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Guide to Broad-Based Black Economic Empowerment

2023 Edition



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Introduction

Broad-based black economic empowerment (**B-BBEE**) is a policy and legislative framework which seeks to redress the historic economic inequalities created primarily as a result of the implementation of apartheid in South Africa.

The principle law governing B-BBEE in South Africa is the Broad-Based Black Economic Empowerment Act, No 53 of 2003 (**B-BBEE Act**) and the regulations promulgated thereunder (**B-BBEE Regulations**).

The principle objectives of the B-BBEE Act are to promote economic transformation and enable meaningful participation of black people in the South African economy, through increased participation in ownership and management structures, increasing the involvement of communities and employees in economic activities and skills training. The B-BBEE Act defines "*black people*" as a generic term which means Africans, Coloureds and Indians (i) who are citizens of South Africa by birth or descent; or (ii) who became citizens of South Africa by naturalization before 27 April 1994; or (iii) who became citizens of South Africa by naturalization on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date.

The B-BBEE Act seeks to increase the participation of black people in the South African economy by -

- requiring that every organ of state and public entity must apply any relevant code of good practice issued in terms of the B-BBEE Act when, amongst other things, determining the qualification criteria for the issuing of licenses, permits or other authorisations, when determining their procurement policies and when developing criteria for entering into partnerships with the private sector
- enabling the Minister of Trade, Industry and Competition to gazette codes of good practice to regulate the measurement of B-BBEE.

The B-BBEE Act provides the framework for the implementation of B-BBEE initiatives, structures, programs and transactions and is also the primary legislation under which the Minister of Trade, Industry and Competition published the Codes of Good Practice for B-BBEE (**B-BBEE Codes**). The B-BBEE Codes define the key terms and concepts relating to B-BBEE, specify the elements against which an enterprise will be measured to determine its B-BBEE compliance rating and the methods for measuring each element.

In addition to the B-BBEE Act and the B-BBEE Codes, there are a number of sector specific codes of good practice, which have been promulgated and find application in specific sectors, such as the Information and Communication Technology (ICT) Sector Codes which finds application in the ICT sector and the Financial Services Sector Codes which applies to the financial services sector.

While neither the B-BBEE Act nor the B-BBEE Codes places a direct legal obligation on private sector participants in South Africa to comply with B-BBEE policy, the effect of placing an obligation on organs of state and public entities to apply the B-BBEE codes of good practice in relation to procurement and the issuing of licenses or authorisations is that the private sector faces indirect legislative, and often times direct commercial, pressure to maintain high levels of B-BBEE compliance. As will be explained in more detail below, the extent of B-BBEE compliance is measured in terms of a scoring system set out in the B-BBEE Codes and sector codes. A major factor in ensuring that a measured entity has very good levels of B-BBEE compliance is the extent of its own procurement of goods and services from other B-BBEE compliant entities. The result is that private sector businesses that are not directly dependent on the state for business are still likely to face commercial pressure from their private sector customers to have high B-BBEE compliance levels, and will do so in order to remain competitive in the South African market.

The B-BBEE Commission is the regulatory body tasked with overseeing, supervising and promoting adherence to the B-BBEE Act. The B-BBEE Commission exercises the functions assigned to it in terms of the B-BBEE Act and any other directives issued by the Minister of Trade, Industry and Competition.

The purpose of this guidebook is to provide an overview of the regulation of B-BBEE, given the commercial benefits of attaining a higher B-BBEE score.

Notwithstanding that measured entities obtain their B-BBEE levels through the scoring mechanism discussed in this guidebook, legal input is generally required in relation to B-BBEE ownership structures and general legal compliance and risk management, to ensure compliance with the B-BBEE Act.

It should also be noted that, B-BBEE in the mining and petroleum sectors continue to be implemented under sector charters issued in terms of the Petroleum Resources Development Act of 2002. There are also other areas of law that dovetail with B-BBEE such as employment equity legislation and public interest considerations applicable to antitrust filings made under the Competition Act of 1998. It is outside the scope of this guidebook to address, the various overlapping legislation but we are certainly able to provide more details should it be required.

Measurement under the B-BBEE Codes

The B-BBEE Codes contain five elements against which the B-BBEE status of an entity will be measured (using the generic scorecard below), resulting in a B-BBEE score ranging from the lowest level being "Non-Compliant" to the highest level, being "Level One". The table below summarises the generic scorecard of the B-BBEE Codes. Note that the elements and weighting points may be different in a sector specific code:

Element	Weighting	Bonus Points	Total
Ownership - measures effective ownership of entities by black people.	25 points	0 points	25 points
Management control - measures the extent to which black people are represented on the board of directors and other senior management positions.	19 points	0 points	19 points
Skills development - measures the extent to which employers carry out initiatives designed to develop the competencies of black employees and black people.	20 points	5 points	25 points
Enterprise and supplier development - measures the extent to which entities buy goods and services from empowering suppliers with strong B-BBEE levels and provide support for the growth of black-owned businesses.	40 points	4 points	44 points
Socio-economic development - 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 in need.	5 points	0 points	5 points

Each of the abovementioned elements has its own scorecard with sub-elements that have separate indicators and weightings and a dedicated set of measurement principles set out in separate sections of the B-BBEE Codes.

The total score which an entity achieves corresponds with a B-BBEE compliance level or status as set out below:

B-BBEE Status	Qualification from Generic Scorecard	B-BBEE Recognition Level
Level One Contributor	> 100 points on the Generic Scorecard	135%
Level Two Contributor	> 95 but <100 points on the Generic Scorecard	125%
Level Three Contributor	> 90 but <95 points on the Generic Scorecard	110%
Level Four Contributor	> 80 but <90 points on the Generic Scorecard	100%
Level Five Contributor	> 75 but <80 points on the Generic Scorecard	80%
Level Six Contributor	≥ 70 but <75 points on the Generic Scorecard	60%
Level Seven Contributor	≥ 55 but <70 points on the Generic Scorecard	50%
Level Eight Contributor	≥ 40 but <55 points on the Generic Scorecard	10%
Non-compliant Contributor	<40 points on the Generic Scorecard	0%

The B-BBEE Codes identify the elements of ownership, skills development and enterprise and supplier development as priority elements and require that entities must achieve a minimum level of compliance with these elements in order to avoid being penalised. All large enterprises with an annual turnover of ZAR 50 million or more must comply with all the priority elements. Qualifying small enterprises with annual turnovers of between ZAR 10 million and ZAR 50 million are required to meet the minimum threshold applicable to the ownership element and to meet the minimum threshold for either skills development or enterprise and supplier development. The minimum thresholds are as follows:

- Ownership - the sub-minimum requirement is 40% of net value (40% of the 8 points on the ownership scorecard) based on the time based graduation factor as provided in Annex 100 (E) of the B-BBEE Codes.
- Skills development: the sub-minimum requirement is 40% of the total weighting points for skills development excluding bonus points (40% of the 20 points).
- Enterprise and supplier development: the sub-minimum requirement is 40% for each of the three categories, 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).

Should an entity fail to comply with its applicable sub-minimum requirements the B-BBEE compliance level which the entity has actually achieved will be reduced by one level. As an example, if it has scored sufficient points to achieve Level 4 B-BBEE compliance, it will only be verified as having achieved Level 5 B-BBEE compliance.

Verification of B-BBEE Compliance

In order to acquire a B-BBEE compliance level as set out above, an independent, accredited B-BBEE verification agency conducts procedures to assess, verify and validate the entity's compliance with each B-BBEE element and award a score and corresponding B-BBEE level to the measured entity based on the principles of the B-BBEE Codes or the applicable sector codes and a verification manual. The verification agency will issue a verification certificate to the measured entity on completion of the verification process.

The B-BBEE compliance level is valid for one year from the date of the verification certificate and thereafter the verification process must be repeated annually.

The methodology for measuring a measured entity's B-BBEE compliance is dependent on the annual turnover of the measured entity. The three categories into which an entity can fall are:

<p>Exempt Micro Enterprises (EME)</p>	<p>Entities with an annual turnover of less than ZAR 10 million and start-up enterprises in their first year after formation or incorporation.</p>	<p>Automatically qualify for a Level Four B-BBEE Status and are exempt from being verified (although they may elect to do so).</p> <p>EME with at least 51% black ownership will automatically have a B-BBEE Status of Level Two.</p> <p>EME with 100% black ownership will automatically have a B-BBEE Status of Level One.</p> <p>A sworn affidavit deposited by a member, director or owner of the entity attesting to the turnover and ownership or a certificate issued by the CIPC is sufficient to prove the entity is an EME and to prove B-BBEE ownership, and therefore would not require a B-BBEE certificate issued by a verification agency.</p> <p>Automatically classified as empowering suppliers.</p>
<p>Qualifying Small Enterprises (QSE)</p>	<p>Entities with an annual turnover of more than ZAR 10 million but less than ZAR 50 million.</p>	<p>QSEs with less than 51% black ownership are measured for compliance by verification agencies in terms of the applicable QSE scorecards which contain less stringent weightings and targets than the scorecards for large enterprises.</p> <p>QSE with at least 51% black ownership will automatically have a B-BBEE Status of Level Two.</p>

		<p>QSE with 100% black ownership will automatically have a B-BBEE Status of Level One.</p> <p>A sworn affidavit deposed by a member, director or owner of the entity attesting to the turnover and ownership is sufficient to prove B-BBEE ownership and a B-BBEE verification certificate is not required to confirm the above Level 1 or Level 2 status.</p>
<p>Generic Enterprises</p>	<p>Entities with an annual turnover of more than ZAR 50 million.</p>	<p>Subject to the most stringent B-BBEE requirements for accreditation and no enhanced recognition in respect of a particular level of black ownership like EMEs and QSEs.</p> <p>Large enterprises are measured for compliance with all of the elements of B-BBEE as set out in the B-BBEE Codes or applicable sector codes.</p>

Ownership

The ownership element measures the extent to which black people are owners of businesses. Ownership is measured with reference to the exercisable voting rights and economic interest held by black people.

Black people may hold their rights of ownership in a measured entity as direct participants or indirectly as participants in an ownership structure (such as a company, an existing close corporation, a co-operative, a trust, a broad-based ownership scheme, an employee share ownership programme or a partnership). Below is the ownership scorecard against which a measured entity will be measured:

Description	Weighting	Compliance
Voting rights		
Exercisable voting rights in the entity in the hands of black people	4	25% + 1 vote
Exercisable voting rights in the entity in the hands of black women	2	10%
Economic interest		
Economic interest in the entity to which black people are entitled	4	25%
Economic interest in the entity to which black women are entitled	2	10%
Economic interest of any of the following black natural people in the measured entity		
Black designated groups (includes unemployed black people not attending an educational institution, black people who are youth, black people who are persons with disabilities, black people living in rural and under developed areas, and black military veterans)	3	3%
Black participants in employee share ownership programmes		
Black people in broad-based ownership schemes		
Black participants in co-operatives		
New entrants	2	2%
Realisation points		
Net value	8	Refer to code series 100 E of the B-BBEE Codes

Key principles for measuring Ownership

Ownership is a priority element, as explained under Chapter 2 above.

The Flow-Through Principle

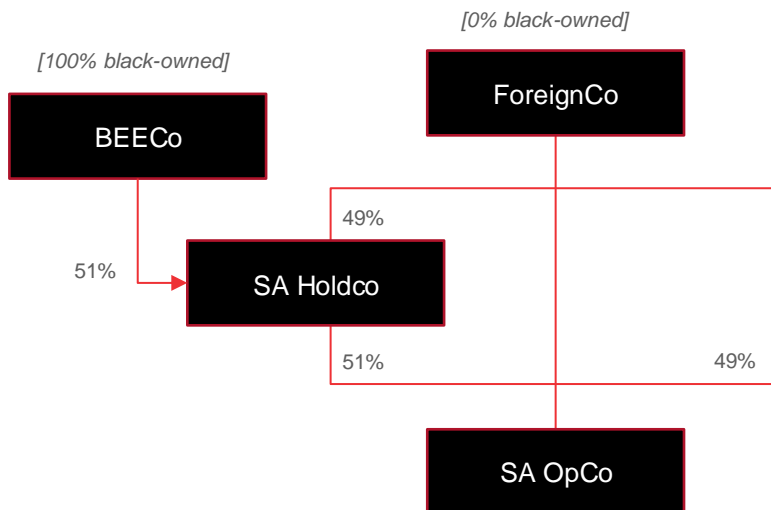
As a general principle, when measuring the rights of ownership of any category of black people in a measured entity, only rights held by natural persons are relevant. However, if the rights of ownership of black people pass through a juristic person, then the rights of ownership in that juristic person are measurable.

This principle is known as the 'Flow-Through Principle' and it applies across every tier of ownership in a multi-tiered chain of ownership until that chain ends with a black person holding rights of ownership.

The method of applying the Flow-Through Principle across one or more intervening juristic persons is as follows:

- multiply the percentage of the natural person's rights of ownership in the juristic persons through which those rights pass by the percentage rights of ownership of each of those juristic persons successively to the measured entity
- the result of this calculation represents the percentage of rights of ownership held by the participant.

Flow-Through: Illustrated



Effective Black ownership =

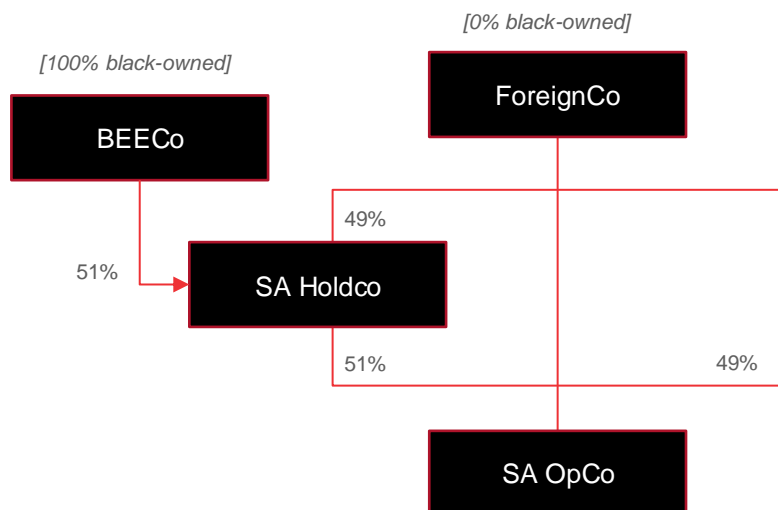
- SA Holdco is 51% black owned
- SA Holdco (51% black-owned) holds 51% of SA OpCo

SA OpCo is **26,01%** black-owned

The Modified Flow-Through Principle

This principle allows one company in an ownership chain to be treated as 100% black-owned, provided that under the normal Flow-Through Principle, that company would be measured as being at least 51% black-owned. This cannot apply to the measured entity.

Modified Flow-Through: Illustrated



Effective Black ownership =

- 51% black owned in terms of The Flow-Through Principle
- SA Holdco is deemed to be **100%** black owned by operation of The Modified Flow-Through Principle
- SA Holdco holds 51% of SA OpCo

SA OpCo is **51%** black-owned

Restrictions on the application of the Modified Flow-Through Principle

The Modified Flow-Through Principle is applied in the calculation of the score for "economic interest in the hands of black people", but is not applied to the calculations for economic interest in the hands of black women, black designated groups, distribution schemes, employee schemes or co-operatives.

Only a QSE or EME that is at least 51% black owned in terms of The Flow-Through Principle (and not The Modified Flow-Through Principle) may rely on the enhanced recognition principles (i.e. where an affidavit is relied upon to evidence black ownership).

In addition, if a measured entity makes use of other ownership enhancement principles such as the exclusion of State ownership or mandated investments (as more fully described below), it is prohibited from using The Modified Flow-Through Principle.

Net Value

An important consideration in relation to ownership is the extent to which a black person's ownership is unencumbered. This aspect is measured in terms of "Net Value".

Net value makes up 8 of a possible 25 ownership points on the ownership scorecard in the B-BBEE Codes and in order to comply with ownership as a priority element, 40% of the 8 points for net value must be scored. Accordingly, if this threshold is not met, the measured entity will automatically drop one B-BBEE rating level.

An example of how net value is conceptualised in the B-BBEE Codes follows:

- a company is worth ZAR 1 million and a black person has taken a bank loan to purchase 25% of the shares to the value of ZAR 250,000, those shares are encumbered
- if after a year the person is able to reduce the liability to ZAR 230,000 then ZAR 20,000 worth of shares are now unencumbered.

Net value on the B-BBEE scorecard was created to reward ownership schemes where the shareholder is able to pay off the shares in a reasonable period of time. The B-BBEE Codes have set 10 years as the 'reasonable period'. This has been broken into milestones for the percentage of the shares which must be unencumbered per year, as set out below:

- 10% for the first year
- 20% for the second year
- 40% from the first day of the third year to the last day of the fourth year
- 60% from the first day of the fifth year to the last day of the sixth year
- 80% from the first day of the seventh year to the last day of the eighth year
- 100% from the first day of the ninth year to the last day of the tenth year.

If the unencumbered share percentage is greater than or equal to the targets in the time period as shown above, then all eight points allocated to net value can be scored. Anything less will be calculated on a *pro-rata* basis.

Employee Share Ownership Plans (ESOP)

The B-BBEE Codes recognises black ownership through an ESOP provided it meets the following criteria:

- the constitution or founding documents of the ESOP must define the beneficiaries of the ESOP and the proportion of their claim to receive distributions – a written record of the name of the beneficiaries or the use of a defined class of natural persons satisfies the requirement of identification, and a written record of the fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining the proportion of benefits
- the fiduciaries (or trustees) of the ESOP must have no discretion as to the identity of beneficiaries or the proportion of their benefits
- the beneficiaries must be entitled to appoint at least 50% of the fiduciaries of the ESOP
- the beneficiaries must participate in the management of the ESOP at a level similar to the management role of shareholders in a company having shareholding
- the constitution or other relevant statutory documents of the ESOP must be available on request to any beneficiary in an official language in which that person is familiar
- all accumulated economic interest of the ESOP must be payable to the beneficiaries at the earlier of a date or event specified in the constitution, or on the termination or winding-up of the ESOP
- the fiduciaries of the ESOP must present the financial reports of the ESOP to beneficiaries annually at an annual general meeting of the ESOP.

If the ESOP meets the aforementioned minimum criteria, then such ESOP will be capable of contributing towards a maximum of 40% of the total points on the ownership scorecard of a measured entity. For the ESOP to be capable of contributing towards 100% of the points on the ownership scorecard, the ESOP must demonstrate that it has a track record of operating as an ESOP or, in the absence of such a track-record, it must demonstrate that it has full operational capacity to operate as an ESOP. Operational capacity is evidenced by suitably qualified and experienced staff in sufficient number, experienced professional advisors, operating premises and all other necessary requirements for operating a business.

Broad-based Ownership Schemes (BBOS)

The B-BBEE Codes recognises black ownership through a BBOS provided it meets the following criteria:

- the management fees of the scheme must not exceed 15%
- the constitution of the scheme must record the rules governing any portion of Economic Interest received and reserved for future distribution or application
- the constitution of the scheme must define the Participants and the proportion of their claim to receive distributions
- a written record of the name of the Participants or the use of a defined class of natural person satisfies the requirement for identification
- a written record of fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining proportion of benefit
- the fiduciaries of the scheme must have no discretion on the above mentioned terms
- at least 85% of the value of benefits allocated by the scheme must accrue to Black people
- at least 50% of the fiduciaries of the scheme must be independent persons having no employment with or direct or indirect beneficial interest in the scheme
- at least 50% of the fiduciaries of the scheme must be Black people and at least 25% must be Black women
- the chairperson of the scheme must be independent
- the constitution, or other relevant statutory documents, of the scheme must be available, on request, to any Participant in an official language in which that person is familiar
- the scheme fiduciaries must present the financial reports of the scheme to Participants yearly at an annual general meeting of the scheme
- on winding-up or termination of the scheme, all accumulated Economic Interest must be transferred to the beneficiaries or an entity with similar objectives.

If the BBOS meets the aforementioned minimum criteria, then such BBOS will be capable of contributing towards a maximum of 40% of the total points on the ownership scorecard of a measured entity. For the BBOS to be capable of contributing towards 100% of the points on the ownership scorecard, the BBOS must demonstrate that it has a track record of operating as an BBOS or, in the absence of such a track-record, it must demonstrate that it has full operational capacity to operate as an BBOS. Operational capacity is evidenced by suitably qualified and experienced staff in sufficient number, experienced professional advisors, operating premises and all other necessary requirements for operating a business.

Private Equity Funds

In terms of the B-BBEE Codes, a private equity fund is defined as "*a third party fund through which investments are made on behalf of the actual owner of the funds pursuant to a mandate given by that person to the private equity fund*".

A fund should be able to be objectively considered as a private equity fund when considered in the context of "usual" private equity funds.

A measured entity may treat any of its ownership arising from a private equity fund as if that ownership were held by black people, where the private equity fund meets the following criteria:

- at least 51% of any of the private equity managers' exercisable voting rights associated with the equity instruments through which the private equity fund holds rights of ownership, must be held by black people
- at least 51% of the private equity fund's executive management and senior management must be black people, and
- at least 51% of the profits made by the private equity fund manager after realising any investment made by it must, by written agreement, accrue to black people.
- the private equity fund manager must be a B-BBEE owned company (as defined in the B-BBEE Codes)
- the private equity fund manager must seek to invest at least 51% of the value of funds under management in companies that have at least a 25% direct black shareholding using the Flow-Through Principle
- the private equity fund manager can facilitate direct black shareholding at the time of entering into the transaction should the target company not meet the requirement of at least 25% black shareholding at the time that the transaction is concluded.

Exclusion of Specified Entities when Determining Ownership

When determining ownership in a measured entity, ownership held by organs of state or public entities must be excluded. Essentially, this means that ownership by the state is treated as non-black.

However, the Minister of Trade, Industry and Competition may designate certain organs of state or public entities as B-BBEE facilitators, which are deemed to have rights of ownership held:

- 100% by black people
- 40% by black women
- 20% by black designated groups
- without any acquisition debts
- without any third-party rights.

Mandated Investments

A Mandated Investment is any investment made by or through any third party regulated by legislation on behalf of the actual owner of the funds, pursuant to a mandate given by the owner to the third party.

Examples of Mandated Investments include: investments made by a South African Pension Fund or Collective Investment Scheme. When determining ownership in a measured entity, rights of ownership of Mandated Investments may be excluded (the maximum percentage of the ownership of any measured entity that may be so excluded is 40%).

A measured entity electing not to exclude Mandated Investments when it is entitled to do so, may either treat all of that ownership as non-black or obtain a competent person's report estimating the extent of black rights of ownership measurable in the measured entity and originating from that Mandated Investments.

A measured entity cannot selectively include or exclude Mandated Investments and therefore an election to exclude one Mandated Investment is an election to exclude all Mandated Investments and vice versa.

Exclusion of value for non-SA operations

Whenever ownership is assessed (including when determining economic interest and net value), the value of non-South African operations are excluded.

Recognition of Black Ownership through the Sale of Assets

The traditional manner in which measured entities acquire points in respect of the ownership element of their B-BBEE scorecard is by entering into ownership transactions which result in black people acquiring either direct or indirect equity interests in such measured entities.

Statement 102 of the B-BBEE Codes also provide for black ownership recognition for the sale of assets, equity instruments and other businesses.

The general principle of Statement 102 is that a measured entity who has concluded a transaction involving a sale of assets, equity instrument or business of a separately identifiable related business to black people or black-owned company, may claim ownership points on the ownership scorecard.

Statement 102 contains various terms and conditions that must be met in order for a sale of assets, equity instruments or sale of business transaction to be recognisable for black ownership. There is also a formula for the calculation of the ownership points arising from the transaction.

Management Control

The management control element measures the participation by black people and black women at board, executive management, and at other management levels, as well as the employment of black employees with disabilities.

Below is the management control scorecard against which the measured entity will have its compliance measured and will be awarded points accordingly.

Measurement category and criteria	Weighting	B-BBEE Recognition Level
Board participation		
Exercisable voting rights of black board members as a percentage of all board members	2	50%
Exercisable voting rights of black female board members as a percentage of all board members	1	25%
Black executive directors as a percentage of all directors	2	50%
Black female executive directors as a percentage of all directors	1	25%
Other executive management		
Black executive management as a percentage of all executive directors	2	6%
Black female executive management as a percentage of all executive directors	1	30%
Senior management		
Black employees in senior management as a percentage of all senior management	2	60%
Black female employees in senior management as a percentage of all senior management	1	30%
Middle management		
Black employees in middle management as a percentage of all middle management	2	75%
Black female employees in middle management as a percentage of all middle management	1	38%

Measurement category and criteria	Weighting	B-BBEE Recognition Level
Junior management		
Black employees in junior management as a percentage of all junior management	1	88%
Black female employees in junior management as a percentage of all junior management	1	44%
Employees with disabilities		
Black employees with disabilities as a percentage of all employees	2	2%

The compliance targets for Senior, Middle and Junior Management are based on the overall demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity Report, as amended from time to time.

In addition, in determining a measured entity's score, the B-BBEE Codes require that the targets should be further broken down i according to the different race sub-groups within the definition of black people, in accordance with the Employment Equity Act (which makes reference to the official statistics on the percentage of employees within the race sub groups making up the Economically Active Population). The B-BBEE Codes contains a set of formulae to calculate the points that a measured entity will achieve based on this approach.

Skills Development

The Skills Development element measures the extent of a measured entity's spend on skills development for black people and the number of black people that the measured entity has supported in learnerships, apprenticeships and internships.

Below is the Skills Development scorecard against which the measured entity will have its compliance measured and will be awarded points accordingly.

Category	Skills Development Element	Weighting Points	Compliance
1. Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a percentage of the Leviable Amount			
1.1	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a percentage of Leviable Amount.	6	3.5%
1.2	Skills Development Expenditure on Bursaries for Black Students at Higher Education Institutions.	4	2.5%
1.3	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black employees with disabilities as a percentage of Leviable Amount.	4	0.3%
2. Learnerships, Apprenticeships, and Internships			
2.1	Number of black people participating in Learnerships, Apprenticeships and internships as a percentage of total employees.	6	5%
3. Bonus points			
3.1	Number of black people absorbed by the Measured and Industry Entity at the end of the Internship, Learnership and Apprenticeship programme under paragraph 2.1.	5	100%

The targets for compliance under the skills development scorecard are a percentage of the Leviable Amount which is the amount paid by the measured entity as a skills development levy to the South African Revenue Services in terms of the Skills Development Levies Act, 1999. It is equal to 1% of the monthly payroll.

The targets under items 1.1, 1.2 and 2.1 are measured based on the different race sub-groups within the definition of black people, in accordance with the Employment Equity Act (as explained under the Management Control element above), and the B-BBEE Codes contain formulae for such calculations.

The types of learning programmes that are recognisable for skills development are set out in a Learning Programme Matrix in the B-BBEE Codes. They include Institution-based theoretical instruction alone which is formally assessed by educational institutions registered with the Department of Basic Education or the Department of Higher Education & Training; recognised or registered structured experiential learning in the workplace that is required after the achievement of a qualification and which is formally assessed by a statutory occupational or professional body; occupationally directed instructional and work-based learning programme that requires a formal contract and which is formally assessed by an accredited body; and occupationally directed informal instructional programmes.

Skills development expenditure includes any legitimate expenses incurred for any learning programme offered by a measured entity to black people evidenced by an invoice or appropriate internal accounting record. Legitimate training costs such as accommodation, catering, travelling and the cost to the measured entity of employing a skills development facilitator or a training manager (non-exhaustive) cannot exceed more than 15% of the total value of skills development expenditure.

Skills development is also a **priority element**, as explained under Chapter 2 above.

Enterprise and Supplier Development

The Enterprise and Supplier Development element measures the extent to which the measured entity procures goods and services from black-owned and B-BBEE compliance entities; and makes enterprise and supplier development contributions.

Below is the Enterprise and Supplier Development scorecard against which the measured entity will have its compliance measured and will be awarded points accordingly.

	Criteria	Weighting Points	Compliance Targets
1.	PREFERENTIAL PROCUREMENT		
1.1	B-BBEE Procurement Spend from all Empowering Suppliers based on the BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend.	5	80%
1.2	B-BBEE Procurement Spend from all Empowering Suppliers that are Qualifying Small Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend.	3	15%
1.3	BBEE Procurement Spend from all Empowering Exempted Micro- Enterprises based on the applicable BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend.	4	15%
1.4	BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend.	11	50%
1.5	B-BBEE Procurement Spend from Empowering Suppliers that are at least 30% Black Women Owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend.	4	12%
	Bonus points		
1.6	B-BBEE Procurement Spend from Empowering Designated Group Suppliers that are at least 51% Black Owned.	2	2%
2.	SUPPLIER DEVELOPMENT		
2.1	Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target.	10	2% of NPAT

	Criteria	Weighting Points	Compliance Targets
3.	ENTERPRISE DEVELOPMENT		
3.1	Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target.	5	1% of NPAT
3.2	Bonus Points		
3.2.1	Bonus point for graduation of one or more Enterprise Development beneficiaries to the Supplier Development level.	1	
3.2.2	Bonus point for creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives by the Measured Entity.	1	

Procurement spend on B-BBEE compliant and black-owned entities is measured in relation to a measured entity's total measured procurement spend (**TMPS**), the parameters of which are set out in the B-BBEE Codes. Items that are excluded from TMPS are tax, salaries and wages, pass through 3rd party procurement; intra group loans and investments; and the cost of imported goods and services under specific conditions (such as when there is no local availability of the same goods or services, but accompanied by an enterprise and supplier development plan for such goods or services).

The concept of an "Empowering Supplier" was suspended indefinitely in terms of a notice issued by the Minister of Trade, Industry and Competition.

Beneficiaries of enterprise and supplier development contributions are entities which are at least 51% black-owned EMEs and QSEs and the purposes of such contributions are to facilitate their growth and development in the economy.

Enterprise and supplier development contributions can be monetary or non-monetary and include the giving of loans; guarantees; credit facilities; grants; preferential terms of supply and the provision of training or mentoring. There are also different proportions of recognition for the type of contribution that is made. As an example, 100% of the amount of any grant will be recognised while only 50% of the amount of a standard interest bearing and secured loan will be recognised.

Enterprise and Supplier Development is also a **priority element**, as explained under Chapter 2 above.

Socio-Economic Development

The Socio-Economic Development element measures the extent of a measured entity's contributions to communities, natural persons or groups of natural persons where at least 75% of the beneficiaries are black people, with the specific objective of facilitating income generating activities for beneficiaries.

Below is the Socio-Economic Development scorecard against which the measured entity will have its compliance measured and will be awarded points accordingly.

Criteria	Weighting Points	Compliance Target
Annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target	5	1% of NPAT

Measured Entities receive recognition for any Socio-Economic Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.

Socio-Economic Development Contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries.

The full value of Socio-Economic Development Contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people.

Socio-economic development contributions include giving of loans; guarantees; credit facilities; grants; preferential terms of supply; payments made to 3rd parties for the benefit of the beneficiaries; and the provision of training or mentoring. There are also different proportions of recognition for the type of contribution that is made. As an example, 100% of the amount of any grant will be recognised while only 80% of the value of professional services rendered at no cost to the beneficiaries will be recognised.

Sector Codes

The sector specific codes of good practice are generally structured according to the elements and principles of measurement set out in the B-BBEE Codes. However each sector code has been created after consultation with various stakeholders in that sector and contains certain differences as to targets, weighting points and in some cases additional elements, which have been agreed as being relevant to that sector.

Some current sector codes include the ICT Sector Codes; the Financial Services Sector Codes; the Construction Sector Codes; the Forestry Sector Codes, and the Agri B-BBEE Sector Codes.

An entity that conducts the majority of its business in a sector governed by a sector code is bound to apply that sector code when measuring its B-BBEE compliance.

Registration of Major B-BBEE Transactions

What is a major B-BBEE transaction?

A major B-BBEE transaction is any transaction between entities/parties that has resulted or will result in ownership recognition for the measured entity in terms of the ownership scorecard of the B-BBEE Codes or relevant sector code. Section 13F(1)(f) of the B-BBEE Act identifies that a function of the B-BBEE Commission is to maintain a registry of major B-BBEE transactions. On 9 June 2017, the Minister of Trade, Industry and Competition published a notice setting out the threshold for the registration of major B-BBEE transactions (see Government Gazette 40898 on 9 June 2017). In terms of that notice, all B-BBEE transactions with a transaction value equal to or exceeding ZAR 25 million must be registered with the B-BBEE Commission.

The ZAR 25 million threshold noted above excludes administration, professional and legal fees. All parties to a transaction have a collective responsibility to register the transaction with the B-BBEE Commission. Regulation 18 of the B-BBEE Regulations prescribes the requirements for the registration of major B-BBEE transactions.

When must a major B-BBEE transaction be registered?

In terms of the B-BBEE Regulations all major B-BBEE transactions must be submitted to the B-BBEE Commission within 15 calendar days of the transaction being concluded.

Registration process

Upon receipt of the application for registration of a major B-BBEE transaction, the B-BBEE Commission must immediately acknowledge receipt of the registration in writing and within 10 calendar days, issue a certificate of registration to the party that submitted the transaction if the requirements for registration have been met.

Within a period of 90 days after the registration of the major B-BBEE transaction, the B-BBEE Commission must assess the transaction to determine its compliance with the provisions of the B-BBEE Act. Once it has attended to such assessment, the B-BBEE Commission will then communicate with the parties in respect of any concerns which it may have.

Foreign entities and B-BBEE

Foreign entities that conduct business in South Africa through a branch office or a subsidiary, will be subject to the B-BBEE Act and the requirements of their businesses may result in a need to be B-BBEE compliant.

Ownership options available to multinationals

The B-BBEE Codes have introduced additional ownership structuring options for multinationals.

Equity equivalent investment programmes

The South African government recognises that certain multinationals have practice of not divesting of ownership in their global operations which restricts them from complying with the ownership element of B-BBEE through the traditional sale or transfer of equity to black South Africans. In such instances, and provided that it can be proven that such multinationals do not enter into local ownership arrangements in other countries globally, the B-BBEE Codes provide for the recognition of monetary contributions dedicated to economic development initiatives that benefit black South Africans, in lieu of such sales of equity (known as Equity Equivalent programmes). Equity Equivalent programmes must comply with the rules set out in the B-BBEE Codes.

An Equity Equivalent programme requires the prior approval of the Minister of Trade, Industry and Competition before it may be implemented. The terms of the arrangement are negotiated with the Minister and an agreement is entered into between the applicant and the ministry. Once approved, the multinational business is able to recognise ownership points for its Equity Equivalent programme. Typically the agreement will commit a multinational to spend an amount of money over an investment period of 5 to 10 years.

The amount to be spent on an Equity Equivalent programme is determined with reference to (i) 25% of the value of the South African operations of the multinational; or (ii) 4% of the total revenue from the South African operations annually over the period of continued measurement. The purpose of Equity Equivalent programmes must be to create economic development or economic benefit for black South Africans. Programmes should ideally be sector specific and promote enterprise and supplier development, research and development, and critical and core skills.

Upon conclusion of the Equity Equivalent agreement with the ministry, the Minister will issue a compliance certificate confirming that the multinational is entitled to recognise B-BBEE ownership points for undertaking the Equity Equivalent programme.

Sale of offshore equity interest

Any South African multinational maintaining its international headquarters outside of South Africa shall be entitled to receive recognition for the sale of an equity interest to black participants in its non-South African holding company or any other non-South African company interposed between the local multinational subsidiary and its holding company.

The percentage of the value of the equity instruments acquired by black South Africans in the non-South African company relative to the value of the South African subsidiary represents the recognisable economic interest by black South Africans in the South African subsidiary of the multinational. The percentage of exercisable voting rights ceded in the South African subsidiary to such black South Africans represents the recognisable exercisable voting rights of black South Africans in the South African subsidiary of the multinational.

Fronting

The B-BBEE Act criminalises fronting practices or fronting. A fronting practice is a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the B-BBEE Act or the implementation of any of the provisions of the B-BBEE Act, including (but not limited to) practices in connection with a B-BBEE initiative:

- In terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise.
- In terms of which the economic benefits received as a result of the B-BBEE status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation.
- Involving the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of B-BBEE compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person; or
- Involving the conclusion of an agreement with another enterprise in order to achieve or enhance B-BBEE status in circumstances in which:
 - there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers
 - the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available; and/or
 - the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis.

Consequences of Fronting

Section 13(1)(d) read with section 13J(1) of the B-BBEE Act grants the B-BBEE Commission the power to initiate an investigation either of its own initiative or in response to complaints received regarding any matter concerning B-BBEE (including into possible fronting practices). The B-BBEE Commission may make a finding that a fronting practice has occurred and may institute proceedings in a court to restrain any breach of the B-BBEE Act. The B-BBEE Commission is obliged to refer a finding of fronting to the South African Police Services and to the National Prosecuting Authority for prosecution.

In terms of the B-BBEE Act, a court may apply the following penalties in the event of a conviction for a fronting practice:

- a natural person may receive a fine or imprisonment for a period not exceeding 10 years or both a fine and imprisonment
- if the convicted person is not a natural person, it may be liable for a fine not exceeding 10% of its annual turnover.

Any person convicted of an offence:

- may not, for a period of 10 years from the date of conviction, contract or transact any business with any organ of state or public entity and must for that purpose be entered into the register of tender defaulters which the National Treasury may maintain for that purpose.
- where the convicted person is not a natural person, the court may restrict the order above to those members, directors or shareholders who contravened the provisions of the B-BBEE Act.



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