until that time had been the unbundling of Safren Ltd (Safmarine). However, there was no charter to guide anyone in the industry or on its periphery as to the nature, extent and character of BEE advancement at that time. In a way, the formation of Smit Dudula Marine joint venture (project based) broke new ground and industry players watched from the sidelines with interest. At that time, Dudula Shipping Company was effectively positioned as the first black empowered maritime company and when it was formed in February of 2000, was considered and believed to be 60% Black.

Prior to 2003 up until today, issues of financing remain critical with a direct impact on black investment in the maritime industry. Depending on the sector one chooses, an investment can be capital intensive yet offer relatively thin margins. The issues around funding have therefore always hinged around the nature of the investment. For example, funders are reluctant to offer finance for a "consulting" type business, which automatically puts brakes on potential ship agency investors getting in the loop. If one chooses asset based operations then one must consider the issues of enormous capital outlay, prices and charter rates being transparent and market determined, thin margins (not withstanding current rate highs) and rand volatility. The question of financing is enormously challenging. In addition, South African banks are neither familiar with, nor active in the shipping finance game, which makes this challenge more intense. This was an issue that Smit Dudula Marine repeatedly encountered as a barrier to progress.

### **4. CHARACTERISTICS OF THE DEAL**

SMIT is a company active in many specialist marine fields in a variety of market segments and owning high value assets – not the easiest of companies for black investors to get in to. A Black entrepreneur investing as a direct shareholder would have been faced with a number of investment decisions. In order to overcome this deterrent in 2000, SMIT identified a commercially viable project in one of its lucrative market segments and was able to attract a black investor prepared and able to invest on a manageable project-by-project basis.

For an established company such as SMIT, it was an enormous step made even more notable by the fact that it was a wholly foreign owned entity. For Dudula Shipping, it was an incredible opportunity to explore unlimited potential and enter into this capital-intensive industry. And both parties entered into the 50/50 joint venture in a spirit of co-operation, commitment and with an eye towards the future. Opportunities were explored on a project-by-project basis – which provided for operational involvement and the development of expertise: the first commercially viable project in the Bunker Delivery market segment being the launch and operation of the bunker barge/tanker 'Smit Dudula', operational in Richards Bay following a period of conversion in Cape Town in August 2001.

A number of additional contracts soon followed and Smit Dudula began to create its own identity and reputation in the industry. Notably, the 50/50 JV was in existence prior to any government charters or scorecards being available. Both parties were sailing into unchartered waters and the challenges of doing so began to take its toll when changing parameters in the form of scorecard and charters emerged. The goalposts had been defined, targets were set and the definition of BEE became legislated.

## **5. POST-DEAL EVENTS**

On February 14<sup>th</sup>, 2003, President Thabo Mbeki's State of the Nation Address set out a clear roadmap for the implementation and acceleration of economic empowerment. President Mbeki noted that "the Government lay the greatest stress on black economic empowerment that is associated with growth, development and enterprise development and not merely redistribution of wealth". For South Africa, 2003 was the year in which "the economic transformation (required) to bring about effective and significant black economic empowerment" was effected and BEE was positioned as an inclusive process that complemented economic growth and development, rather than "an exclusive redistribution exercise".

The State of the Nation Address was soon followed by the Department of Trade and Industries' efforts to communicate its intended framework for evaluating transformation. And it became clear that parastatals would be changing parameters for supplier evaluation as a result.

In the months that followed the government released three important documents including the Strategy for Broad-Based Black Economic Empowerment in March 2003, The Code of Good Practice (which is an explanation of the approach to be adopted by government in the measurement of BEE compliance) and the Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003), otherwise known as the BB BEE Act which was passed into law on 6 January 2004.

As a result of these documents entering the public domain, it became clear that the government defined BEE as having 3 distinct but linked contexts. The first is direct empowerment, which aims at promoting ownership and control by black persons over the economy. A tremendous emphasis was placed on BEE compliance in terms of equity and ownership. This was more specifically evident in the supplier criteria set for companies "wishing to do business with the government". As a result, similar requirements were set by entities or parastatals subject to sectoral requirements and including the likes of PetroSA, SAPREF, De Beers Marine and others.

The second context relates primarily to the promotion of human resource development and the third, known as 'indirect empowerment', includes enterprise development through investment in and joint ventures with black empowered or black-owned businesses and level of procurement sourced from black-empowered or black-owned businesses, amongst other criteria.

And with the advent of a clearer definition of BEE, the concept of independent validation and evaluation of BEE status and the eradication of fronting became a reality. This was followed by the Dti Codes of Practice, establishment of a BEE council and a system of accredited BEE evaluating companies to audit and verify BEE companies.

## **6. LESSONS LEARNT**

Getting BEE right is as much about both parties making mistakes and learning from them as it is about transformation. The bottom line though, is that we do not have forever to "get transformation right". In order to address the inequalities of the past, real progress must be made in the short and medium term and the advent of charters and scorecards, with the accompanying climate of expectation on the part of both established business and investors, will go a long way towards achieving this within the desired time frames.

The maritime industry is one of the oldest industries and as a result, the community is international in flavour and very traditional. The established community tends to view new entrants (irrespective of colour) with great caution. It is an industry for people who are seeking a long-term investment and appreciate the value of personal relationships. The industry values people who have "done time" and, as such, first time black investors will always meet with the challenge of demonstrating credibility. It is important to invest more time and resources in fewer investments and cultivate strong relationships than spread oneself too widely too quickly. An active commitment on the part of established business to maritimise the investors/shareholders is required, for it is only by doing this that one can engender an environment of real and reciprocal participation. To function effectively at board level without any maritime knowledge or insight creates a lack of 'value-adding'. This is as much a prerogative of the established business as it is for the Board members/investors/shareholders.

It goes without saying that time, interaction, research and due consideration needs to be invested in the partner selection phase. Adequate attention must be paid to thoroughly investigating shareholding of proposed partners on the part of the established business, and, on the part of investors, suitability of the established business in meeting their investment visions. Clear and stated definitions of the expectations and objectives of both parties is required prior to investment. The objectives of established business and the black entrepreneur or investor are often very different. The creation of shared objectives should be a prerequisite for a long-term commitment on both sides. Successful investors/partners need to share objectives and agree on the value adding of each party, on the equitability of each side's contribution, on equitable management and on mechanisms to control disputes.

Taking into account the issues already discussed in this paper, in retrospect it is clear that the joint venture Smit Dudula Marine was a classic example of what we today refer to as New Enterprise Development. Compared to the process of transforming an established company into a fully-fledged BEE entity, Smit Dudula and its stated objectives of skills transfer over time, project-by-project investment and steady growth of business, can be appropriately located within the category of Enterprise Development. At the time of Smit Dudula's establishment, the long-term vision was to, in good time and following successfully concluded projects, welcome black investment into Smit Marine South Africa. Smit Dudula was, in effect, a transformation 'incubation' model rather than a properly structured BEE entity.

Black investors and established companies alike active in the maritime sector should all heed lessons learned from the Smit Dudula joint venture experience which can be best summarised as follows:

- There is no such thing as a BEE "quick fix", from both points of view. Transformation is a process not a business deal and critically involves a change in mindset.
- Timing is critical and one must look at it within the context of the environment of the black investor/s, the established company, the business at stake as well as the dynamics of the maritime industry.
- It is vital that partner selection and due diligence be sufficiently carried out.
- Transformation is a business imperative, but is your company ready for it? An assessment of organizational 'maturity' should be carried out by the established company in order to accurately gauge how far it is down the transformation line. This facilitates the development of a detailed, practical and achievable transformation strategy. Transformation has a multi-faceted definition and at established company level has got to be about total integration of its principles over and above black shareholding.
- BEE is an integral part of doing business in South Africa and transformation must be seen as a business imperative. All parties are in business in order to make money and to grow the operation and with this shared objective in mind, organizational culture shift becomes a natural progression.
- Business objectives must be in line with the transformation imperative. Focussing on "blackness" only is not sustainable.

- Not getting it right (first time) can be costly in terms of management time, black investor resources, potential loss in market share and damage to reputation and credibility of both parties.

## 7. Conclusions

Particularly in the maritime industry, BEE is about identifying and managing the right mix of people, opportunity, investment and risk on the part of both the investor and the established company. The creation of a multifaceted BEE definition on the part of the DTI in 2004 in the form of the scorecard has been the first real concrete guideline developed by government and combines the imperative to make businesses profitable with the imperative to transform.

Active participation by black investors goes a long way to highlighting to all levels within a company that it “walks its talk”. As a result, Black investors are behoven not to be silent partners. They cannot view their investment in traditional terms, particularly in this industry. They need to participate actively and in a variety of ways in order to add value to the established company. In essence, it is black investors who are the changing face of this industry and, as such, need to bestow their countenances on the established company, its employees, its international partners, its fellow investors and the maritime industry as whole. The very nature of empowerment and transformation demands this.

At the very same time, the established company needs to locate its transformation progress within the correct context. Transformation is not only about welcoming black investors onboard and improving black representation at board level, it is also about changing organisational culture and mindset – about changing the way in which the company does business.

The path that joint ventures such as Smit Dudula Marine (Pty) Ltd followed serves as a learning tool and in the face of guidance offered by the charters and scorecards, can help to set the ground rules for future investments, partnerships and BEE ventures.

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