

DEPARTMENT OF TRADE AND INDUSTRY

NOTICE 306 OF 2019

CODE SERIES 000, STATEMENT 000

**CODES OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC
EMPOWERMENT**

I, **Dr Rob Davies**, Minister of Trade and Industry hereby:

- (a) Publish the following **Amended Code Series 000, Statement 000** in terms of Section 9 (1) of the Broad-Based Black Economic Empowerment Act 2003, (Act No. 53 of 2003) as amended by Act 46 of 2013 for implementation within 6 Months from date of Gazette; and
- (b) Replace **Amended Code Series 000, Statement 000** within Gazette 36928 with the following **Amended Code Series 000, Statement 000**.



DR ROB DAVIES, MP
MINISTER OF TRADE AND INDUSTRY

9 / 4 /2019

AMENDED CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 000: GENERAL PRINCIPLES AND THE GENERIC SCORECARD

Issued under Section 9 of the Broad-Based Black Economic Empowerment Act of 2003, as amended

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1 OBJECTIVES OF THIS STATEMENT

- 1.1 Specify the interpretative principles of Broad-Based Black Economic Empowerment(B-BBEE);
- 1.2 Specify the application of the Codes and the basis for measurement under the Codes;
- 1.3 Indicate the qualifying thresholds for Measured Entity to qualify as an Exempted Micro-Enterprise (EME) or Qualifying Small Enterprise (QSE);
- 1.4 Specify the method of measuring Start-Up Enterprises;
- 1.5 Specify the elements of B-BBEE measurable under the Generic Scorecard and Qualifying Small Enterprises;
- 1.6 Specify the basis for determining compliance by Entities with the Codes;

2. KEY PRINCIPLES

- 2.1 The fundamental principle for measuring B-BBEE compliance is that substance takes precedence over legal form.
- 2.2 In interpreting the provisions of the Codes any reasonable interpretation consistent with the objectives of the B-BBEE Act as amended and the B-BBEE Strategy must take precedence.
- 2.3 The basis for measuring B-BBEE initiatives under the Codes is the B-BBEE compliance of the Measured Entity at the Date of Measurement.

- 2.4 Any misrepresentation or attempt to misrepresent a Measured Entity's true B-BBEE Status will be dealt with in accordance with the provisions as set out in the B-BBEE Act as amended, and may lead to the disqualification of the entire scorecard of the entities concerned.
- 2.5 Initiatives which split, separate or divide a Measured Entity as a means of ensuring eligibility as an Exempted Micro-Enterprise, a Qualifying Small Enterprise or a Start-Up Enterprise may constitute an offence and will be dealt with in accordance with the provisions as set out in the B-BBEE Act as amended.
- 2.6 Any representation made by an Entity about its B-BBEE compliance must be supported by suitable evidence or documentation. A Measured Entity that does not provide evidence or documentation supporting any initiative must not receive any recognition for that initiative.
- 2.7 Wherever a Standard Valuation Method applies to measuring an indicator, the same standard should apply, as far as reasonably possible, consistently in all other applicable calculations in this statement.

3. APPLICATION OF THE CODES

3.1 The following Entities are measurable under the Codes:

3.1.1 all Organs of State and Public Entities;

3.1.2 all Measured Entities that undertake any economic activity with all Organs of State and Public Entities;

3.1.3 any other Measured Entity that undertakes any economic activity, whether direct or indirect, with any other Measured Entity that is subject to measurement under paragraph 3.1.1 to 3.1.2 and which is seeking to establish its own B-BBEE compliance.

3.2 The basis for measuring the B-BBEE compliance of an Entity in terms of paragraph 3.1 is:

3.2.1 Paragraph 4, in the case of an Exempted Micro-Enterprise;

3.2.2 Paragraph 5.3 in the case of a Black Owned QSE;

3.2.3 The Generic Scorecard and QSE Scorecard, in the case of other Measured Entities; and

3.2.4 A Measured Entity in a sector in respect of which a sector code has been issued in terms of Section 9 of the BBBEE Act as amended, may only be measured for compliance in accordance with that code.

3.3 PRIORITY ELEMENTS, SUBMINIMUM AND DISCOUNTING PRINCIPLE

3.3.1 The Priority Elements are as follows:

3.3.1.1 Ownership:

3.3.1.1.1 The sub-minimum requirement for Ownership is 40% of Net Value (40% of the 8 points) based on the Time Based Graduation Factor as provided in Annexe 100 (E).

3.3.1.2 Skills Development:

3.3.1.2.1 The sub-minimum requirement for Skills Development is 40% of the total weighting points excluding bonus points (40% of the 20 points) for Skills Development.

3.3.1.3 Enterprise and Supplier Development:

3.3.1.3.1 The sub-minimum requirement for Enterprise and Supplier Development is 40% of the total weighting points for each of the three categories, excluding bonus points, within the Enterprise and Supplier Development element, namely preferential

procurement (40% of the 25 points); Supplier Development (40% of the 10 points) and Enterprise Development (40% of the 5 points).

3.3.2 COMPLIANCE TO PRIORITY ELEMENTS

3.3.2.1 A Large Enterprise is required to comply with all the Priority Elements.

3.3.2.2 A Qualifying Small Enterprise is required to comply with Ownership as a compulsory element, and either Skills Development or Enterprise and Supplier Development, with the exclusion of black-owned QSEs in terms of paragraph 5.3 below.

3.3.3 DISCOUNTING PRINCIPLE EFFECT

3.3.3.1 Qualifying Small Enterprises or Generic Enterprises that fails to meet the 40% sub-minimum requirement for any or a combination of the priority elements in terms of 3.3.1 and 3.3.2 above, will have their B-BBEE status level discounted one level.

3.3.3.2 The discounted level will be recorded and be the applicable status level for that Measured Entity.

3.3.3.3 Notwithstanding the recognition in 3.3.3.1 above, the Measured Entity will recognise the actual points achieved below the 40% sub-minimum requirements.

3.4 The requirement to submit data to the Department of Labour under the Employment Equity Act 55 of 1998 is only applicable to 'designated employers' who employ 50 or more employees or who exceed the turnover threshold specified by the Department of Labour. However, for

the purpose of measurement: both Generic and Qualifying Small Entities that employ less than 50 employees are required to submit sufficient evidence for verification purposes.

4. ELIGIBILITY AS AN EXEMPTED MICRO ENTERPRISE (EME)

- 4.1 Any enterprise with an annual Total Revenue of R10 Million or less qualifies as an Exempted Micro-Enterprise.
- 4.2 Start-Up Enterprises are ordinarily regarded as Exempted Micro Enterprises, unless tendering for a contract in excess of the threshold for EMEs, in which case the corresponding scorecard will apply.
- 4.3 An Exempted Micro-Enterprise is deemed to have a B-BBEE Status of “Level Four Contributor” having a B-BBEE Recognition Level of 100% under paragraph 9.2.
- 4.4 Enhanced B-BBEE recognition level for an Exempted Micro-Enterprise:
 - 4.4.1 Despite paragraph 4.3 an EME which is 100% Black Owned, measured using the flow-through principle, qualifies for elevation to “Level One Contributor” having a B-BBEE recognition level of 135%.
 - 4.4.2 Despite paragraphs 4.3 and 4.4.1, an EME which is at least 51% Black Owned, measured using the flow-through principle, qualifies for elevation to “Level Two Contributor” having a B-BBEE recognition level of 125%.
- 4.5 Despite paragraphs 4.3 and 4.4, an EME is allowed to be measured in terms of the QSE scorecard should it so choose.
- 4.6 An EME is only required to obtain a sworn affidavit or Certificate issued by Companies and Intellectual Property Commission (CIPC) on an annual basis, confirming the following:

4.6.1 Annual Total Revenue of R10 million or less; and

4.6.2 Level of Black ownership.

4.7 Any misrepresentation in terms of Para 4.6 above constitutes a criminal offence as set out in the B-BBEE Act as amended.

5. ELIGIBILITY AS A QUALIFYING SMALL ENTERPRISE (QSE)

5.1 A Measured Entity with an annual Total Revenue of between R10 million and R50 million qualifies as a Qualifying Small Enterprise.

5.2 A QSE must comply with all of the elements of B-BBEE for the purposes of measurement.

5.3 Enhanced B-BBEE recognition level for QSE:

5.3.1 Despite paragraph 5.2 above, a Qualifying Small Enterprise which is 100% Black Owned, measured using the flow-through principle, qualifies for elevation to a "B-BBEE Level One Contributor" having a B-BBEE recognition level of 135%.

5.3.2 Despite paragraph 5.2 above, a Qualifying Small Enterprise which is at least 51% Black Owned, measured using the flow-through principle, qualifies for elevation to a "B-BBEE Level Two Contributor" having a B-BBEE recognition level of 125%.

5.3.3 A Black Owned QSE in terms of paragraph 5.3. above, is only required to obtain a sworn affidavit on an annual basis, confirming the following:

5.3.3.1 Annual Total Revenue of between R10 million and R50 million; and

5.3.3.2 Level of Black ownership.

5.4 Despite paragraph 5.3 a black-owned QSE may be measured in terms of the QSE scorecard should it so choose.

5.5 Any misrepresentation in terms of Para 5.3 above constitutes a criminal offence as set out in the B-BBEE Act as amended.

6. ELIGIBILITY AS A GENERIC ENTERPRISE

6.1 Any enterprise with an annual Total Revenue of R50 Million and more qualifies as a Large Enterprise.

6.2 A Large Enterprise must comply with all of the elements of B-BBEE for the purposes of measurement

7. ELIGIBILITY OF JOINT VENTURES AND START-UP ENTERPRISES

7.1 The measurement of Unincorporated Joint Ventures will be done as follows:

7.2 Unincorporated Joint Ventures are required to compile a consolidated verification certificate. A consolidated verification certificate will consolidate the verified compliance data of joint venture partners in accordance with paragraph 7.3 below as if those Measured Entities were a single Measured Entity.

7.3 The consolidation of compliance data shall be based on a weighting in accordance with the joint venture agreement relevant to the specific joint venture. Therefore, should two companies enter into an Unincorporated Joint Venture their respective scores in terms of the relevant Code of Good Practice will be weighted according to their proportionate share in the joint venture and added together for a combined score out of 100.

7.3.1 Should a company qualify in terms of the Qualifying Small Enterprise Scorecard its B-BBEE score out of 100 must be used to calculate the consolidated score.

- 7.3.2 51% Black Owned EMEs and 51% Black Owned QSEs will qualify for a score of 95 points while 100% Black Owned EMEs and 100% Black Owned QSEs will qualify for a score of 100 Points.
- 7.3.3 EME's other than those in paragraph 7.3.2 above will qualify for a score of 85 Points.
- 7.3.4 The JV B-BBEE Certificate is valid for 12 Months and only applicable to a specific Project.
- 7.3.5 Notwithstanding the B-BBEE Status Level attributed to the JV in terms of the above mechanism the black ownership of the respective partners may be flowed through to the JV in proportion to the respective JV partners' economic interest and voting rights in the JV as determined by the JV agreement.
- 7.4 Start-up Enterprises are deemed to have qualifying B-BBEE Status in accordance with the principles of paragraph 4 of this Statement.
- 7.5 Despite paragraph 7.4, a Start-up Enterprise may be measured in terms of the QSE scorecard or the Generic scorecard should they choose to.
- 7.6 Despite paragraph 7.4, a Start-up Enterprise must submit a QSE scorecard when tendering for any contract, or seeking any other economic activity covered by Section 10 of the Act, with a value higher than R10 million but less than R50 million. For contracts of R50 million or more they should submit the Generic scorecard. The preparation of such scorecards must use annualised data.

8. THE GENERIC SCORECARD

- 8.1 The Ownership Element, as set out in Code series 100, measures effective ownership of entities by Black people.
- 8.2 The Management Control element, as set out in Code series 200, measures the effective control of entities by Black people.
- 8.3 The Skills Development element, as set out in Code series 300, measures the extent to which employers carry out initiatives designed to develop the competencies of Black employees and Black people internally and externally.
- 8.4 The Enterprise and Supplier Development element, as set out in Code Series 400, measures the extent to which entities buy goods and services from Empowering Suppliers with strong B-BBEE recognition levels. This element also measures the extent to which enterprises carry out supplier development and enterprise development initiatives intended to assist and accelerate the growth and sustainability of black enterprises.
- 8.5 The Socio-Economic Development element, as set out in Code series 500, measures the extent to which entities carry out initiatives that contribute towards Socio-Economic Development or Sector Specific initiatives that promote access to the economy for Black people.

9. The B-BBEE GENERIC SCORECARD

9.1 The following table represents the B-BBEE Generic Scorecard

Element	Weighting	Code series reference
Ownership	25 points	100
Management Control	19 points	200
Skills Development	20 points (Plus 5 Bonus Points)	300
Enterprise and Supplier Development	40 points (Plus 4 Bonus Points)	400
Socio-Economic Development	5 points	500
Total	109 (118) Points	

9.2 B-BBEE RECOGNITION LEVELS

9.2.1 Based on the overall performance of a Measured Entity using the Generic Scorecard and Qualifying Scorecard Enterprise Scorecard, the Measured Entity will receive one of the following B-BBEE Status uses with the corresponding B-BBEE recognition level:

B-BBEE Status	Qualification	B-BBEE recognition level
Level One Contributor	≥100 points	135%
Level Two Contributor	≥ 95 but <100 points	125%
Level Three Contributor	≥90 but <95 points	110%
Level Four Contributor	≥80 but <90 points	100%
Level Five Contributor	≥75 but <80 points	80%
Level Six Contributor	≥70 but <75 points	60%
Level Seven Contributor	≥55 but <70 points	50%
Level Eight Contributor	≥40 but <55 points	10%
Non-Compliant Contributor	<40 points	0%

10. ENHANCED RECOGNITION FOR CERTAIN CATEGORIES OF BLACK PEOPLE

10.1 Throughout the Codes, various criteria appear which advance the interests of certain categories of Black people. These include:

10.1.1 Black women, should form between 40% and 50% of the beneficiaries of the relevant Elements of the Scorecard;

10.1.2 Black people with disabilities, Black youth, Black people living in rural areas and Black unemployed people form part of the beneficiaries of the relevant Elements of the Scorecard.

11 ADJUSTMENT OF THRESHOLDS

The Minister may, by notice in the Gazette, adjust the thresholds in paragraphs 4 to 6. Any such changes apply to compliance reports prepared for a Measured Entity after a 12-month period following the gazetting of the adjustment.

12 DURATION OF THE B-BBEE CODES

12.1 A Code remains in effect until amended, substituted or repealed under Section 9 of the Act.

12.2 The Minister may review the Codes at any stage, and regular reviews will take place to monitor the implementation of B-BBEE throughout the economy.