

DEPARTMENT OF TRADE AND INDUSTRY

EXECUTIVE SUMMARY

THE 2nd PHASE OF CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT

The Department of Trade and Industry (the dti) has been tasked with the drafting of the codes of good practice on BEE as per the requirements of the Broad-Based Black Economic Empowerment (BBBEE) Act no.53 of 2003. One objective of these codes is to provide further clarity and guidance on the interpretation and definition of BBBEE.

The first phase of the codes of good practice on BBBEE , was launched in November 2005, which covers the conceptual framework, the measurement of Ownership and Management Control, as well as interpretations of the individual statements.

The second phase of the codes of good practice on BBBEE, which is the subject matter of this document, covers 5 components of the BBBEE scorecard, thus, preferential procurement, employment equity, skills development, enterprise development, residual (industry specific and corporate social investment initiatives), and also the Qualifying Small Enterprise sections. Other statements covered include fronting practices, specific verification issues relating to the complex structures, multinationals, State-owned / public entities.

These codes will encourage all entities, both public and private, through the issuing of licenses, concessions, sale of assets and preferential procurement to implement proper BBBEE initiatives. Thus, the codes of good practice provide a standard framework for the measurement of broad-based black economic empowerment across all sectors of the economy.

The individual statements are summarized below:

STRUCTURE OF THE CODES OF GOOD PRACTICE

Code 000: Statement 001: Fronting practices and other Misrepresentation of BBBEE Status;

This statement provides clarity on fronting practices and risks, and specifies the requirements for reporting of fronting practices. It also provides guidance for the determination and evaluation of fronting risk, and specifies the consequences of fronting practices.

Some of the examples of fronting contained in this statement include:

- **Window dressing,**
- **Benefit Diversion,**
- **Opportunistic Intermediaries.**

Code 000: Statement 002: Specific Verification Issues relating to complex structures

This statement provides guidance as to which Measured Entities are subject to measurement under the codes and as to the consolidation of compliance data in certain specific instances.

It further provides guidance as to the attribution and separation of compliance data and clarity as to transfer of certain BEE contributions in the event of a sale of business.

Code 100: Statement 102: The Recognition of Ownership contributions arising from Investments by BEE Targeted Warehousing Funds,

This statement seeks to specify the key measurement principles associated with ownership by and contributions to Warehousing Funds, for the purposes of facilitating BEE transactions.

A Warehousing fund is defined as a fund established by an enterprise, organs of the state or public entity for the specific purpose of holding an equity interest in another enterprise from exiting black participants for a fixed duration of time with the obligation of ultimately transferring that equity interest into ownership by the intended black participants and should be approved by the minister of Trade and Industry.

Code 100: Statement 103: The recognition of Ownership Contributions by Multinational Companies,

This statement defines the key measurement principles applicable to measurement of ownership contributions by Multinational Businesses and South African Multinationals. It further provides for the recognition of Equity Equivalent contributions made by Multinational Businesses, and provides for the recognition of ownership contributions arising from sales of offshore Equity Interests.

The statement further provides for the recognition of ownership contributions arising from sales of businesses or assets by the Multinational Businesses or South African Multinationals; and specifies the approach to measurement of ownership contributions made by South African Multinationals.

The statement continues to provide recognition of certain public programs or schemes as equity equivalents by Multinational Businesses to be approved by the minister of Trade and Industry in consultation with the sectoral line minister, premiers or other stakeholders in any government department, provincial government or local government.

This statement also allows both Multinational Businesses as well as South African Multinationals to receive indicative points on their Ownership Scorecard after having implemented some of the initiatives allowed for in this statement.

Code 100: Statement 104: The recognition of Ownership Contributions made by Public Entities and the Organs of State,

This statement specifies the basis for the award of indicative points for the ownership Element of broad-based black economic empowerment in respect of public entities wholly owned by organs of state and in respect of organs of state. It further specifies the basis for the recognition of ownership of Equity Interests held by Designated Public Entities as being black ownership.

Code 100: Statement 105: The recognition of Ownership Contributions made by Companies limited by Guarantee and Section 21 Companies.

This statement specifies the basis for the award of indicative points for the ownership Element of broad-based black economic empowerment in respect of companies limited by guarantee and section 21 companies; and it further specifies the basis for recognition of ownership of Equity Interests held by companies limited by guarantee

and section 21 companies.

Code 300: Statement 300: Employment Equity

This statement measures initiatives targeted to achieve employment equity in respect of all measured entities in the workplace. A fundamental principle of this statement is to ensure alignment with the Employment Equity Act.

The statement provides targets for the inclusion of black people in occupational levels other than top management and semi-skilled and unskilled levels.

The statement also emphasizes the importance of black women within Employment Equity through the allocation of half of the points to the inclusion of black women in Senior to Middle management positions.

Code 400: Statement 400: Skills Development

This statement measures initiatives implemented by employers that are targeted at the promotion of competencies of black people within an organization.

It further specifies the skills development scorecard, which will be used to measure the amount of contributions made by the measured entities towards development of black people.

This statement is in line with the National Skills Development Act (1998), National Skills Development Strategy and Skills Development Levies Act.

It further specifies the basis for the measurement of the organizational transformation contributions to BEE which is a qualitative aspect to transformation within the organization.

Code 500: Statement 500: Preferential Procurement

This statement measures the extent to which enterprises procure from companies that are BEE compliant. This also includes Micro Enterprise as well as qualifying small enterprises. A preferential procurement scorecard has been included to provide targets for Preferential Procurement from the above-mentioned compliant suppliers.

The statement further provides the key measurement principles to be applied when calculating preferential procurement contributions to BBBEE. It further specifies principles to be applied when calculating BEE Procurement Spend, and specifies the formula for the calculation of the individual criteria specified in the preferential scorecard.

Code 600: Statement 600: Enterprise Development

This statement measures specific initiatives for assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such beneficiary entities through the expansion of those beneficiary entities' financial and/or operational capacity

It further specifies the key measurement principles to be applied when calculating Qualifying Enterprise Development Contributions to BBBEE and provides guidance in terms of the measurement of monetary and non-monetary contributions.

The statement further encourages Enterprise Development initiatives in rural communities and in any geographical areas identified by government.

In addition, a bonus point will be awarded against submission by the measured entity of adequate proof that it contributed to job creation.

Code 700: Statement 700: Residual Element

This statement specifies initiatives intended to directly provide black people who are natural persons, with a means of generating income for themselves.

It is a fundamental principle of this statement to encourage initiatives intended to facilitate access to the economy by black people and is inclusive of both Corporate Social Investment and Industry specific contribution.

It further specifies key measurement principles to be applied when calculating Qualifying Residual Contributions to BBBEE. It also provides formula for the calculation of the criteria specified in the residual contribution scorecard, and is the basis for the award of bonus points.

Code 1000: Statement 1000 - 1700: Qualifying Small Enterprise

These statements are meant to measure BBBEE in all the components of qualifying small enterprises. This will include the conceptual framework, the measurement of ownership, management, employment equity, skills development, preferential procurement, enterprise development, and the residual element of qualifying small enterprises.

These codes attempt to provide a much less onerous BEE compliance regime by providing certain exceptions.

Conclusion

The dti will also be requesting public submission on the treatment of indirect ownership within BBBEE, which includes pension funds, private funds, private equity and asset managers.

The dti intends to use the codes of good practices to guide and direct the BBBEE process within the South African economy. It is noteworthy that these codes of good practice are released for a 60-day public commentary period, with the intention of gazetting both phase 1 and 2 of the Codes of Good Practice on BBBEE.