



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

Section 9(1): Codes of Good Practice

It is hereby notified that the Minister of Trade and Industry intends gazetting the following Code of Good Practice under section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003 in due course. This document is published for general information.

**CODE 000: FRAMEWORK FOR THE MEASUREMENT OF BROAD BASED BLACK
ECONOMIC EMPOWERMENT**

**STATEMENT 000: THE ORGANISATION OF THE CODES OF GOOD PRACTICE, THE
ELEMENTS OF BROAD BASED BLACK ECONOMIC EMPOWERMENT AND THE GENERIC
SCORECARD**

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

Arrangement of this Statement

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1 DEFINITIONS

In this statement, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 **"BEE Status"** means the compliance bands referred to in paragraph 8.2;
- 1.2 **"BEE"** means black economic empowerment;
- 1.3 **"black people"** means African, Coloured or Indian persons who are natural persons and:
 - 1.3.1 are citizens of the Republic of South Africa by birth or descent; or

- 1.3.2 are citizens of the Republic of South Africa by naturalisation before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or
- 1.3.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date;
- 1.4 "**Elements**" means the measurable quantitative or qualitative elements of BEE compliance specified in this Statement in paragraph 7 and in the Generic Scorecard as amplified in Codes 100 - 700;
- 1.5 "**Employment Equity Act**" means the Employment Equity Act of 1998, as amended;
- 1.6 "**Qualifying Small Enterprise**" means an enterprise that qualifies for measurement under the qualifying small enterprise scorecard, in terms of the definition specified in Code 1000;
- 1.7 "**Target**" means the targets attributed to the various Elements in the Generic Scorecard;
- 1.8 "**the Act**" means the Broad-Based Black Economic Empowerment Act of 2003;
- 1.9 "**the Codes**" means this Statement and all Codes of Good Practice issued in terms of section 9 of the Act;
- 1.10 "**the Generic Scorecard**" means the balanced BEE scorecard included with this Statement at paragraph 8.1;
- 1.11 "**the Strategy Document**" means the document entitled "South Africa's Economic Transformation – A Strategy for Broad-Based Black Economic Empowerment" published by the department of trade and industry in March 2003, subject to any amendment or substitution in terms of section 11 of the Act;
- 1.12 "**Transitional Period**" means the period referred to in paragraph 10;
- 1.13 "**Verification Agency**" has the meaning defined in Code 000 Statement 020;
- 1.14 "**Verification Certificate**" has the meaning defined in Code 000 Statement 020;
- 1.15 "**Weighting**" means the weightings attributed to various Elements in the Generic Scorecard in Codes 100 – 700.

2 INTERPRETATION OF THIS STATEMENT

The provisions of this statement must be interpreted in a manner that is consistent with the objectives of the Act and those set out in paragraph 4.

3 APPLICATION OF THIS STATEMENT

3.1 This statement:

3.1.1 applies to all broad-based black economic empowerment initiatives conceived and implemented by organs of state or public entities, except those that relate to enterprises defined as Qualifying Small Enterprises, as provided for in Code 1000, and

3.1.2 provides guidance which may be followed by private sector enterprises in implementing similar initiatives. In this regard:

3.1.2.1 such enterprises must comply with this statement in their interactions with any organ of state or public entity; and

3.1.2.2 such enterprises are encouraged to apply these principles in their interactions with each other.

3.2 This statement and all the Codes must be read in conjunction with the Strategy Document.

4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

4.1 specify interpretative principles of BEE;

4.2 provide further clarity as to the organisation of the Codes;

4.3 specify certain key principles relating to measurement under the Codes;

4.4 specify the Elements of broad-based black economic empowerment to be measured in the Generic Scorecard;

4.5 specify the Generic Scorecard;

4.6 specify the basis for determining compliance by enterprises with Codes;

4.7 make provision for the Transitional Period before the mandatory use of the Generic Scorecard commences; and

4.8 define the duration for the applicability of the Codes.

5 INTERPRETATION PRINCIPLES

5.1 The fundamental principle of measurement of BEE compliance is that substance takes precedence over legal form.

5.2 It is a fundamental principle of the Codes that all measurement of BEE initiatives is based on the actual level of BEE compliance at the date of measurement.

5.3 If an enterprise misrepresents, or attempts to misrepresent, the true BEE Status of the enterprise with a false or unjustifiably favourable status, the entire BEE scorecard for that enterprise will be disqualified.

5.4 Any representation made by an enterprise with respect to BEE compliance must be capable of being supported by appropriate evidence or documentation.

5.5 If an enterprise fails to provide evidence or documentation supporting a representation with respect to BEE compliance, the enterprise must not be awarded any points relating to that representation.

5.6 Verification agencies and procurement officials must report to the Minister any apparent attempt at circumventing the Act.

6 THE ORGANISATION OF THE CODES

6.1 The provisions of this paragraph apply to all Codes issued under the Act.

6.2 The following table represents the number ranges for all Codes issued under the Act:

Code number range	General subject matter
Code 000	Framework for the measurement of broad-based black economic empowerment
Code 100	Measurement of the ownership Element of broad-based black economic empowerment
Code 200	Measurement of the management control Element of broad-based black economic empowerment

Code 300	Measurement of the employment equity Element of broad-based black economic empowerment
Code 400	Measurement of the skills development Element of broad-based black economic empowerment
Code 500	Measurement of the preferential procurement Element of broad-based black economic empowerment
Code 600	Measurement of the enterprise development Element of broad-based black economic empowerment
Code 700	Measurement of the residual Element of broad based black-economic empowerment
Code 800	Sector Codes as defined in Code 000 Statement 010
Code 1000	Measurement of broad-based black economic empowerment for qualifying small enterprises

7 THE ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

- 7.1 The ownership Element, as set out in Code 100, measures the effective ownership of enterprises by black people.
- 7.2 The management control Element, as set out under Code 200, measures the effective control of enterprises by black people.
- 7.3 The employment equity Element, as set out under Code 300, measures initiatives intended to achieve equity in the workplace in accordance with
- 7.3.1 the Act; and
- 7.3.2 the Employment Equity Act.
- 7.4 The skills development Element, as set out under Code 400, measures the extent to which employers' implements initiatives designed to promote the development of competencies of black employees.
- 7.5 The preferential procurement Element, as set out under Code 500, measures the extent

to which enterprises procure from

7.5.1 broad-based black empowerment contributors;

7.5.2 micro enterprises ; and

7.5.3 qualifying small enterprises.

7.6 The enterprise development Element, as set out under Code 600, measures the extent of implementation of initiatives by enterprises intended to assist and accelerate the development of other enterprises.

7.7 The residual Element, as set out under Code 700, measures the extent to which enterprises implement sector specific initiatives as well as other initiatives that contribute towards social development and directly facilitate access to the economy for black people,

8 THE GENERIC SCORECARD

8.1 The following table represents the Generic Scorecard and contains the:

8.1.1 Elements of the scorecard;

8.1.2 weightings, and

8.1.3 primary reference Codes which specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Codes 100 – 700).

Element	Weighting	Primary Codes Reference
Ownership	20 points	Code 100
Management control	10 points	Code 200
Employment equity	10 points	Code 300
Skills development	20 points	Code 400
Preferential procurement	20 points	Code 500
Enterprise development	10 points	Code 600
Residual	10 points	Code 700

8.2 An enterprise will be evaluated as falling into one of the following BEE Statuses based on the overall performance in terms of the Generic Scorecard:

8.2.1 the BEE Status will be determined through the points qualification as specified in the centre column; and

8.2.2 the BEE Status attained will determine the BEE procurement recognition level that the enterprise will obtain for the purposes of measurement of the preferential procurement Element contemplated in Code 500.

BEE Status	Qualification	BEE procurement recognition level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥75 but <85 on the Generic Scorecard	110%

Level Four Contributor	≥65 but <75 on the Generic Scorecard	100%
Level Five Contributor	≥55 but <65 on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 on the Generic Scorecard	10%
Non Compliant Contributor	<30 on the Generic Scorecard	0%

8.3 The BEE Status of an enterprise, must be raised to the next highest BEE Status level to the one at which it is evaluated, when:

8.3.1 black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest in that enterprise; and

8.3.2 that enterprise has achieved the full seven points under the net equity interest component of the ownership scorecard.

8.4 The "economic interest", "exercisable voting rights" and "net equity interest" referred to paragraph 8.3 must be measured in accordance with Code 100 Statement 100.

9 VERIFICATION OF COMPLIANCE

9.1 In exercising their powers in terms of section 10 of the Act, organs of state and public entities must rely on the validity of a Verification Certificate issued by an accredited Verification Agency in respect of any enterprise not subject to Code 1000 Statement 1000.

9.2 Private sector enterprises are strongly encouraged to rely on the validity of a Verification Certificate issued by an accredited Verification Agency in respect of any enterprise not subject to Code 1000 Statement 1000, as failure to do so may impact upon their own Verification Certificates if used in relation to organs of state and public entities.

9.3 Code 1000 Statement 1000 specifies the requirements for verifying compliance of enterprises subject to that Code.

10 TRANSITIONAL PERIOD

10.1 All BEE compliance measurement under the Codes will be undertaken in accordance with the Generic Scorecard with effect from the end of the 12th month following the commencement of this Statement. However, to the extent that the attainment of the objectives of the Act may be compromised, the Minister may reconsider that date.

10.2 During the Transitional Period of 12 months following the commencement of this Statement, an enterprise may calculate its BEE compliance:

10.2.1 in accordance with the Generic Scorecard; or,

10.2.2 on the basis of measuring only the ownership and management control Elements, in which case the following formula must be used:

$$A = B \times 1.92$$

Where

A is the indicative BEE Status during the Transitional Period

B is the total score achieved in respect of Code 100 and Code 200

11 DURATION OF THE CODES

11.1 A Code will be in effect until amended, substituted or repealed pursuant to section 9 of the Act.

11.2 The Minister shall be required to review the Codes following the end of tenth year following the commencement date of this Code.