

City of Johannesburg

Public Transport Transformation and Empowerment Policy

1. PURPOSE AND SCOPE

The purpose of this policy is to set out the principles and procedures that the City of Johannesburg Metropolitan Municipality (City) will follow when transforming and empowering public transport operators and services. These services include Rea Vaya BRT, Metrobus and mini bus taxis services as well as the operation and management of public transport facilities.

This policy will replace the BOC Company Formation Policy approved in 2012 and the Mayoral Committee report on public transport facilities approved in 2014.

2. BACKGROUND

The Transport Department in the City has been pioneering approaches to the transformation of the public transport sector in general and the empowerment of the mini bus taxi sector in particular. The majority of the initiatives have revolved around the introduction of Bus Rapid Transit (BRT) or Rea Vaya BRT in Johannesburg.

Since the decision was first made in 2006 to introduce the Rea Vaya BRT, the context has changed, and sufficient time has now elapsed for an evaluation and reconsideration of the initial goals and the extent to which they have been achieved.

This revised policy proposes new strategies and approaches to achieve transformation and empowerment in the public transport sector in respect of:

- Negotiation and transformation processes
- Bus operating company formation;
- Financial compensation and empowerment of both operators and drivers
- Value chain opportunities through Bus Operating Companies

The previous BOC Formation Policy included provisions for affected operators to access value chain opportunities such as security and cleaning at Rea Vaya stations on a preferential basis. A Mayoral Committee report also agreed to pilot similar value chain opportunities in small or medium sized public transport facilities which are owned by the City and occupied by a single taxi association.

However, the City has received confirmation from a legal opinion that no provision in legislation exists for giving affected taxi operators a preference when the City procures these services. The only preferences that various legislation including the Constitution, Broad Based Black Economic Empowerment Act and the Preferential Procurement Policy Framework Act and Regulations provide for are in respect of black women, black people with disabilities, black youth, black people living in rural areas and black unemployed.

These value chain opportunities from the side of the City are thus no longer available. Due regard should also be taken of the City's decision in 2017 to insource security and cleaning including in public transport facilities.

The document is structured as follows:

- Definition of key terms and concepts;
- Objectives of transformation and empowerment;
- Negotiation process and structures;
- Bus operating company formation process;
- Empowerment through financial compensation;
- Empowerment through capacitation and training;
- Empowerment through enablement of accessing value chain opportunities through bus operating companies; and
- Empowerment through employment opportunities.

3. DEFINITIONS AND KEY CONCEPTS

This section sets out the definitions of key concepts which will be referred to in the policy

Concept	Abrv	Definition or explanation
Affected operator	AO	An operator who has been affected by the introduction of new public transport services linked to an Integrated Public Transport Network Plan.
Broad based black economic empowerment	BBBEE	A national policy to promote the economic empowerment of previously disadvantaged individuals.
Bus/Vehicle Operating Company	BOC/ VOC	The entity that will enter into a bus operating contract with the City for the provision of bus services
Bus/Vehicle Operating Company Agreement	BOCA	The contract drawn up by the City for signature by itself and the BOC setting out <i>inter alia</i> the terms and conditions upon which the City requires public transport services to be operated, the vehicles to be acquired, secured and maintained, the use or lease of City property, and related matters.
Bus Rapid Transit	BRT	A high-performance bus system where some of the buses are on dedicated lanes to improve speed, safety and reliability.
Eligible operator	EO	An affected Operator who meets the verification criteria set by the City in order to prove that they are legally compliant, bona fide operators of current public transport services on an affected route and who are therefore eligible to become shareholders in the BOC under consideration.
Enterprise Development		A strategy for promoting economic growth and reducing poverty by building SMMEs.
Financial compensation		An amount of money granted to identified affected operators as compensation for the loss of economic rights as result of the introduction of an IPTN or other approved transformation process approved by the City.
Integrated Public Transport Network Plan		A public transport plan which seeks to integrate different modes and is approved by the Mayoral Committee. It can include rail, bus, mini bus, midi bus and demand responsive services.

Concept	Abrv	Definition or explanation
BOC Management Plan		The plan approved by the board of the BOC setting out the procedures and policies to be applied to the management and operation of the BOC, to be submitted by the BOC to the City as a condition precedent to the BOCA for the City's approval.
Negotiated Contract		A contract concluded between the City and the operators operating within the area in which the City intends on introducing the NEQ IPTN in terms of S. 41(1) of the National Land Transport Act no. 5 of 2009 (NLTA).
Operator		A person carrying on the business of operating a public transport service
Potentially affected operators	PAO's	Operators who are possibly affected by the introduction of new public transport services linked to an Integrated Public Transport Network Plan and whose affectedness will be determined during the process of transformation
Party/Parties		The bodies who are parties to the negotiations.
Previously disadvantaged Operators		Means 'black people' as defined in section 1 of the BBBEE Act 53 of 2003 which means Africans, Indians and Coloureds (a) who are citizens of the Republic of South Africa by birth or descent or (b) who became citizens of the Republic of South Africa by naturalisation (i) before 27 April 1994 or (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date
Supplier development		Is the process of working with certain suppliers to improve their performance for organisation, leading to improvements in total added value from supplier in question in terms of BBBEE rating, product or service offering, business processes and performance delivery lead times and delivery.
Taxi operated investment company	TOIC	An investment vehicle set up by taxi associations and/or individual taxi operators for purposes of participating in a transformation process.
Transformation process		A process of engagement, consultation and/or negotiation between the City and operators for the purposes of transforming the public transport system of the City including the introduction of an IPTN, which process has to be approved by the Municipal Council, being the executive and legislative arm of the City.
Value chain		Investment opportunities for previously disadvantaged public transport operators arising out of the implementation of public transport transformation including the introduction of BRT.

4. LEGAL FRAMEWORK

This section sets out the framework and key legal provisions that the City is required to be in compliance with as it implements this policy of transformation and empowerment

Key provisions are set out below.

4.1. National Land Transport Act (NLTA) and the National Land Transport Regulations on Contracting for Public Transport Services (Contracting Regulations)

The NLTA sets out how planning, implementation, licensing, integration and management of public transport should happen. Amongst other things it sets out the terms and conditions where contracts can be negotiated in the interests of economic empowerment of previously disadvantaged individuals (section 41 of the NTLA) and government can move from existing contractual arrangements to favour and enable new entrants into bus contracting (Section 46 of the NLTA).

4.2. Municipal Finance Management Act (MFMA) and the Municipal Asset Transfer Regulations (MATR)

- Section 14 of the MFMA read with the Municipal Asset Transfer Regulations (MATR) which regulate the disposal and/or transfer of the City's capital assets. Section 14 and the MATR sets out the procedure which the Transport Department would need to adhere to prior to disposing and/or transferring its capital assets in line with the transformation process.
- Section 33 of the MFMA which regulates the conclusion by the City of contracts having future budgetary implications and sets out the procedure to be followed by the Transport Department prior to concluding such a contract.
- The provisions of section 48 and section 50 of the MFMA regarding the necessary approvals and procedure to be followed prior to the City issuing any form of security in favour of any person in connection with the IPTN.

4.3. Division of Revenue Act (2018) (DORA)

The DORA regulates the use by the City of the Public Transport Network Grant (PTNG). In respect of this grant, financial compensation can't be paid to previously disadvantaged operators who have lost economic rights as a result of the introduction of an IPTN, without independent verification of such loss, which needs to be approved by the NDOT.

5. GOALS AND OBJECTIVES

Our goal is creating and ensuring a reliable, safe and affordable public transport to City residents as part of bettering their lives and building a well-functioning City. The City aims to transform, empower and capacitate individuals from the public transport industry firstly because it will serve this goal and secondly because economic empowerment is critical to economic growth and public safety in the City.

This policy distinguishes between transformation and empowerment objectives. These are set out below.

Our transformation objectives are to ensure that the mini bus taxi industry plays a meaningful role in providing quality public transport including through:

- (a) Being able to scrap or sell old unsafe vehicles and either recapitalise these with safer vehicles or become shareholders in restructured public transport services including the BRT system;
- (b) Being able to offer quality, reliable public transport which is affordable to passenger and sustainable for them on routes that are commercially viable or through scheduled or performance-based contracts with the state;
- (c) The state providing safe and accessible public transport facilities such as ranks, interchanges and holding areas which can increase passenger numbers, speed and attractiveness of this mode of transport; and
- (d) The state taking effective action against criminality and lack of safety of road users.

Our empowerment objectives are to provide mini bus taxi operators with opportunities to grow and build sustainable businesses in the transport and other sectors because:

- (a) Some are exchanging the economic right of an operating license with that of a shareholding in a new bus operating company and the state has committed that they should not be worse off than if they had continued with their current business for the duration of seven years by doing this;
- (b) By providing these opportunities, they will be in a better position to contribute to a safe and reliable public transport system, contributing to building the economy and addressing unemployment and poverty.

There are four key components to delivering our empowerment objectives namely:

- (a) **Financial compensation;**
- (b) **Training and capacitation** of mini bus taxi drivers and operators;
- (c) **Enabling value chain opportunities** through the bus operating companies; and
- (d) **Preferential employment opportunities** for drivers and other personnel coming from the mini bus taxi industry.

In delivering on our empowerment objectives, we are mindful of the fact that the mini bus taxi industry was disadvantaged due to our apartheid history.

In the implementation of this policy, the City will align with the following values:

- (a) *Affordability and value for money:* The City must be able to afford providing public transport services and the passengers must be able to afford the fares;
- (b) *Quality:* Public transport services must be safe, reliable and convenient;
- (c) *Legality:* The process must be compliant with the Constitution, transport and municipal finance legislation and in line with government policies;
- (d) *Credible and legitimate process:* The process must be inclusive and have the support of all spheres of government and key stakeholders; and
- (e) *Good governance and zero tolerance of fraud and corruption:* The process needs to be fair and transparent.

In the next sections we set out how the objectives will be given effect to.

6. PROCESSES AND STRUCTURES OF NEGOTIATION AND TRANSFORMATION

To achieve the objective of public transportation transformation and empowerment, the process can significantly impact on the outcome. The playing field needs to be levelled through the way in which processes are structured, high levels of communication to all parties and stakeholders is critical, there is independent facilitation or chairperson and transparent dispute resolution mechanisms. In this section, guidelines are proposed in this regard.

6.1. Transformation phases

The following is a guideline as to the key phases and outputs that can be expected from each phase in respect of public transport transformation with specific reference to a negotiated contract in terms of Section 41 of the NLTA. However, the same phases can be followed but modified with due regard to the specific nature of the transformation process.

Phase	Key outputs
Engagement phase	<ul style="list-style-type: none"> • Information sharing • Building understanding • Setting up negotiations and negotiation teams
Pre-negotiation's phase	<ul style="list-style-type: none"> • Determine which operators/routes are affected and thus which operators are eligible to become part of the transformation process including becoming shareholders • Registration of affected operators • Agreement on negotiation modalities through the signing of a Negotiation Framework Agreement.
Negotiations	<p>Formal negotiations between mandated negotiation teams wherein the following can be agreed:</p> <ul style="list-style-type: none"> • How affected operators participate and become eligible operators for purposes of transformation • Bus/Vehicle Operating Company Agreement including the fee per km to be paid • Bus/Vehicle Operating Company Formation Agreement • Empowerment including Compensation Agreement • Employment Framework agreement
BOC/VOC formation and preparation for operationalization	<ul style="list-style-type: none"> • Training and orientation of prospective shareholders, drivers and others eligible to be employed • Fulfilment of requirements of Companies Act and other legislation • Establishment of relevant shareholding structures • Employment of staff • Disposal of vehicles and provision of compensation as agreed in the negotiations.

Before the start of any negotiation or transformation process, the Mayoral Committee must agree on the parameters of the negotiation mandate of the City officials as well as how a mandate can be amended including the establishment of a Mayoral Committee Mandating Sub-Committee, if necessary.

6.2. Transformation structures and related modalities

At the onset of a transformation process which involves negotiations the parties should reach agreement on a negotiation plan to ensure that the process is structured and there are clear rules and processes.

The negotiation plan should set out:

- (a) The structure of the negotiations including terms of reference and composition of working groups and plenary meetings;
- (b) The size of the negotiation teams which should be of a workable size and based on the concept of 'proportional representation';
- (c) Need and nature of independent facilitation, secretariat and translation services;
- (d) The code of conduct to be followed during the negotiations including such as issues as being well prepared, treating each other with respect, timeous securing of mandates;
- (e) The role of consultants, technical support, advisors and observers and related issues such as attendance and speaking rights;
- (f) Confidentiality, speaking to the media and related matters;
- (g) Training and capacity building;
- (h) Processes for caucusing and mandating by all the Parties
- (i) Mechanisms of communication to affected operators;
- (j) Arrival and attendance;
- (k) Decision making and dispute resolution including issues such as what constitutes sufficient consensus;
- (l) Minute taking and recording of agreements;
- (m) Logistical issues such as meeting venues, cell phone use; distribution of documents; and
- (n) Time limits of the negotiation process and what shall occur if the time limits are not met.

The negotiation plan must be approved by the Mayoral Committee before being signed with other parties.

6.3. Support for previously disadvantaged operators

To ensure that previously disadvantaged operators are able to participate on a level playing field the City is committed to provide the following support, the details of which should be agreed to per transformation process and approved by the Mayoral Committee:

Type of support	Extent
Access to City resources	Reasonable access to venues, and related resources such as telephone, internet access and photocopying that will facilitate communication and consultation with the City and between operators.
Communication	Regular newsletters that are accessible to operators and drivers to keep them informed about what is being negotiated/transformed and the progress in this regard.
Technical support	The City should arrange technical support of the operator's choice through the following process:

Type of support	Extent
	<ul style="list-style-type: none"> • Transport Department to develop terms of reference for technical support which shall include rates as prescribed by the Department of Public Service and Administration (DPSA) for consultants • Mandated representatives of operators to identify service providers who are willing to execute the terms of reference at the prescribed rates and provide a written motivation of such service providers which shall include that the process was fair and the proposed service providers have the support of their executive structures; • The City shall not be obliged to appoint any service provider who is not, in the City's opinion, properly qualified to provide the technical support required; • City to procure the services of this service provider in compliance with the MFMA on terms and conditions which include payment per milestone (for consultant's work) and per hours for meetings attended and there must be documentation on each and every item of work. • Transport Department to also appoint a firm from the audit or legal panel to quality assurance each invoice including copies of internal minutes and internal consultant reports that the City would not have access to and recommend that the City pays; • GRAS to include in their annual internal audit, an audit of the technical support. • In the event that operators are not able to reach consensus on technical support or there are disputes in respect of the appointment of technical support, the City reserves the right to go out on an open tender on behalf of operators for technical support
Allowances for transformation processes	<p>Payment of allowances to compensate for the time away from operator's businesses and travel in attending meetings and related processes as follows:</p> <ul style="list-style-type: none"> • Only duly mandated representatives are eligible to receive allowances after the relevant leadership of such operators have made a public commitment to the transformation process. • The Transport Department to only pay representatives who have been approved in writing by the executive of the relevant structures • The amount of allowances plus other relevant details such as a 'cap' must be agreed by the Mayoral Committee for every transformation process or phase after consultation with the operators. • Payment of allowances must conform to payment and taxation requirements of the City.
Information sharing workshops and events	Input and logistic support for a reasonable number of information sharing workshops or events such as study tours

6.4. Independent facilitation and dispute resolution

The City is committed to provide reasonable independent facilitation in respect of the different processes or phases. This facilitation can be for:

- Chairing and facilitation processes including pre-negotiations and negotiations; and
- Facilitate resolution of disputes between and within the various parties.

The role of the independent facilitator shall be including but not limited to the following:

- (a) Chairing of meetings;
- (b) Determine and have the authority to decide on matters of process;
- (c) Facilitate problem solving on issues where appropriate;
- (d) Agenda setting;
- (e) Dispute resolution by mediation or other mechanisms as may be agreed by the parties;
- (f) Provision of secretariat services; and
- (g) Provision of translation services.

In respect of dispute resolution:

- (a) Arbitration should be a last resort and must be agreed by the parties;
- (b) From the City side a decision to embark upon arbitration must be made by the Mayoral Committee; and
- (c) Notwithstanding the above, the parties may also by agreement use other outside assistance to break deadlocks.

The following are the processes and conditions in respect of the procurement of independent facilitation:

- (a) The City will provide a pro forma term of reference for independent facilitation, which the parties may adapt by agreement;
- (b) Facilitators and related services (such as secretariat or translation services as agreed with the parties) to be appointed through a company or consortium which includes panel of different facilitators and can provide secretariat and translation services;
- (c) The Transport Department to procure the company or consortium through an open tender process in line with the City's Supply Chain Management system;
- (d) The terms of reference of the above tender to include that the company or consortium must provide a range of CVs and the City together with Mandated Representatives to identify service providers of their choice for a particular negotiation/transformation period, matter or plan.

7. BUS/VEHICLE OPERATING COMPANY FORMATION

Bus operating company formation refers to the formation of a new bus or vehicle operating company by the shareholders or prospective shareholders when an IPTN is introduced.

This policy makes provision for three different options for bus operating company formation as follows:

- A: The BOC/VOC is a product of the negotiation process as is required by Section 41 of the NLTA and affected operators become shareholders in the BOC/VOC
- B: The BOC/VOC exists or is set up to tender for a public transport contract through Section 42 of the NTLA. The empowerment and bus operating company formation processes are separated
- C: The BOC/VOC is a product of the negotiation process as is required by Section 41 of the NLTA but affected operators are all provided with financial compensation and have a choice to become shareholders and contribute an agreed amount of equity.

It is possible to start with one plan and shift to another plan depending on the progress of negotiations. Any decision about a plan or the shift to another plan shall be made by the Mayoral Committee.

The features of Plan A, B and C are set out in more detail below.

Feature	A	B	C
Type of contract	Negotiated Section 41 of the NLTA	Tendered Section 42 of the NLTA	Negotiated Section 41 of the NLTA
Maximum duration of the contract	12	7	12
Who owns the buses	Operator by the end of the contract. Transfer in terms of the MFMA	Could be owned by the City or the City could require tenderer to procure buses or use buses that they own.	As per A
Who will be the shareholders?	Affected operators. The shareholding in the BOC will be linked to the number of vehicles/seats and operating licences withdrawn from affected operators	Successful service provider as a result of an open procurement process evaluated on price, functionality and BBEE. The successful service provider can include affected mini bus taxi operators as shareholder, but this would be the decision of the bidder.	As per A but not all affected operators become shareholders.
How will the amount to be paid as equity be determined?	A negotiated amount of equity is invested by every affected operator when they subscribe for shares.	N/A	The value of the ordinary equity will be based on the estimated future operating cash flows of the BOC (free cash flow model / discounted cash flow model) at inception
How will shareholder be organised?	Through TOICS or operators will be direct shareholders in the BOC	N/A	As per A
How can good governance be assured in TOICS	City to insist on minimum content in the MOI of the TOICS to promote good governance. TOICS must distribute dividends to their members. As part of the fee per km, funds should be allocated for a Company Secretary or further person who can be responsible to provide TOICS with administrative support and set up and	N/A	As per A.

Feature	A	B	C
	manage proper structures of liaison between the TOICs and the Company.		
Measure to ensure service excellence and safeguards for governance (BOCA provisions and penalties)	<p>The Bus Operating Company Agreement should include provisions for:</p> <ul style="list-style-type: none"> • Higher penalties for operational inefficiencies • Penalties for poor governance • Penalties for not implementing a performance management system <p>Should the penalties reach a set threshold in the BOCA, the City would be entitled to cancel the BOCA with notice to the BOC.</p>	Penalties for operational performance only.	As per A
Composition of boards and compliance with King Commission	<ul style="list-style-type: none"> • Boards must be made up of majority independent members. • Independent board members who resign or are dismissed by the Board must be replaced with independent board members. • Board meetings shall not quorate without independent members. 	<ul style="list-style-type: none"> • Boards must be made up of 100% independent board members • Compliance with King Commission guidelines 	<ul style="list-style-type: none"> • Boards must be made up of 100% independent board members • Compliance with King Commission guidelines
Composition of executive management team	Senior management of the BOC must be appointed in line with the Employment Equity Act.	As per A	As per A
Provisions in the BOCA in relation to management and business plans	BOC required to do Management Plan at inception to meet City requirements before BOCA is implemented	Tender would require compliance with all legislation including BBBEE.	As per A.

Feature	A	B	C
	BOC required to submit a business plan annually including what they are doing in terms of skills development, supplier development and there should be consequences if the business plan is not met.		
Role of fee per km	Structured so that if there are operational problems in the Company, this should impact on the dividend paid to shareholders as soon as possible the Earnings before Interest, Dividends, Depreciation and Amortisation (EBIDDA) will be negatively impacted and thereby reducing the amount available for distribution	Financial model only makes provision for a commercial profit and dividend issued only if company declares a profit	As per A
Empowerment (Financial compensation)	All shareholders to receive financial compensation equivalent to what they would have earned if they had continued to operate taxis for next seven years. Financial compensation can be made up of combination of ROT and dividends	All affected operators receive financial compensation equivalent to what they would have earned if they had continued to operate taxis for next seven years. Financial compensation only in the form of ROT.	As per B
Empowerment (training and capacity building)	City to fund and facilitate training and capacitation of drivers of affected operators so that they have an opportunity to be able to access further employment and empowerment opportunities.	As per A	As per A
Empowerment (value chain opportunities)	BOC would be required to have a supplier development programme, targeting affected operators	As per A	As per A

Feature	A	B	C
Empowerment (employment opportunities)	Would be required in an Employment Framework Agreement to recruit 60% from a database of affected operators.	Would be required in the BOCA to give all drivers who had been trained an opportunity to be employed but no obligation to employ.	As per B

8. FINANCIAL COMPENSATION FOR EMPOWERMENT

The goal of financial compensation is to empower affected operators by compensating them for the loss of economic rights inherent in their Operating Licences and minibus taxi business. Below the rationale, categories of financial compensation and terms of conditions is set out.

8.1. Rationale for paying financial compensation when introducing IPTN's

The City will pay financial compensation to affected operators for the following reasons:

- (a) To compensate the affected operators for relinquishing an economic right which is reflected in a seven-year operating license granted to the affected operator pursuant to the provisions of the NLTA. It is assumed that the operating license will be held for a further seven years as is required by the NLTA.
- (b) To compensate the affected operators for agreeing not to operate in competition with the Rea Vaya BRT. The affected operators will be required to sign a restraint of trade agreement with the City which will be used by the City to protect its interest.

In addition, this financial compensation will assist operators to become sustainable and prosperous businesses including by acquiring equity in the BOC and/or investing in other income generating activities.

Financial compensation is complemented by both training and capacity building proposals included in this policy as well eligible operators receiving a scrapping allowance through the taxi recapitalisation process.

It is possible to separate the payment of compensation from the establishment of a bus operating company. The City can conclude on a compensation amount to all who agree to relinquish their economic rights of a seven-year license and then embark on a separate process of bus operating company formation.

8.2. Categories of compensation

The City can provide compensation as follows:

Category	Description
Compensation for empowerment	<p>This is an amount of money equivalent to what an affected operator would earn per vehicle if he or she would be continuing to operate this vehicle for a further seven years on an affected route.</p> <p>This amount of compensation would be the same irrespective of whether the affected operator was going to become a shareholder or exit the industry.</p>

Category	Description
	<p>How the compensation is paid to an affected operator would be agreed in a payment plan. This payment plan could be either or a combination of a lump sum, paid periodically or monthly or be part of the profit margin if the affected operator is a shareholder in terms of an agreed payment plan.</p> <p>This compensation can only be provided to an operator when and whose vehicle has been scrapped or sold, his/her operating license for that vehicle has been cancelled and a restraint of trade has been signed.</p>
Transitional compensation	<p>This is an amount of money to compensate operators monthly for the loss of income between the time in which they hand in their vehicles and the time in which they receive the final compensation for empowerment.</p> <p>This compensation may be necessary where there is a lag time between the start of an IPTN and the scrapping or selling of an operator's license and the cancelling of his license.</p>
Compensation for victimisation	<p>This is an amount of money provided to operators who can no longer operate due to victimisation as a result of their association with the introduction of an IPTN.</p>

8.3 Terms and conditions in terms of paying financial compensation

The mechanisms and parameters for the disbursement of such funds will be the subject of negotiations only with the previously disadvantaged targeted beneficiaries.

The settlement agreement is reinforced by a Restraint of Trade Agreement. For tax purposes it is recognised that this compensation, regardless of whether it is paid as a lump sum or as a series of payments, is seen as a capital gain in the hands of the affected operator.

The conditions for paying compensation are as follows:

- a) An agreement regulating the payment of compensation must be signed by mandated representatives of affected operators and approved by the Mayoral Committee
- b) The operator who is to be paid, has a vehicle with an operating license. No claim will be considered for vehicles with no operating licenses or operating licenses not linked to any vehicle. However, the City can facilitate a process to enable operators to be regularised.
- c) The vehicle of the operator must be disposed of through the National Department of Transport's Taxi Recapitalisation Programme or sold. If the vehicle is sold, payment will be made only when all relevant documents have been submitted to/by the original owners, irrespective of the transaction concluded between the seller and the new owner.
- d) The associated operating licences are relinquished and cancelled;
- e) The affected operator has signed a Restraint of Trade agreeing not to operate in competition with the Rea Vaya for a period of 7 years from the effective date of a vehicle or bus operating contract agreement and further undertaking not to apply for a new operating license for any routes which are part of the IPTN of the City; and
- f) The affected operator has signed that this is a full and final settlement and will not claim any further funds.

Financial compensation) can be paid out by the City in terms of a number of different payment plans including as a lump sum, monthly or periodic payments as agreed between the City and the affected operators.

In the event that the operator does not adhere to the terms and conditions of the ROT, the City shall stop his/her payments in terms of the payment plan and institute punitive proceedings.

8.4. Process in respect of determining the amount of compensation to be paid

At the time of drafting of this policy, the only source of funds for financial compensation is the national Public Transport Network Grant (PTNG). The conditions of this grant indicate that “verified data on operator revenue and profitability and draft agreements for the compensation of existing economic rights of affected operators must be provided to DoT prior to concluding agreements on compensation for economic rights”.

Thus the amount to be paid has to be based on the existing economic rights determined by the amount of profit an operator is currently getting and/or could reasonably get in the next seven years (which is the maximum length of an operating license) if he/she did not become a shareholder of the BOC or was affected by the introduction of an IPTN.

The amounts to be paid thus needs to be decided after:

- Investigation and information gathering – by operators and their Technical Support;
- Verification of information – by City and/or Independent party; and
- Negotiation – with City and operators negotiation teams.

Tax must be the responsibility of the operator and should not be factored in the calculations of the amount.

8.5. Approval by the Mayoral Committee and Council

On the basis of this policy, the Mayoral Committee will recommend to Council for approval on a transformation process or phase by phase or process basis:

- (a) The precise criteria for the allocation of financial compensation ;
- (b) The previously disadvantaged targeted beneficiaries of such funds;
- (c) The amount and payment plan; and
- (d) Any other provisions and conditions.

9. EDUCATION, TRAINING AND CAPACITATION FOR EMPOWERMENT

Education, training and capacitation is the second leg of empowerment which aims to:

- (a) Empower negotiators to be able to participate meaningfully in the negotiation processes;
- (b) Empower mini bus taxi leadership to be pro-active partners in the transformation processes including in respect of operating their mini bus taxi businesses more sustainably and providing better services to commuters; and
- (c) Equip operators including those that have received financial compensation to grow their business or new businesses including to supply the Bus Operating Companies or take advantage of value chain opportunities on an equal footing with other businesses.

The following training and capacitation empowerment initiatives can be funded and arranged by the City and offered to operators:

- a) Education or training at accredited or recognised secondary and tertiary institutions;
- b) Internships and learnerships;
- c) Incubation programmes;
- d) Programmes to upskill drivers to be able to apply for formal jobs in the transport sector including driving of buses;
- e) Enabling behavioural change for drivers and taxi owners including in respect of customer care, financial self-management and conflict resolution; and
- f) Mediation and facilitation services in instances of conflict to inter alia model new ways of addressing conflict and resolve intractable and recurring deep-seated conflicts.

10. ENABLING VALUE CHAIN OPPORTUNITIES IN BOCS

The third leg of empowerment is creating opportunities for affected operators to benefit from 'value chain' opportunities in the Bus Operating Company.

In respect of BOC/VOCs where a bus or vehicle operating company agreement exists with the City, the City will require these Companies to set up supplier development programmes in the BOCA. The City can do this by adding clauses in the BOCA requiring the BOC to make this undertaking in the Management Plan which is a suspensive condition to hand over the BOC. The City can also monitor supplier development and penalise BOC's that do not do so.

Supplier development can be in respect of bus maintenance, cleaning and security of the depot and buses, provision of tyres and other vehicle parts, provision of fuel and lubricants and services such as accounting, auditing and legal.

11. PREFERENTIAL EMPLOYMENT OPPORTUNITIES

Drivers and other workers or independent contractors of affected operators should have an opportunity to be employed as:

- Bus drivers, cleaners or maintenance workers in the BOC/VOC; and
- Station staff in the SSMA.

How workers and/or contractors of affected operators are provided this opportunity should be included in an agreement signed by the Parties after Mayoral Committee approval. The following are guidelines for issues to be included in such an agreement:

- (a) A database should be set up by affected operators according to agreed criteria as to who can be included in such a database.
- (b) Those on the database should have an opportunity to receiving training as set out in the above section
- (c) The training should enable the workers on the database to be able to complete for employment positions in the BOC or City through fair and transparent recruitment processes. There should be no entitlement for employment.

- (d) The City and the BOC should agree targets on numbers of percentages of workers from the database to be employed and if necessary, include such targets in an Employment Equity Plan
- (e) The City can require the BOC in the Management Plan to set certain targets.
- (f) These targets can be different from or in addition to the statutory Employment Equity targets such as race, gender and disability.
- (g) Consideration should also be given to where the person lives in relation to his place of work. This is to both target local residents as well as being able to address reasonable demands for transport to work, once employed.

In the interest of clarity, there will be no entitlement to employment for workers and independent contractors of affected operators. All employment should happen through open and transparent recruitment policies, but the City shall endeavour to provide capacity building that will make it more likely for candidates from affected operators to be successful in their applications for employment.

12. REVIEW AND IMPLEMENTATION OF THE POLICY

This policy should be reviewed periodically and can be amended by Mayoral Committee resolution. The policy can also be complemented with more detailed guidelines which should be presented to the City Manager and MMC for Transport to ensure concurrence with the policy.

END