



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

Section 9(5): Codes of Good Practice

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

**CODE 1000: FRAMEWORK FOR THE MEASUREMENT OF BROAD BASED BLACK
ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL ENTERPRISES**

**STATEMENT 1000: THE ORGANISATION OF THE QUALIFYING SMALL ENTERPRISES
CODES OF GOOD PRACTICE, THE ELEMENTS OF BROAD BASED BLACK ECONOMIC
EMPOWERMENT AND THE QUALIFYING SMALL ENTERPRISES SCORECARD**

Issued under section 9 of the Broad-Based Black Economic Empowerment Act 53 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 Procurement Recognition Level " means the percentage BEE Procurement Recognition Levels as determined in the table in paragraph 8.2.2

- 1.2 **"BEE Status"** means the compliance bands referred to in paragraph 8.2;
- 1.3 **"BEE"** means black economic empowerment;
- 1.4 **"black people"** means African, Coloured or Indian persons who are natural persons and:
- 1.4.1 are citizens of the Republic of South Africa by birth or descent; or
- 1.4.2 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
- 1.4.3 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;
- 1.5 **"Deemed Micro Enterprise Recognition Level"** means BEE Procurement Recognition Level of 100% and BEE Status of Level 4 as contemplated in Paragraph 10;
- 1.6 **"Elements"** means the measurable quantitative or qualitative elements of BEE compliance specified in this Statement;
- 1.7 **"Employment Equity Act"** means the Employment Equity Act 55 of 1998, as amended;
- 1.8 **"Exempted Micro Enterprises"** means an enterprise which:
- 1.8.1 qualifies for BEE compliance exemption by nature of the fact that the Enterprise has an annual turnover of less than the VAT registration limit as per the Value Added Tax Act of 1991; and
- 1.8.2 meets the principles of non-circumvention in terms of 5.1 to 5.6 of this Statement
- 1.9 **"Qualifying Small Enterprise"** means an enterprise that qualifies for measurement under the qualifying small enterprise scorecard, in terms of paragraph 13 of this statement;
- 1.10 **"Target"** means the targets attributed to the various Elements in the Generic Scorecard;
- 1.11 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.12 **"the Codes"** means this Statement and all Codes of Good Practice issued in terms of

section 9 of the Act;

- 1.13 **"the Generic Scorecard"** means the Broad-Based Black Economic Empowerment scorecard as per Code 000 Statement 000, issued under the Act;
- 1.14 **"the Qualifying Small Enterprises Scorecard"** means the Scorecard referred to in paragraph 8 of this statement;
- 1.15 **"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;
- 1.16 **"Transitional Period"** means the period referred to in paragraph 11; and
- 1.17 **"Weighting"** means the weightings attributed to various Elements in the Qualifying Small Enterprises Scorecard in Codes 1100 – 1700.

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 applies to all broad-based black economic empowerment initiatives conceived and implemented by all eligible Qualifying Small Enterprises that elect to be measured in terms of Codes 1000 to 1700
- 3.2 Qualifying Small Enterprises may take guidance from Statement 000 to 900 in circumstances where additional clarity is required.

4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are:

- 4.1 to specify interpretative principles of BEE;
- 4.2 to provide further clarity as to the organisation of the Codes in respect of Small Qualifying Enterprises;

- 4.3 to specify the Elements of broad-based black economic empowerment to be measured in the Qualifying Small Enterprise Scorecard;
- 4.4 to specify the Qualifying Small Enterprise Scorecard;
- 4.5 to provide clarification on the application of the Qualifying Small Enterprises Scorecard
- 4.6 to determine the treatment of micro enterprises for the purposes of BEE
- 4.7 to make provision for a transitional period before the mandatory use of the Qualifying Small Enterprise Scorecard commences;
- 4.8 to define the duration for the applicability of the Codes; and
- 4.9 to determine the types of enterprise eligible to be classified as Qualifying Small Enterprises

5 INTERPRETATIVE 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 In instances where Enterprises, which split, separate or divide themselves with the intention of making the newly divided Enterprise(s) eligible for BEE compliance exemption as an Exempted Micro Enterprise or eligible for measurement under the

Qualifying Small Business Scorecard, those initiatives may be regarded as an attempt at circumvention.

5.7 Verification agencies must report to the Minister any apparent attempt at circumventing the Act.

6 THE ORGANISATION OF THE QUALIFYING SMALL ENTERPRISES CODES

6.1 The following table represents the number ranges for the Codes issued in respect of Qualifying Small Enterprises under the Act:

Code number range	General subject matter
Code 1000	Framework for the measurement of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1100	Measurement of the ownership Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1200	Measurement of the management control Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1300	Measurement of the employment equity Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1400	Measurement of the skills development Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1500	Measurement of the preferential procurement Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1600	Measurement of the enterprise development Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1700	Measurement of the residual Element 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 1100, measures the entitlement of black people to participate in the ownership of an enterprise.
- 7.2 The management control Element, as set out under Code 1200, measures the effective control of enterprises by black people.
- 7.3 The employment equity Element, as set out under Code 1300, 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 1400, measures the extent to which employers' implement initiatives designed to promote the skills development of black employees and utilizes the National Skills Fund.
- 7.5 The preferential procurement Element, as set out under Code 1500, measures the extent to which enterprises procure from broad-based black empowerment contributors including micro enterprises as well as qualifying small enterprises.
- 7.6 The enterprise development Element, as set out under Code 1600, measures the extent of implementation of initiatives intended to assist and accelerate the development of enterprises.
- 7.7 The residual Element, as set out under Code 1700, 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 QUALIFYING SMALL ENTERPRISES SCORECARD

8.1 The following table represents the Qualifying Small Enterprises Scorecard and contains:

8.1.1 the Elements of the scorecard;

8.1.2 the weightings, and

8.1.3 the primary reference Codes which specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Codes 1100 – 1700).

Element	Weighting	Primary Codes Reference
Ownership	20 points	Code 1100
Management control	20 points	Code 1200
Employment equity	20 points	Code 1300
Skills development	20 points	Code 1400
Preferential procurement	20 points	Code 1500
Enterprise development	20 points	Code 1600
Residual	20 points	Code 1700

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 Qualifying Small Enterprises 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 1500.

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:

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

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

8.4.2 The “economic interest, “exercisable voting rights” and “net equity interest” referred to

in paragraph 8.3 must be measured in accordance with Code 1100 Statement 1100.

9 APPLICATION OF THE QUALIFYING SMALL ENTERPRISES SCORECARD

- 9.1 A Qualifying Small Enterprise may elect to be measured using five of the seven elements of broad-based black economic empowerment
- 9.2 Should there be no employees in the employ of the measured enterprise, the enterprise cannot include the employment equity Elements as one of the elected elements
- 9.3 Each indicator will have a weighting of 20 percent, resulting in a total of 140 available BEE points
- 9.4 When electing to be measured using more than five of the seven Elements, the BEE Status must be determined using a total of 125 BEE points
- 9.5 A Qualifying Small Enterprise which elects to include the ownership Element in their measurement, will have its ownership score (including bonus points) multiplied by 1.25, provided that the enterprise scores a minimum of 20 points (including bonus points) for ownership, before the application of this multiple.

10 TREATMENT OF MICRO ENTERPRISES

Exempted Micro Enterprises, as defined in paragraph 1.8 and as identified in Annexe 1000-B of this Statement, will have a deemed BEE Contribution Level of Four, as laid out in the table in paragraph 8.2.

11 TRANSITIONAL PERIOD

- 11.1 All BEE compliance measurement under the Codes will be undertaken in accordance with the Qualifying Small Enterprises 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.
- 11.2 During the Transitional Period of 12 months following the commencement of this Statement, an enterprise may calculate its BEE compliance:
 - 11.2.1 in accordance with the Qualifying Small Enterprise Scorecard; or,

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

$$A = B \square 1.92$$

Where

A is the indicative BEE Status during the Transitional Period

B is to total score achieved in respect of Code 1100 and Code 1200

12 DURATION OF THE CODES

- 12.1 A Code will be in effect:

12.1.1 until amended, substituted or repealed pursuant to section 9 of the Act; or

12.1.2 otherwise, for a period of 10 years.

- 12.2 Despite the paragraph above, the Minister reserves the right to review the period of the duration of the Codes.

13 DETERMINING ELIGIBILITY AS A QUALIFYING SMALL ENTERPRISE

- 13.1 Annexe 1000-B specifies the identification of enterprises eligible to be classified as Qualifying Small Enterprises.

- 13.2 For the avoidance of doubt, Annexe 1000-B should be interpreted as follows:

13.2.1 Within the agricultural sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R2.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R2.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.2 Within the mining and quarrying sector in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R7.50 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is

greater than R7.50 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.3 Within the manufacturing sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.4 Within the electricity, oil and gas sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.5 Within the construction sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R5.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R5.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.6 Within the retail and motor trade and repair services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R15.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R15.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.7 Within the wholesale trade, commercial agents and allied services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R5.00 million and 10 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R5.00 million and 10 employees

respectively, the measured enterprise will be measured according to the Generic Scorecard.

- 13.2.8 Within the catering, accommodation and other trades sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 100 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 100 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.9 Within the transport, storage and communications sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.10 Within the Finance and Business Services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.11 Within the community, social and personal services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 100 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 100 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

Annexe 1000-A: Model Qualifying Small Enterprise Scorecard

BEE Elements	Code Ref.	Weighting	Indicators	Indicator Weighting	10 year compliance target
Ownership	BEE 1100	20%	Exercisable Voting Rights by black people	5%	25.% + 1 vote
			Economic Interest in the Enterprise to which Black people are entitled	7%	25%
			Ownership Fulfilment	1%	No restrictions
			Net Equity Value	7%	10% of the Target (Year 1) 20% of the Target (Year 2) 40% of the Target (Year 3,4), 60% of the Target (Year 5,6) 80% of the Target (Year 7,8) 100% of the Target (Year 9,10)
			<i>Bonus Points:</i> <i>Involvement in the ownership of the Enterprise of:</i> - <i>Black Women and/or</i> - <i>Broad-based Ownership Schemes</i>	3%	15%
Management Control	BEE 1200	20%	Black representation at Owner-Manager level;	20%	25,1% Owner-Manager Representation,
			<i>Bonus Points: Black Women representation at Owner-Manager</i>	2%	10%
Employment Equity	BEE 1300	20%	Black representation at Manager-Controller level	6%	40%
			Black women representation at Manager-Controller level	6%	20%
			Black employees as a percentage of total employees	4%	70%

			Black women as a percentage of total employees	4%	35%
Skills Development	BEE 1400	20%	Application submitted to the National Skills Fund	5%	Yes
			Quantifiable skills development spend on black employees in addition to Skills Development Levy as a percentage of the Leviaible Amount (including amount spent on learnerships)	15%	2%
Preferential Procurement	BEE 1500	20%	BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels or Deemed Micro Enterprise Recognition Levels as a percentage of Total Measured Procurement Spend	20%	50%
Enterprise Development	BEE 1600	20%	Enterprise development contributions made by the Qualifying Small Enterprise as a percentage of EBITDA	20%	2%
Residual Element	BEE 1700	20%	Qualifying Residual Contributions made by the Enterprise measured as a percentage of net profit after tax	20%	2%

Annexe 1000-B: Qualifying Small Enterprise Identification Table

Sector or sub-sectors in accordance with the Standard Industrial Classification	Size or class	Total full-time equivalent of paid employees	Total annual turnover	Scorecard to comply with/ Exemption status
		<i>Less than:</i>	<i>Less than:</i>	
Agriculture	Medium	100	R 4.00 m	Generic Scorecard
	Small	50	R 2.00 m	Qualifying Small Enterprise
	Very small	10	R 0.40 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Mining and Quarrying	Medium	200	R30.00 m	Generic Scorecard
	Small	50	R 7.50 m	Qualifying Small Enterprise
	Very small	20	R 3.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Manufacturing	Medium	200	R40.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	20	R 4.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Electricity, Gas and Water	Medium	200	R40.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	20	R 4.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Construction	Medium	200	R20.00 m	Generic Scorecard
	Small	50	R 5.00 m	Qualifying Small Enterprise
	Very small	20	R 2.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Retail and Motor Trade and Repair Services	Medium	100	R30.00 m	Generic Scorecard
	Small	50	R15.00 m	Qualifying Small Enterprise

	Very small	10	R 3.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Wholesale Trade, Commercial Agents and Allied Services	Medium	100	R50.00 m	Generic Scorecard
	Small	50	R25.00 m	Generic Scorecard
	Very small	10	R 5.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Catering, Accommodation and other Trade	Medium	100	R10.00 m	Qualifying Small Enterprise
	Small	50	R 5.00 m	Qualifying Small Enterprise
	Very small	10	R 1.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Transport, Storage and Communications	Medium	100	R20.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	10	R 2.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Finance and Business Services	Medium	100	R20.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	10	R 2.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Community, Social and Personal Services	Medium	100	R10.00 m	Qualifying Small Enterprise
	Small	50	R 5.00 m	Qualifying Small Enterprise
	Very small	10	R 1.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise