



**REPABOLIKI YA AFERIKA BORWA**

**REPUBLIC 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 400: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF BROAD-BASED  
BLACK ECONOMIC EMPOWERMENT**

**STATEMENT 400: THE RECOGNITION OF SKILLS DEVELOPMENT AND ORGANISATIONAL  
TRANSFORMATION CONTRIBUTIONS TO BLACK ECONOMIC EMPOWERMENT**

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

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**1 DEFINITIONS**

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

- 1.1 **"ABET"** refers to adult basic education and training as determined by the National Qualifications Authority in accordance with Success Indicator 2.7 of the National Skills Development Strategy;
- 1.2 **"black people with disabilities"** shall have the same meaning as defined in Code 100 Statement 100;
- 1.3 **"black unemployed people"** shall have the same meaning as defined in Code 100 Statement 100;

- 1.4 **"Board"** shall have the same meaning as defined in Code 200 Statement 200;
- 1.5 **"Core Skills"** means skills that are related to any of the following:
- 1.5.1 value-adding activities of the Measured Entity in line with its core business;
  - 1.5.2 in areas that the Measured Entity cannot outsource; or
  - 1.5.3 within the production/operational component of the Measured Entity's value-chain; as opposed to the supply-side; services or downstream operations;
- 1.6 **"Critical Skills"** are those skills to be identified by each SETA in accordance with Success Indicator 1.1 (Lever 1.1) of the National Skills Development Strategy. The Critical Skills for each Measured Entity will be determined by reference to Critical Skills identified by the relevant SETA having jurisdiction over each of the Measured Entity's spheres/areas of operation;
- 1.7 **"Element"** shall have the same meaning as defined in Code 000 Statement 000;
- 1.8 **"employee"** bears the meaning as defined in the Employment Equity Act;
- 1.9 **"Enterprise"** shall have the same meaning as defined in Code 100 Statement 100;
- 1.10 **"Learnerships"** refer to the skills development programs approved by the relevant SETA having jurisdiction over each of the Measured Entity's spheres/areas of operation and which are fully certified in accordance with the National Qualifications Framework maintained in terms of South African Qualifications Authority Act;
- 1.11 **"Leviable Amount"** bears the meaning as defined in the Skills Development Levies Act of 1999 as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act;
- 1.12 **"Measured Entity"** means an Enterprise as well as any organ of state or public entity subject to measurement under Codes;
- 1.13 **"National Skills Development Strategy"** means the national skills development strategy referred to in section 5(1)(a)(ii) of the Skills Development Act as further qualified in the strategy released by the Department of Labour in March 2005, covering the period 01 April 2005 to 31 March 2010;

- 1.14 **"SETA"** means a sector education and training authority, established by section 9(1) of the Skills Development Act having jurisdiction over Measured Entities;
- 1.15 **"Skills Development Spend"** comprises the amount of money that a Measured Entity spends on skills development that is over and above any of skills development levy payable in accordance with the Skills Development Levies Act determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act;
- 1.16 **"the Act"** means the Broad-Based Black Economic Empowerment Act of 2003;
- 1.17 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement;
- 1.18 **"the Employment Equity Act"** means the Employment Equity Act of 1998, as amended or substituted;
- 1.19 **"the Income Tax Act"** means the Income Tax Act of 1962;
- 1.20 **"the Skills Development Act"** means the Skills Development Act of 1998;
- 1.21 **"the Skills Development Levies Act"** means the Skills Development Levies Act of 1999;
- 1.22 **"the Skills Development Scorecard"** means the scorecard used for the measurement of skills development contributions in this statement; and
- 1.23 **"Workplace Skills Plan"** is the plan of a Measured Entity that is approved by the relevant SETA in accordance with Success Indicator 2.1 (Lever 2.1) of the National Skills Development Strategy.

## **2 INTERPRETATION OF THIS STATEMENT**

- 2.1 When interpreting a provision of this statement, any reasonable interpretation that is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation that is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

### 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of the skills development Element of broad-based black economic empowerment in respect of all Measured Entities.

### 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

- 4.1 specify the scorecard for the measurement of the skills development Element of BEE;
- 4.2 define the key measurement principles associated with the skills development Element;
- 4.3 specify the formula for measuring the skills development Element of BEE; and
- 4.4 specify the basis for the measurement of the organisational transformation contributions to BEE.

### 5 THE SKILLS DEVELOPMENT SCORECARD

- 5.1 The following table represents the criteria used for the purposes of deriving a score for skills development in terms of this statement:

Category	Skills Development Element	Weighting points	Compliance Target
5.1.1	Skills Development		
	5.1.1.1 Skills Development Spend on black employees as a percentage of Leivable Amount.	4	3%
	5.1.1.2 Skills Development Spend on Critical Skills and/or Core Skills for black employees as a percentage of Leivable Amount.	2	2.6%
	5.1.1.3 Skills Development Spend on Critical Skills and/or Core Skills for black women employees as a percentage of Leivable Amount.	2	1.4%
	5.1.1.4 Skills Development Spend on black employees with disabilities as a percentage of Leivable Amount.	1	0.3%
5.1.2	Learnerships		
	5.1.2.1 Number of black employees on SETA-accredited Learnerships as a percentage of total employees	2	5%
	5.1.2.2 Number of black women employees on SETA-accredited Learnerships as a percentage of total employees	2	2.5%
	5.1.2.3 Number of formerly black unemployed people and/or black people formerly residing in rural areas on Learnerships as a percentage of	1	1%

		total employees		
5.1.3	Organisational Transformational Index			
	5.1.3.1	Existence of a comprehensive Black Economic Empowerment strategy, that integrates all the elements of the BEE Scorecard, assigns clear executive responsibilities, creates appropriate functioning representative committees and which has been approved by the Board of the Measured Entity and which is being implemented	<b>Yes</b>	<b>1</b>
	5.1.3.2	Employment of a Skills Development Facilitator	<b>Yes</b>	<b>1</b>
	5.1.3.3	Existence of a policy on non-discrimination widely published within the Enterprise and which emphasises the promotion of racial, gender, religious and cultural diversity which is being implemented. An element of this implementation must be the regular and on-going facilitation of external diversity management training	<b>Yes</b>	<b>1</b>
	5.1.3.4	Compliance with all relevant employment related legislation	<b>Yes</b>	<b>1</b>
	5.1.3.5	Implementation of an effective human resource management plan which emphasises retention, career development and long-term career planning of all employees including learners and which is being implemented. Such plan must include targets against which performance is measurable.	<b>Yes</b>	<b>1</b>
	5.1.3.6	Existence of a program designed to give practical effect to the policies and programs in the items in paragraphs 5.1.3.1 to 5.1.3.5 through routine organisational social environmental audits the outcomes of which are published widely within the Measured Entity	<b>Yes</b>	<b>1</b>
<b>TOTAL</b>				<b>6</b>

- 5.2 Where a Measured Entity attains a score in respect of any one of the criteria specified in the skills development scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting points.
- 5.3 For the avoidance of doubt, the calculations in paragraphs 5.1.1.1 to 5.1.1.4 are not intended to be cumulative.
- 5.4 Any Skills Development Spend by a Measured Entity which is related to an ABET program may be recognised at a multiple of 1.25 to the actual level of such Skills Development Spend.

## **6 QUANTIFIABLE SKILLS DEVELOPMENT SPEND**

Quantifiable skills development spend includes:

6.1 Direct training costs (which must represent at least 50% of all such spend) such as:

6.1.1 internal training initiatives that are quantifiable and verifiable;

6.1.2 external training initiatives that are quantifiable and verifiable;

6.1.3 training courses that are structured and recognised by the applicable SETA;

6.1.4 costs of training materials;

6.1.5 costs of trainers;

6.1.6 costs of external training facilities including costs of catering; and

6.1.7 scholarships and bursaries.

6.2 Indirect Training Costs such as:

6.2.1 costs of internal training facilities including catering;

6.2.2 external costs such as course fees;

6.2.3 other costs such as accommodation and travel; and

6.2.4 Administration costs such as organization of training.

## **7 KEY MEASUREMENT PRINCIPLES**

7.1 Measured Entities shall be entitled to be awarded points on the Skills Development Scorecard in accordance with the provisions of paragraphs 8.1 and 8.2 below provided that:

7.1.1 they are compliant with the requirements of the Skills Development Act and the Skills Development Levies Act;

7.1.2 they are registered with the applicable SETA;

- 7.1.3 they have developed a Workplace Skills Plan; and
- 7.1.4 they have implemented programs targeting the development of Critical and/or Core Skills generally, and specifically, in relation to black employees.
- 7.2 Training initiatives must meet the criteria specified in paragraph 6. In this regard:
  - 7.2.1 Scholarships and bursaries: Where scholarships and bursaries are awarded on a non-recoverable basis, those initiatives will be recognisable;
  - 7.2.2 Internal training initiatives: Internal training initiatives must be quantifiable and verifiable to be recognised as Skills Development Spend. Proof of identifiable outcomes, training schedules, attendance registers and course content must be provided to verification agencies;
  - 7.2.3 External training initiatives: External training initiatives must be quantifiable and verifiable to be recognised as Skills Development Spend. Invoicing or identifiable outcomes, training schedules, attendance registers and course content must be provided to verification agencies; and
  - 7.2.4 Other costs: Other costs such as accommodation, travel and other costs associated with training initiatives must be quantifiable and verifiable to be recognised as Skills Development Spend.

## 8 MEASUREMENT OF SKILLS DEVELOPMENT INDICATORS

- 8.1 The skills development element of the Scorecard is calculated on the following basis:

$$A = \frac{B}{C} \times D$$

Where

**A** is the score achieved in respect of any given criteria in the Skills Development Scorecard specified in paragraphs 5.1.1.1 to 5.1.1.4

**B** is the percentage of Skills Development Spend on the relevant target groups specified in paragraphs 5.1.1.1 to 5.1.1.4

**C** is the percentage compliance target in respect of that criteria

**D** means the weighting points allocated to the applicable Skills Development criteria being measured.

8.2 The Learnership element of the Scorecard is calculated on the following basis:

$$A = \frac{B}{C} \times D$$

Where

**A** is the score achieved in respect of any given criteria in the Skills Development Scorecard specified in paragraphs 5.1.2.1 to 5.1.2.3

**B** is the percentage of black registered accredited learnerships as a percentage of total number of employees in each of the relevant target groups specified in paragraphs 5.1.2.1 to 5.1.2.3

**C** is the percentage compliance target in respect of that criteria

**D** means the weighting points allocated to the applicable Skills Development criteria being measured.