

GOOD CORPRACTICE

CODES OF GOOD PRACTICE ON B-B BEE

SECOND PHASE



the dti

Department
Trade and Industry
REPUBLIC OF SOUTH AFRICA

The Department of Trade and Industry (the dti) has been tasked with the drafting of the Codes of Good Practice on BEE as per the requirements of the Broad-Based Black Economic Empowerment (B-B BEE) Act no 53 of 2003. One objective of these codes is to provide further clarity and guidance on the interpretation and definition of B-B BEE.

The first phase of the Codes of Good Practice on B-B BEE, was launched in November 2005, which covers the conceptual framework, the measurement of Ownership and Management Control, as well as interpretations of the individual statements.

The second phase of the Codes of Good Practice on B-B BEE, which is the subject of this document, covers 5 components of the B-B BEE scorecard; preferential procurement, employment equity, skills development, enterprise development, residual (industry specific and corporate social investment initiatives), and also the Qualifying Small Enterprise sections. Other statements covered include fronting practices, specific verification issues relating to complex structures, multinationals, and state-owned / public entities.

These codes will encourage all entities, both public and private, through the issuing of licenses, concessions, sale of assets and preferential procurement, to implement proper B-B BEE initiatives. Thus, the Codes of Good Practice provide a standard framework for the measurement of broad-based black economic empowerment across all sectors of the economy.

The low rate of economic growth is one of the challenges confronting the South African economy. This challenge is due mainly to insufficient skills, high levels of unemployment and poverty, and income inequality among the majority of black people. The 2nd phase of Codes of Good Practice is responding primarily to the challenges faced by the second economy, including a lack of skills, high rates of unemployment and poverty, and inequality.

The following elements of the scorecard on broad-based black economic empowerment outline the principles and targets to address challenges of the second economy.



STRUCTURE OF THE CODES OF GOOD PRACTICE

Code 000: Statement 001: Fronting practices and other misrepresentation of B-B BEE status

This statement provides clarity on fronting practices and risks, and specifies the requirements for the reporting of fronting practices. It also provides guidance for the determination and evaluation of fronting risk, and specifies the consequences of fronting practices.

Some of the examples of fronting contained in this statement include:

- Window dressing
- Benefit Diversion
- Opportunistic Intermediaries.

Code 000: Statement 002: Specific verification issues relating to Complex Structures

This statement provides guidance as to which Measured Entities are subject to measurement under the codes, and to the consolidation of compliance data in certain specific instances.

It further provides guidance as to the attribution and separation of compliance data, and clarity as to transfer of certain B-B BEE contributions in the event of the sale of a business.

Code 100: Statement 102: The recognition of Ownership contributions arising from investments by B-B BEE targeted Warehousing Funds

This statement seeks to specify the key measurement principles associated with ownership by and contributions to Warehousing Funds, for the purpose of facilitating B-B BEE transactions.

A Warehousing Fund is defined as a fund established by an enterprise, organs of the State or public entity for the specific purpose of holding an equity interest in another enterprise from exiting black participants for a fixed duration of time, with the obligation of ultimately transferring that equity interest into ownership by the intended black participants. The fund should be approved by the Minister of Trade and Industry.

Code 100: Statement 103: The recognition of Ownership Contributions by multinational companies

This statement defines the key measurement principles applicable to measurement of Ownership Contributions by multinational businesses and South African multinationals. It further provides for the recognition of Equity Equivalent contributions made by multinational businesses, and the recognition of Ownership Contributions arising from sales of offshore Equity Interests.

The statement also provides for the recognition of ownership contributions arising from sales of businesses or assets by multinational businesses or South African multinationals; and specifies the approach to measurement of Ownership Contributions made by South African multinationals.

The statement continues to provide recognition of certain public programmes or schemes as equity equivalents by multinational businesses to be approved by the Minister of Trade and Industry, in consultation with the sectoral line minister, premiers or other stakeholders in any government department, provincial government or local government.

This statement also allows both multinational businesses as well as South African multinationals to receive indicative points on their Ownership Scorecard after having implemented some of the initiatives allowed for in this statement.

Code 100: Statement 104: The recognition of Ownership Contributions made by public entities and the organs of State

This statement specifies the basis for the award of indicative points for the Ownership Element of broad-based black economic empowerment in public entities wholly owned by organs of State. It also specifies the basis for the recognition of Ownership of Equity Interests held by Designated Public Entities as being black ownership.

Code 100: Statement 105: The recognition of Ownership Contributions made by companies limited by guarantee and section 21 companies

This statement specifies the basis for awarding indicative points for the Ownership Element of broad-based black economic empowerment in companies limited by guarantee and section 21 companies; and it further specifies the basis for recognition of Ownership of Equity Interests held by companies limited by guarantee and section 21 companies.

Code 300: Statement 300: Employment Equity

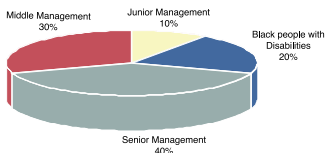
This statement measures initiatives targeted to achieve employment equity in all measured entities in the workplace. A fundamental principle of this statement is to ensure alignment with the Employment Equity Act.

The statement provides targets for the inclusion of black people in occupational levels other than top management and semi-skilled and unskilled levels.

The statement also emphasises the importance of black women within Employment Equity through the allocation of half of the points to the inclusion of black women in senior to middle management positions.

Built in to the application of this scorecard is the need for enterprises to implement measures in their organisations that will ensure the development of black employees for the occupation of middle to senior management positions.

Criteria	Compliance targets
Senior Management	60%
Senior Management (Black Women)	30%
Middle Management	75%
Middle Management (Black Women)	40%
Junior Management	80%



Code 400: Statement 400: Skills Development

This statement measures initiatives implemented by employers that are targeted at the promotion of competencies of black people within an organisation.

It further specifies the Skills Development scorecard, which will be used to measure the amount of contributions made by the measured entities towards development of black people.

It further specifies the basis for the measurement of the organisational transformation contributions to B-B BEE, which is a qualitative aspect to transformation in the organisation.

It specifically emphasises the need for employers to provide skills training in what is referred to as core skills and critical skills, and also encourages the use of Learnership Programmes.

Core skills and critical skills are defined as follows:

- Core skills are value-adding activities of enterprises in line with its core business, and within the operational component of its value-chain.
- Critical skills are identified by each SETA in relation to the National Skills Development Strategy.



Leaderships relate to skills development programmes that are approved by the relevant SETA, and fully certified in accordance with the National Qualification Framework, maintained with regard to the South African Qualification Authority.

This code is also in line with the National Skills Development Act (1998), the National Skills Development Strategy and the Skills Development Levies Act.

It further specifies the basis for the measurement of the organisational transformation contributions to B-B BEE, which is a qualitative aspect to transformation within the organisation.

The Skills Development scorecard provides compliance targets distributed as follows:

- 3% of leviable amount (payroll) for Skills Development spent on black employees. This target is over and above the requirement by the Skills Development Levies Act, which requires that employers spend 1% of the leviable amount on skills levy.
- 2,6% for Skills Development spend for critical and core skills for black employees.
- 1,4% for Skills Development spend for critical and core skills for black women employees.
- 0,3% for Skills Development spend on employees with disabilities.
- 5% for the number of black employees on SETA accredited learnerships as a percentage of total employees.
- 2,5% for the number of black women employees on SETA accredited learnerships as a percentage of total employees.

One of the key challenges identified in the ASGI-SA is the skills shortage among black workers and job seekers. The Skills Development initiatives are intended to facilitate the achievement of the objectives of ASGI-SA, through provision of technical and business skills to enable black people to be equipped with suitable skills for them to effectively participate in the economy.

This element further provides an implementation tool to add further impetus to compliance with the Employment Equity Act and the Skills Development Act. The B-B BEE Act thus puts pressure on companies to comply, by providing more “teeth” to the implementation of both these pieces of legislation.

Code 500: Statement 500: Preferential Procurement

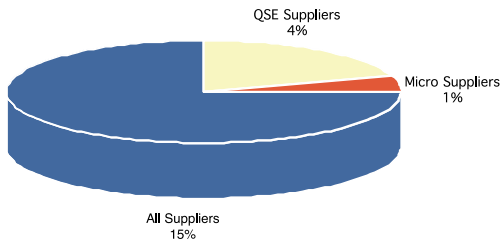
This statement measures the extent to which enterprises procure from companies that are B-B BEE compliant. This also includes micro enterprises as well as qualifying small enterprises. A Preferential Procurement scorecard has been included to provide targets for Preferential Procurement from the above-mentioned compliant suppliers.

The statement further provides the key measurement principles to be applied when calculating Preferential Procurement contributions to B-B BEE. It further specifies the principles to be applied when calculating B-B BEE Procurement spend, and specifies the formula for the calculation of the individual criteria specified in the Preferential Procurement scorecard.

The Preferential Procurement scorecard targets and weighting are shown below for procurement from the above-mentioned compliant suppliers.

- **Weighting Allocation of Preferential Procurement to:**
 - All suppliers (including QSE and Micro): 15%
 - QSE suppliers 4%
 - Micro enterprises 1%
 - Total 20%

- **Target:**
 - All suppliers (including QSE and Micro): 70%
 - QSE suppliers 15%
 - Micro suppliers 5%



From the above table it is evident that quite a substantial number of the points for Preferential Procurement go towards procurement from small, very small and micro enterprises.

The combined small and micro enterprises target indicates that the companies will not earn full points if they do not procure at least 20% of its total procurement from the small, very small and micro enterprises. The rationale of this Preferential Procurement element is that if B-B BEE compliant companies could spend at least 20% of their total procurement spend on small and micro enterprises, it will have major spin-offs in the economy as small and micro enterprises will require more manpower and capacity to deliver. As such, more black people will be employed, more revenue for those small and micro enterprises will be created as well as the eventual growth of those enterprises.

The code further provides the key measurement principles to be applied when calculating Preferential Procurement contributions to B-B BEE.

Code 600: Statement 600: Enterprise Development

This statement measures specific initiatives for assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such beneficiary entities through the expansion of their financial and/or operational capacity. These beneficiary entities would be mainly medium, small, very small and micro enterprises.

It further specifies the key measurement principles to be applied when calculating qualifying Enterprise Development contributions to B-B BEE and provides guidance in terms of the measurement of monetary and non-monetary contributions.

The statement further encourages Enterprise Development initiatives in rural communities, and in any geographical areas identified by government.

The code goes further to give an enhanced incentive for Enterprise Development initiatives that are targeted specifically at micro enterprises, those initiatives that will result in job creation, as well as those that are targeted at creating enterprises, which produce goods that were not previously available in South Africa. Projects that are targeted at initiatives in rural communities, and in any geographical areas identified by government as urban/rural development nodes are also given additional incentives.

The code encourages both monetary and non-monetary contributions to Enterprise Development initiatives. These contributions may be in the form of provision of mentoring, financial assistance, preferential credit terms, provision of guarantees, use of infrastructure for free or at reduced rates, and any other initiatives that are intended to enhance the ability of aspirant B-B BEE compliant suppliers to become sustainable over the long term.

In addition, a bonus point will be awarded against submission by the measured entity of adequate proof that it contributed to job creation.

Code 700: Statement 700: Residual Element

This statement specifies initiatives intended to directly provide black people who are natural persons with a means of generating income for themselves.

The code on the Residual Element specifies initiatives intended to directly provide black people with a means of becoming economically active. The underlying principle of this code is to encourage initiatives intended to facilitate access to the economy by black people, and is inclusive of both corporate social investment and industry-specific contribution.

It further specifies key measurement principles to be applied when calculating Qualifying Residual Contributions to B-B BEE. It also provides a formula for the calculation of the criteria specified in the Residual Contribution scorecard, and is the basis for the awarding of bonus points.

Some of the examples cited in this code as corporate social investment initiatives for B-B BEE purposes are:

- Development programmes for women, youth, people with disabilities, people living in rural areas and other target groups;
- Support of health and HIV/AIDS programmes in the community;
- Support for community education facilities, programmes at secondary and tertiary level; bursaries and scholarships;
- Community training; skills development for unemployed; adult basic education and training in communities;
- Environmental initiatives that focus on conservation, awareness, education and waste management;
- Arts and culture initiatives that support development programmes, development of new talent; and
- Sport initiatives that support development of sports programmes.

This is not intended to be an exhaustive list of initiatives that can qualify under B-B BEE, but seeks to demonstrate that initiatives that will have the result of providing black people with the opportunity of participating positively in the South African economy will be able to qualify for points on the B-B BEE scorecard.

Code 1000: Statement 1000 - 1700: Qualifying Small Enterprise

These codes attempt to provide a much less onerous B-B BEE compliance regime by providing certain exceptions.

Like all economic citizens of South Africa, small enterprises are also expected to contribute towards the transformation of our economy. Normally business entities would be required to comply with all 7 elements of the B-B BEE scorecard. Taking into consideration the need to lessen the regulatory burden on small enterprises as well as to encourage compliance with B-B BEE requirements within this sector, a much more flexible approach was adopted towards the treatment of small enterprises within B-B BEE. Small entities can now choose to comply with only five out of the seven elements of B-B BEE. Furthermore, the way in which they are expected to comply with the chosen elements is also not as stringent as the requirements in the generic scorecard.

Micro enterprises, which have been defined as those entities with a turnover of less than the VAT registration limit (currently R300 000 per annum), have been exempted from the requirement of compliance with B-B BEE. In simpler terms, such entities will not be required to fill in the B-B BEE scorecard and will be given an automatic BEE compliance level. This is to ensure that they are not get disadvantaged from obtaining procurement opportunities. In fact, small and very small (defined as qualifying small enterprises in the codes) as well as micro enterprises have been allocated specific Preferential Procurement targets in order to ensure that large enterprises are compelled to acquire goods and services from them.

Key Principles	Description	Implication
Qualifying Small Enterprises (Definition)	Qualifying small enterprises classified according to the National Small Business Act, based on turnover and employee numbers	<ul style="list-style-type: none"> ■ The qualification criteria for QSEs differs across sectors ■ A table to provide guidance for classification for B-B BEE purposes has been provided in the codes
Exemption of Micro Enterprises	Micro Enterprises with annual turnover below the VAT registration limit exempted from the codes	<ul style="list-style-type: none"> ■ Automatic B-B BEE compliance level given to micros in order to encourage preferential procurement spend to micros
Application of the QSE Scorecard	Allows QSEs to apply the entire 7 elements of the scorecard or select 5 of the 7	<ul style="list-style-type: none"> ■ QSE can potentially score a 100 points without having sold equity to black people
Bonus Provisions (Enhanced recognition)	Different Bonus provision for QSEs where the ownership target is met	<ul style="list-style-type: none"> ■ Provides additional incentive for black-owned QSEs as well as those entities having sold equity to black people

ASGI-SA and B-B BEE

The above-mentioned elements of the scorecard are envisioned to address the economic challenges identified in the growth strategy, ASGI-SA, which includes skills development, regulatory burden on small and micro enterprises, lack of markets and business opportunities, unemployment, and poverty.

ASGI-SA indicated regulatory and tax burdens as some of the constraints confronting the majority of small and micro enterprises in the Second Economy. The Codes of Good Practice provide a much less onerous B-B BEE compliance regime by providing certain exceptions to the small and micro business levels.

It is also believed that the elements of the scorecard will facilitate the integration of the informal sector into the formal sector, through provision of required resources and capacity in the informal sector. The main objective of improving shared and accelerated growth will be achieved through implementation of the elements of the scorecard.

the dti intends to use the Codes of Good Practice to guide and direct the B-B BEE process within the South African economy. It is noteworthy that these Codes of Good Practice are released for a 60-day public commentary period, with the intention of gazetting both phase 1 and 2 of the Codes of Good Practice on B-B BEE.

For more information regarding the codes, visit the dti website: www.thedti.gov.za





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