

Chapters Two to Four: Code 000 – Framework for the Measurement of Broad-Based Black Economic Empowerment

Chapter Two: Statement 000 – The Organisation of the Codes of Good Practice, the Elements of Broad-Based Black Economic Empowerment and the Generic Scorecard

Introduction

Statement 000 resolves certain fundamental and key issues surrounding broad-based BEE and the application thereof, by outlining the framework in which the measurement of broad-based BEE must take place. This includes an interpretive paragraph on misrepresentation or circumvention.

Overview & Objectives

- Provides Code references for each of the seven elements of B-BBEE
- Lays down certain fundamental principles with respect to substance over form and provides guidance on what constitutes misrepresentation in terms of BEE
- Assigns BEE statuses attached to an entity's corresponding broad-based score, as well as to the corresponding BEE procurement recognition level
- Explains the transitional period for the optional application of narrow-based measurement principles
- Specifies the duration of the Codes

Interpretation Principles

These interpretation principles outline key principles with respect to fronting – the key principle being that substance must always take precedence over form. In addition, key generic measurement principles are provided. They are as follows:

1. Measurement of BEE principles is based on the actual level of compliance at the date of measurement:

This means that the BEE status of an enterprise is determined as a snapshot at a point in time.

2. Supporting evidence or documentation is required for the substantiation of BEE contributions:

All claims with respect to BEE contributions made by a measured enterprise must be supported by evidence or documentation. No recognition in the form of points on the Generic Scorecard will be given for claims that are unsubstantiated by evidence. The evidence will be evaluated during the verification process by an accredited verification agency prior to any recognition of reported BEE initiatives.

3. Disqualification for misrepresentation:

Should an enterprise be found to misrepresent its BEE status, the enterprise will forfeit any points for any BEE contributions and its entire scorecard will be disqualified.

4. Fronting to be reported to the Minister of Trade and Industry:

A Guide to Interpreting the Codes

Following specific sets of procedures, procurement officers and verification agencies are obliged to report incidences of fronting or circumvention of the principles of the BEE Act, to the Minister of Trade and Industry.

Organisation of the Codes, the Elements, the Generic Scorecard

In addition to providing code references for the seven elements of broad-based BEE, references are provided for transformation charters gazetted as sector codes, which will be contained under Code 800, as well as for statements to be contained under Code 1000 for the measurement of SMMEs which are classified as “qualifying small enterprises”.

Code 800 allows for charters to become legally binding thereby enabling sectors to focus on some of the unique characteristics of individual industries when implementing BEE, whilst Code 1000 provides recognition for the unique environment faced by SMMEs.

BEE Statuses and Procurement Recognition Levels

Statement 000 outlines what each of the seven elements measures in essence (paragraph seven), before going on to summarise the corresponding weightings for these seven elements and consequently interpreting an enterprise’s score on the Generic Scorecard by assigning it a corresponding BEE status (paragraph eight).

An enterprise is measured out of 100 BEE contribution points, which will determine that enterprise’s contribution level. The highest possible contribution level is Level One, for entities that score over 100% (this may be achieved by obtaining bonus points), whilst the lowest recognition level is Level Eight, for entities that score 30% to 40% on the scorecard. The status of “Non Compliant Contributor” is assigned to those enterprises that score less than 30% on the scorecard.

For ease of reference, the table in paragraph 8.2.2 of Statement 000, is reproduced here:

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%

For the purposes of preferential procurement, each BEE status band (Levels One to Eight) is assigned a corresponding BEE procurement recognition level. This represents the proportion of spend which a decision maker can claim for interacting with a measured enterprise. For example, if a procurement officer procures from a Level Five Contributor, s/he can claim 80 cents in every Rand spent with that entity, as BEE procurement spend. The procurement officer’s BEE recognition level, however, drops to 50 cents in every Rand when procuring from a Level Seven Contributor and increases to R 1.25 for every Rand spent with a Level Two Contributor).

Enhanced BEE Procurement Recognition Levels

A measured enterprise which procures goods and services from Contributors in Levels One, Two and Three, will enjoy enhanced recognition: i.e.: for every R1 spent with a Level One Contributor, the procurer may recognise R1.35 as BEE procurement.

In addition, an inherent bonus system has been designed for procurement from enterprises which are more than 50% black-owned in that such enterprises may be promoted one level in terms of their BEE status – i.e. a 51% black-owned enterprise which scores 65% on the Generic Scorecard, may jump from being a Level Four Contributor, to being classed as a Level Three Contributor. However, this only applies in cases where black people hold more than 50% of the exercisable voting rights and economic interest, and where the full seven net equity points have been earned, all in accordance with the measurement principles contained in Statement 100 on ownership.

Verifying BEE Contributions

When interacting with the private sector (through procurement, issuing of licences, PPPs, organs of state and public entities must insist that private sector enterprises prove their BEE status by providing a verification certificate from an accredited verification agency. Private sector enterprises are encouraged to do the same for the purposes of procurement and supply. Failure to do so can impact on the validity of a private sector entity's verification certificate when it interacts with government. For example, if Company A wishes to interact with government, its preferential procurement score cannot be accurately determined if its own suppliers have not been verified. This will impact on the overall BEE score (and potentially the BEE status) of Company A.

The Transitional Period and the Duration of the Codes

In recognition of the fact that many enterprises are still applying narrow-based or similar evaluation⁴ mechanisms, the Codes allow for the continuation of narrow-based evaluation until the end of the twelfth month of the publication and gazetting of Code 000. This is to allow all reporting entities the opportunity to initiate the reporting of BEE contributions using the Codes from the first reporting period that will begin subsequent to the release of the Codes. Notwithstanding the latter, broad-based evaluation is encouraged to continue, or to begin, prior to the completion of the transitional period.

If an enterprise elects to be measured on narrow-based principles during the transitional period, the sum of the measured enterprise's score for ownership and management will be multiplied by a factor of 1.92.

In other words, the measured enterprise's **narrow-based score** will be calculated as follows:

$$= \text{sum of scores for ownership \& management elements} \times 1.92$$

Unless a Code is amended, substituted or repealed as allowed for in section 9 of the BEE Act, the Codes will be reviewed after a period of ten years, following the gazetting thereof.

⁴ An entity's BEE status is evaluated according to ownership and management control exclusively

Chapter Three: Statement 010 – Guidelines for the Development and Gazetting of Transformation Charters

Introduction

As the second wave of transformation began to gain momentum in South Africa in 2001, various sectors of the economy began drafting documents of intent that summarised each sector's commitments with respect to transformation. These became known as sector transformation charters.

There was, however, no overall framework against which to benchmark the individual charters during their development and no guidance on the level and extent of involvement by stakeholders. In the absence of such a framework, there may have existed substantial differences between these sector charters.

Section 12 of the BEE Act of 2003 provided some guidance with respect to the composition of what the Act termed, 'transformation charters'. In terms of the BEE Act, sector transformation charters are commitments by a sector to accelerate BEE and are gazetted for information purposes only. Nonetheless, there existed a need for a more comprehensive regulatory framework to guide the development of transformation charters developed in terms of section 12, as well as those charters developed to be gazetted as Codes of Good Practice. Statement 010 provides such a framework.

Overview & Objectives

- Provides guidelines on the drafting of transformation charters (those applying to be gazetted in terms of s12 and those applying for the sector charter to be converted and gazetted as a Sector Code of Good Practice in terms of s9 of the BEE Act)
- Provides guidelines on the process to be followed for the gazetting of transformation charters
- Explains the status of transformation charters gazetted in terms of section 12
- Explains the status of transformation charters which are converted and gazetted as Sector Codes of Good Practice in terms of section 9 (charters gazetted as Codes of Good Practice)
- Provides guidelines for constituting Charter Councils in Annexe 010

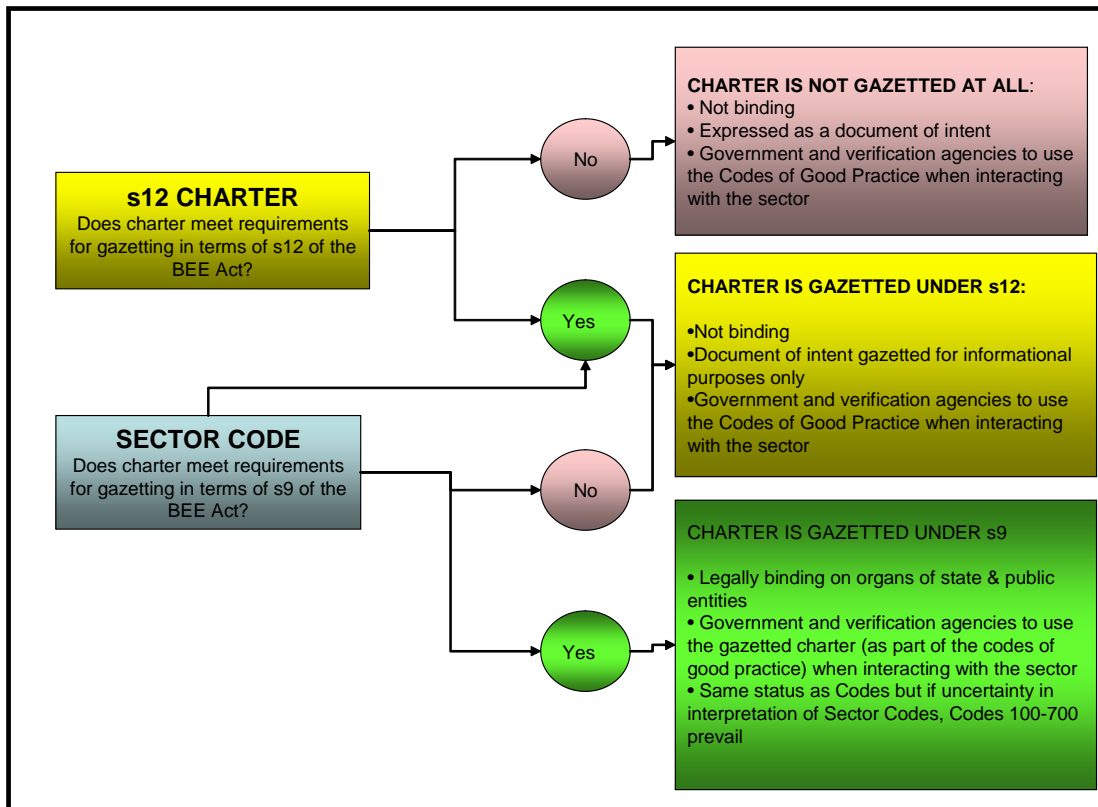
A Guide to Interpreting the Codes

The Status of Transformation Charters Gazetted in Terms of s12 and the Status of Sector Codes of Good Practice Gazetted in terms of s9

The BEE Act provides for the drawing up of industry charters that may be gazetted in terms of either section 9 or section 12 of the Act:

Sector Codes (s9 of BEE Act)	Transformation Charters (s12 of BEE Act)
<ul style="list-style-type: none"> Gazetted as Codes of Good Practice to be contained in Code 800 	<ul style="list-style-type: none"> Gazetted for informational purposes only s12 charters are expressions of the industry's commitment to transformation
<ul style="list-style-type: none"> Same legal status as the Codes of Good Practice, therefore binding on organs of state and public entities in their interactions with the sector, as provided for in section 10 of the BEE Act 	<ul style="list-style-type: none"> No legal status, therefore not legally binding on organs of state or public entities
<ul style="list-style-type: none"> Private sector enterprises are encouraged to apply the Codes of Good Practice (including Sector Codes, if applicable) in their interactions with one another, as espoused in Code 000 	<ul style="list-style-type: none"> Private sector entities must apply Codes 100 – 700 or Code 800 should they wish to interact with organs of state and/or public entities and are furthermore encouraged to do the same in their interactions with one another

Implications for the Gazetting of Transformation Charters under section 12 & Sector Codes under section 9:



A Guide to Interpreting the Codes

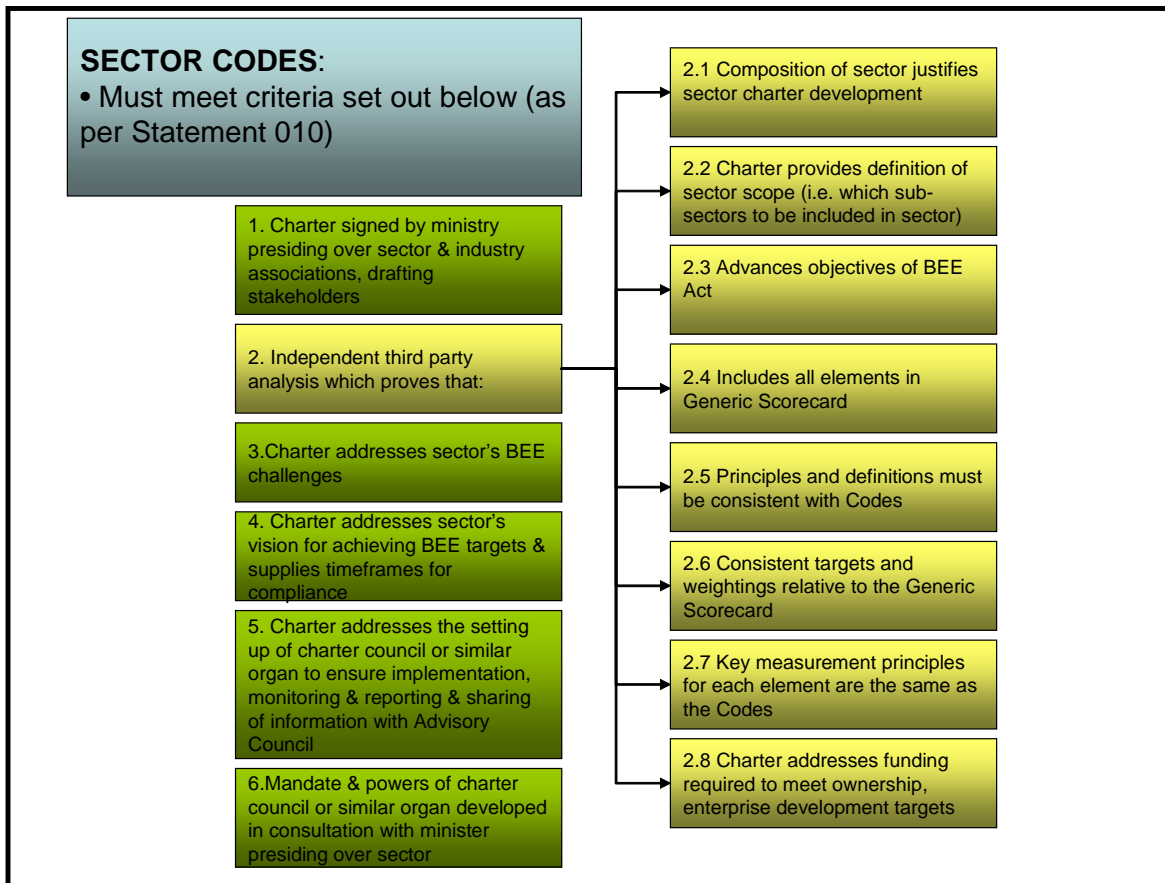
Procedure for the Gazetting of Transformation Charters in Terms of s12 of the BEE Act

Transformation Charters to be gazetted in terms of section 12 of the BEE Act must simply meet the following two criteria, as outlined in the Act:

- The charter must be sufficiently consultative in that it must have been developed by the sector’s major stakeholders
- The charter must advance the objectives of the BEE Act

Procedure for the Gazetting of Transformation Charters as Sector Codes of Good Practice

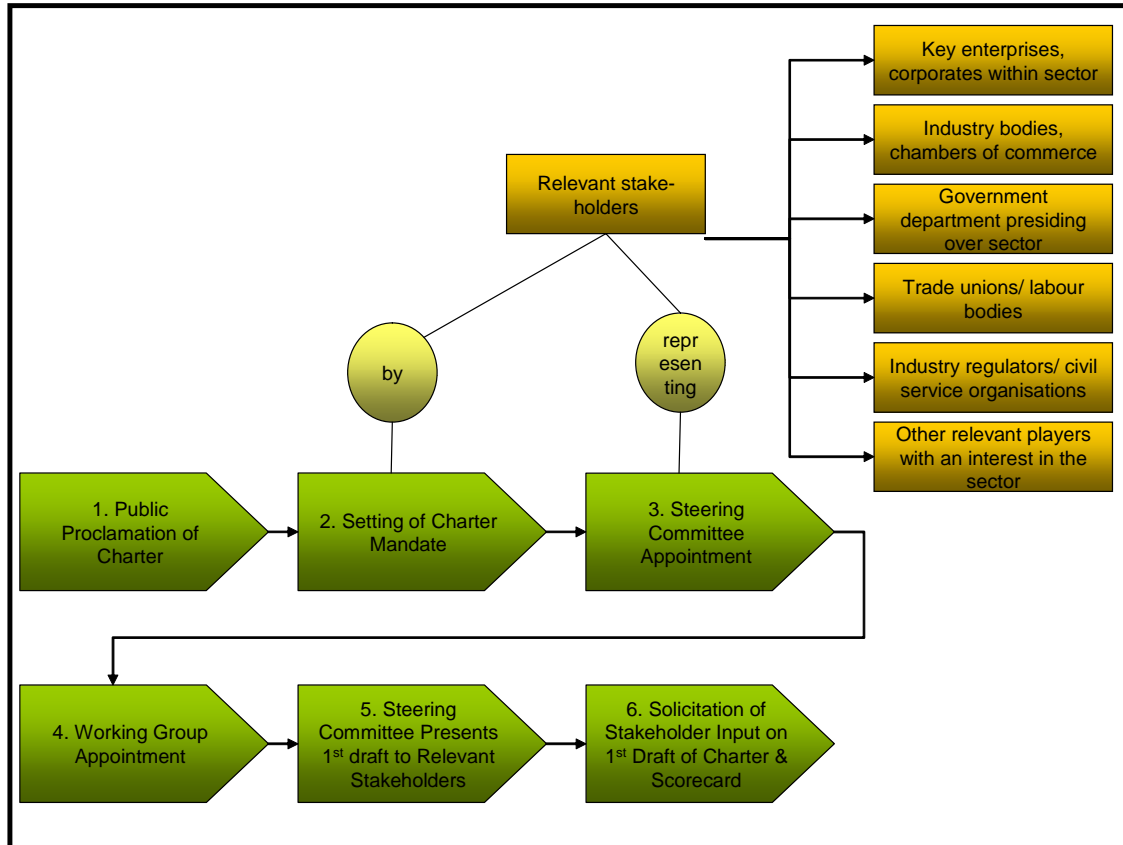
Since transformation charters gazetted in terms of section 9 of the BEE Act, become Codes of Good Practice and are therefore legally binding on organs of state and public entities, the procedure for gazetting these is far more stringent than that of s12 charters:



Enterprise BEE Plans

Enterprise BEE plans are mission statements to achieve transformation by individual entities. These are voluntary company-specific commitments to BEE and may not be used for the purposes of measuring an entity’s BEE status, save for internal assessment purposes.

Recommended Model for Drawing up a Transformation Charter (Annexe 010-A)



Chapter Four: Statement 020 – The Approval, Accreditation and Regulation of BEE Verification Agencies

Introduction

South Africa's transformation process began as a government driven initiative which was later followed by certain players within big business through the conclusion of BEE deals, as part of the first wave of BEE in the late 1990s.

However, during this period, there existed no basis upon which such deals, or indeed, other BEE initiatives, could be evaluated and compared. The lack of a standard measure often led to conflicting and contradictory decisions regarding BEE. Recognising BEE as a business imperative by the private sector led to the emergence of BEE verification agencies. The role of the verification agency is to ensure that a measured entity's BEE contributions are verified, and that the entity's reported BEE status is valid and accurate.

In the absence of a framework for measurement and an industry watchdog to monitor verification agencies, different verification agencies formulated and employed different verification methodologies and standards. The result has been an inconsistency in the substance of BEE verification which potentially advantages entities verified by agencies employing less stringent verification criteria, and erodes the ability of the verification agencies to introduce transparency and uniformity in the verification and reporting of BEE.

To enhance the quality and standards of the BEE verification and reporting process, Statement 020 provides for the setting up of a BEE verification accreditation body, to accredit only those verification agencies which meet the criteria outlined in Statement 020, thereby ensuring that standards are uniform and enabling government and the private sector to rely on verification certificates issued by accredited agencies.

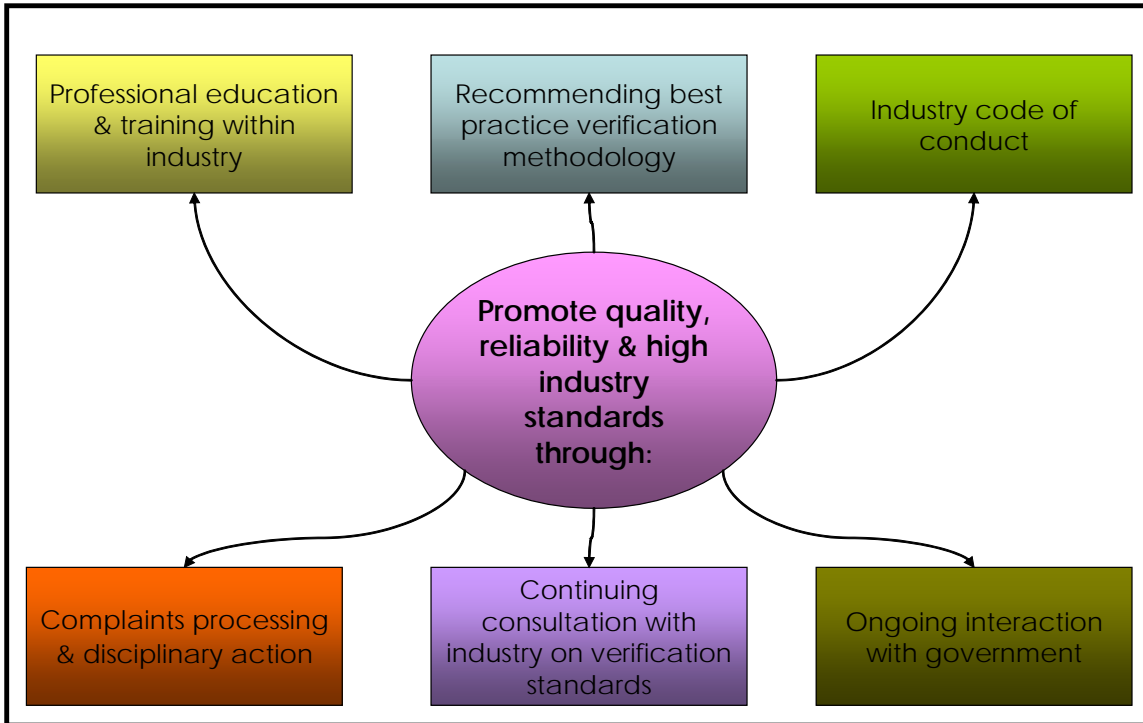
Overview & Objectives

- Specifies qualification criteria and the procedure to be followed for the accreditation of BEE verification agencies
- Outlines standards for conducting BEE verification by verification agencies
- Outlines the role of an industry body to work together with the government's accreditation body

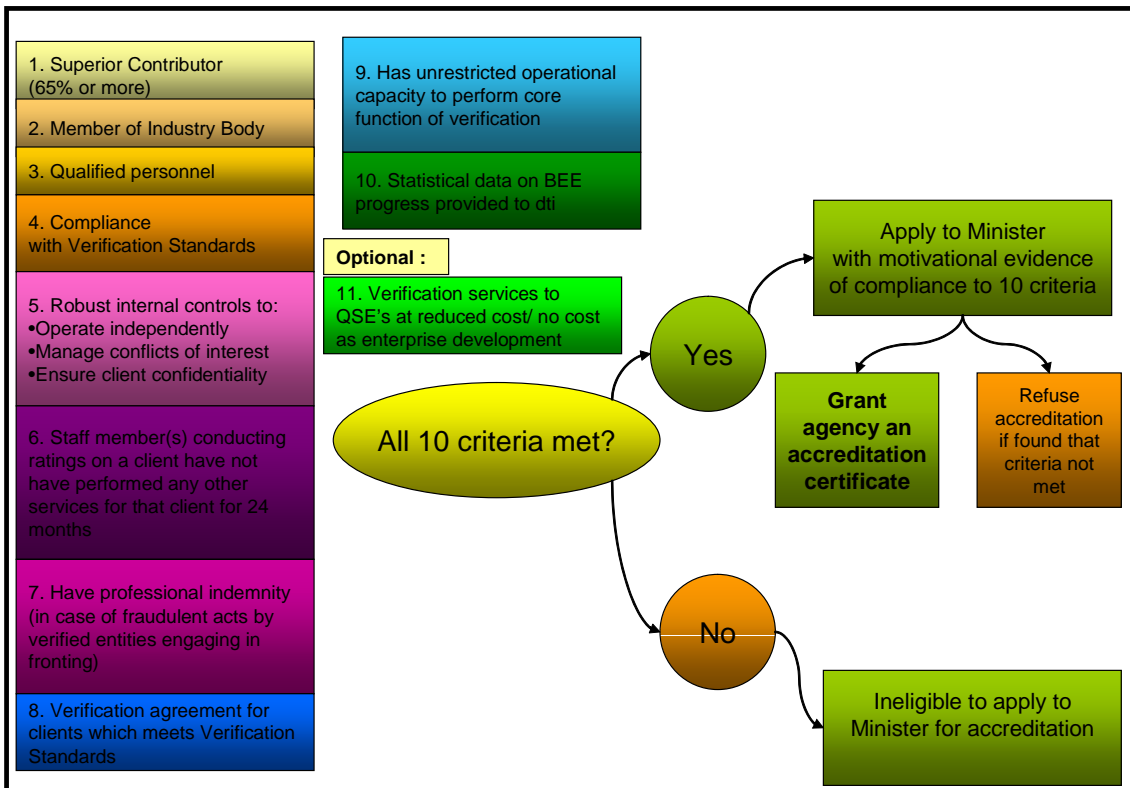
Verification Standards

The Minister of Trade and Industry must ensure that verification standards be developed by the accreditation body, in consultation with the industry body. In effect, these standards will, *inter alia*, be employed to determine the accreditation status of a verification agency, and to enhance the quality and standards of the verification agency as a whole.

Responsibilities of the Industry Body for BEE Verification



Criteria and Process for the Accreditation of Verification Agencies



Industry Body for BEE Verification Agencies

Statement 020 encourages the development of an industry body for the BEE verification industry. The industry body must have representation by the following parties for recognition by the Minister of Trade and Industry:

1. Verification agencies
2. Minister of Trade and Industry (i.e.: **the dti** representation)
3. The industry accreditation body

In addition, the industry body must promote minimum verification standards as developed by the accreditation body and must function as a quality control vehicle. The diagram below illustrates the responsibilities that the industry body must include in its mandate:

