

**STATEMENT 030:
QUALIFICATION, MEASUREMENT AND REPORTING CRITERIA FOR BROAD-
BASED BLACK ECONOMIC EMPOWERMENT**

Abstract

This statement aims to align the application of policy instruments with broad-based BEE. The statement identifies the various policy instruments identified for the implementation of BEE, defines broad-based BEE mechanisms and differentiates them from narrow-based BEE instruments. The main objective of the statement is to provide a basis for government, industries and enterprises to align different preferential procurement, licensing and financing initiatives with broad-based BEE.

The statement also highlights the potential risk presented by the inclination of industry and enterprises to measure themselves on broad-based BEE but to evaluate their suppliers and business partners using narrow-based BEE criteria. An example of broad-based preferential procurement and reporting mechanisms is also provided. The statement also provides transitional recommendations for organs of state or enterprises currently applying narrow-based BEE mechanisms.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

**QUALIFICATION , MEASUREMENT AND REPORTING CRITERIA FOR BROAD
BASED BLACK ECONOMIC EMPOWERMENT**

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Introduction

1. *This statement aims to standardise and systematise the use of different policy instruments, as identified in the broad-based BEE Strategy, in applying and implementing broad-based BEE. The policy instruments identified by the BEE Strategy include: **legislation, regulation, issuing of licenses, granting of concessions, disposal of state assets, entering into private/public partnership and contracting for goods and services (i.e. preferential procurement).***

The statement also advises private sector charters and initiatives, which involve the application of broad-based BEE, especially through preferential procurement.

2. *When implemented properly and appropriately, the broad-based BEE strategy will ensure that every enterprise operating in South Africa will become both an implementer and a facilitator of economic transformation. The promotion and acceleration of broad-based BEE can be enhanced by the multiplier effect introduced by the different indirect BEE factors, namely preferential procurement and enterprise development.*
3. *The inclusion of narrow-based BEE mechanisms in the application of the broad-based BEE strategy will, however, result in a significant implementation gap. The gap will limit the effects of the BEE strategy to the first or second tier of business which deals directly with Government through procurement, licensing or other policy instruments.*
4. *Ineffective implementation of BEE will significantly reduce the multiplier effect envisaged in the broad-based strategy. Furthermore, the application of a narrow-based strategy encourages fronting, especially in sectors where genuine black ownership is difficult to achieve in the immediate short term.*
5. *Various charters and enterprise initiatives have, unfortunately, demonstrated the inclination towards the application of narrow-based mechanisms, largely as a result of the fact that the adoption and implementation of narrow-based BEE requires*

significantly less time and effort than the adoption and implementation of broad-based BEE.

- 6. Furthermore, the application of different approaches when implementing policy instruments, hinders the harmonisation of the reporting and disclosure of BEE initiatives by public and private sector entities. This results in the unnecessary complication of a process which would otherwise be able to compare BEE contributions across Government institutions, industries and entities.*
- 7. The lack of harmonisation also results in potential resistance to BEE, as businesses are uncertain of the correct and appropriate initiatives to implement in their promotion of broad-based BEE.*

Objectives

- 8. The objective of this statement is to examine and explain the methods and requirements for the implementation of broad-based BEE when applying policy instruments.*
- 9. Highlighting the potential social and economic consequences of the current implementation gap, the statement aims to steer public and private enterprise away from the ease of narrow-based measures, in order to further accelerate broad-based BEE through the design, implementation and reporting of broad-based BEE initiatives.*

Interpretation and Definitions

- 10. The terms defined below are intended to provide a reference for a variety of defined or understood terms and concepts that are used in relation to various forms of Enterprises including, but not limited to:*
 - a) companies governed in terms of the Companies Act 61 of 1973,*
 - b) close corporations governed in terms of the Close Corporations Act 69 of 1984,*

- c) *co-operative societies governed in terms of the Co-Operatives Act 91 of 1981,*
- d) *partnerships and sole proprietorships governed in terms of the common law, and*
- e) *trading trusts as governed in terms of the Trust Property Control Act 57 of 1998 and the common law.*

In each such instance, a term defined herein may be accompanied by a reference to some of the analogous terms or concepts used in relation to the various forms of Enterprises. Where such analogous terms and concepts are identified, they may be used in the interpretation of the defined term, but should under no circumstances be considered to limit the generality of the defined term which they accompany, nor should they be deemed to constitute an exhaustive list of analogous terms and concepts of that defined term.

11. *Examples provided in this statement are inserted for illustrative purposes only and should not be considered substantive provisions within this statement.*

12. **Act:** *The Broad Based Black Economic Empowerment Act 53 of 2004.*

13. **BEE Scorecard:** *a scorecard for the measurement of broad-based black economic empowerment for a particular Enterprise, as set forth in terms of a Code of Good Practice issued under the Act.*

14. **Black people:** *is as defined in Statement 040: Glossary to the Code of Good Practice*

15. **Black economic empowerment (BEE):** *an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about both significant increases in the number of black people that manage, own and control the country's economy as well as significant decreases in income inequalities.*

16. **Broad-based black economic empowerment:** *is as defined in Statement 040: Glossary to the Codes of Good Practice. The process promotes the economic*

empowerment of all black people, including black women, black workers, black youth, black people with disabilities and black people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:

- *increasing the number of black people who manage, own and control enterprises and productive assets,*
- *facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises,*
- *human resource and skills development,*
- *achieving equitable representation in all occupational categories and levels in the workforce,*
- *preferential procurement, and*
- *investment in enterprises that are owned or managed by black people.*

17. Broad-based BEE status: *the BEE progress or status of an economic entity as measured according to the broad-based BEE scorecard in the BEE Codes of Good Practice or in a Gazetted industry charter. The different preferential categories include:*

- (a) **“Excellent contributor to broad-based BEE”** - *total score of 80% and above*
- (b) **“Good contributor to broad-based BEE”** - *total score of 65% to 79.9%*
- (c) **“Satisfactory contributor to broad-based BEE”** - *total score of 40% to 64.9%*
- (d) **“Limited contributor to broad-based BEE”** - *total score of below 40%*

18. Fronting: *any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to black beneficiaries would suggest. The claims can be in the form of direct ownership, human resource development and indirect ownership components as per the balanced scorecard.*

19. Narrow-based BEE: *a set of transactions transferring corporate assets from white to black ownership.*

20. **Narrow-based BEE status:** the categorisation of companies and economic entities by their ownership and management status. These include but are not limited to:

- (a) **“Black enterprise”** defined as an enterprise or economic entity that is 50,1% owned by black persons and where black management has majority control. Ownership is a term that bears the same meaning as defined in Statement 100 of the Code of Good Practice.
- (b) **“Black empowered enterprise”** is one that is at least 25,1% owned by black persons and where there is substantial management control by black people.
- (c) **“Black influenced enterprise”** is one that is at least 5,1% owned by black persons and where there is tangible influence by black people.
- (d) **“Black engendered enterprise”** is one with at least 25,1% representation of black women within the black equity and management portion.
- (e) **“Community or broad-based enterprise”** has an empowerment shareholder who represents a broad base of members.

Scope

21. This statement should be applied in the recognition and measurement of black ownership by every organ of state and public entity in –

- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law,
- (b) developing and implementing a preferential procurement policy,
- (c) determining qualification criteria for the sale of state-owned enterprises, and
- (d) developing criteria for entering into partnerships with the private sector.

22. In addition, the statement should be applied to ensure a uniform approach to the black ownership aspect of broad-based BEE by all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders.

Balanced Scorecard

23. *In terms of the broad-based BEE Strategy, government will use a 'balanced scorecard' to measure progress made by enterprises and sectors in achieving BEE.*

The scorecard will measure three core elements of BEE:

- a) Direct empowerment through ownership and control of enterprises and assets,*
- b) Human resource development and employment equity, and*
- c) Indirect empowerment through preferential procurement and enterprise development.*

24. *The balanced scorecard also allows government departments, state-owned enterprises, other public agencies and private sector companies to align their own procurement practices and individual BEE strategies. The scorecard facilitates the process of setting measurable targets for BEE.*

Policy Instruments for the Implementation of Broad-based BEE

25. *In terms of the broad-based BEE strategy, government will apply BEE criteria, as set out in the scorecard, when:*

- a) contracting for goods and/or services,*
- b) granting a license to engage in a specific regulated economic activity, for example, gambling or mining,*
- c) granting a concession to a private enterprise to operate an asset or enterprise on behalf of the state,*
- d) selling an asset or a state-owned enterprise,*
- e) entering into a public-private partnership, and*
- f) engaging in any economic activity.*

26. *Preferential procurement mechanisms include the procurement of goods and services from various categories of BEE contributors. The key differentiation between preferential procurement and normal procurement practices is the consideration of the broad-based BEE status of an enterprise as a preferential indicator in the identification, selection and retention of suppliers.*

27. *Broad-based BEE criteria should also be applied when government and private sector apply BEE-based preference mechanisms when using financing instruments to promote BEE. Financing instruments will be varied and will include guarantees, grants, incentive schemes, loan and equity financing.*

Application of Broad-based BEE through Policy Instruments

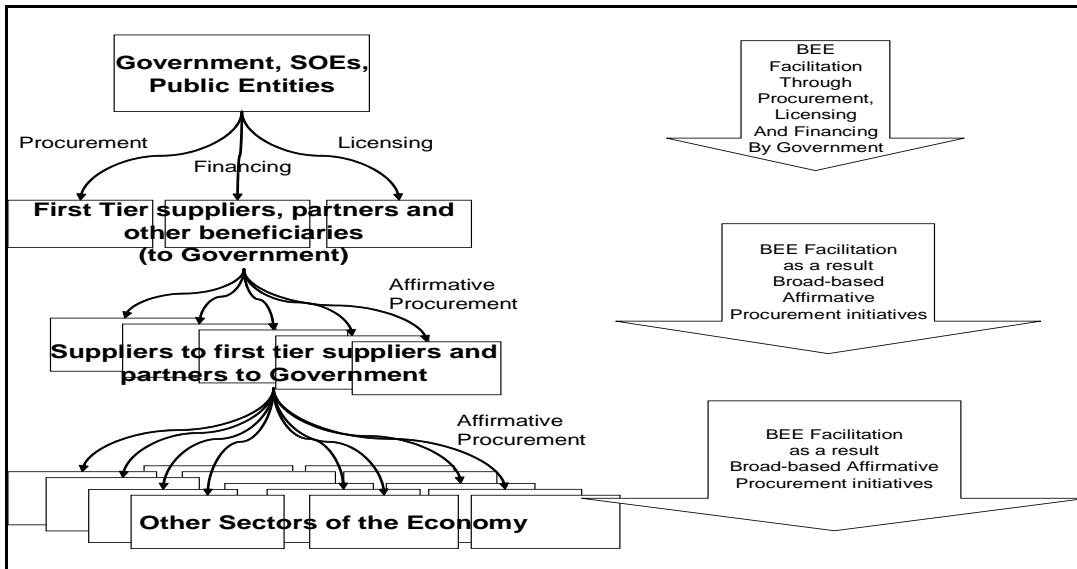
28. *Government will use the total score as per the balanced scorecard to rank enterprises according to their progress in achieving broad-based BEE. The following are the categories for preference in ranking:*

- a) Total score of 80% and above – excellent contributor to broad-based BEE*
- b) Total score of 65% to 79.9% – good contributor to broad-based BEE*
- c) Total score of 40% to 64.9% – satisfactory contributor to broad-based BEE*
- d) Total score of below 40% – limited contributor to broad-based BEE*

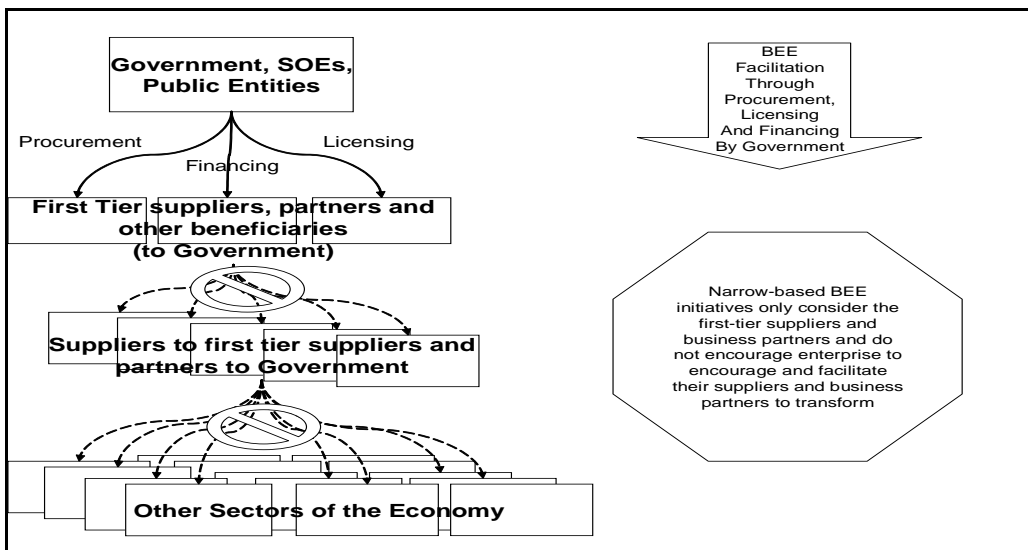
29. *Government will also encourage the private sector to develop similar ranking systems in sector and enterprise charters and to use these rankings in their procurement.*

30. *Government, industry and enterprises should use the broad-based BEE status of an enterprise when developing preferential procurement and reporting mechanisms. The transitional provision (paragraph 37) applies to enterprises and organs of state that have existing narrow-based BEE mechanisms for preferential procurement and reporting purposes.*

31. *The application of broad-based BEE initiatives accelerates the transformation process in the economy, because every economic enterprise becomes a facilitator and driver of broad-based BEE, to their suppliers and business partners.*



32. The consideration of the narrow-based status of an enterprise when applying broad-based BEE can potentially result in the dilution of the overall reach and effectiveness of the broad-based BEE process. Narrow-based BEE only evaluates ownership and control within an enterprise and does not require enterprises to undertake initiatives to promote BEE within their industries or through their suppliers and business partners.



33. While broad-based BEE mechanisms aim to broaden the beneficiary base to include all black investors, management, employees, suppliers and communities, narrow-

based BEE mechanisms limit their beneficiary base to those who have the necessary opportunity, experience and resources to acquire an equity stake or be appointed into senior managerial positions.

34. Furthermore, narrow-based BEE mechanisms may result in the prevalence of 'fronting' to circumvent the ownership and management requirements of BEE.

Harmonisation of Recognition, Measurement and Reporting Mechanisms for Broad-based BEE

35. The differences in the election of broad-based BEE and narrow-based BEE mechanisms by different industries, severely hampers the harmonisation of recognition, measurement and reporting of BEE across government and industry.

36. Another prevalent mismatch is illustrated by the proposals of some industry charters, where enterprises measure themselves in terms of a broad-based BEE scorecard, while setting narrow-based, ownership requirements for their suppliers and business partners. This can result in implementation gaps and conflicts when different charters are implemented.

Transitional Provisions

37. It is envisaged that all BEE policy instruments applied 12 months after the release of this Code will be based on a broad-based mechanism. BEE status will be measured as a score based on the BEE scorecard, rather than solely on the percentage of ownership held by black people. No reporting in terms of a narrow-based mechanism will qualify for any percentage score in terms of any broad-based BEE scorecard, subsequent to the 12-month transitional period after the release of this Code.

Example A: Proposed preferential procurement indicators and reporting structures for industry charters and enterprise initiatives

Procurement from Categories of BEE Suppliers	Comparative Weighting	Actual Spend	Weighted Spend
<i>Excellent Contributors to BEE</i>	100%	R 75,000,000	R 75,000,000
<i>Good Contributors to BEE</i>	75%	R 240,000,000	R 180,000,000
<i>Satisfactory Contributors to BEE</i>	50%	R 374,500,000	R 187,250,000
<i>Limited Contributors to BEE</i>	0%	R 152,000,000	R 0
Total Preferential procurement Status		R 841,500,000	R 442,250,000
Preferential procurement Percentage			52.6%

The comparative weighting, actual spend and weighted spend are included for illustrative purposes, whilst the actual comparative weighting and reporting mechanisms are presented in the Procurement statements of the Codes of Good Practice and in the different industry charters.