
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY NOTICE 343 OF 2018

DRAFT SCHEDULE 1 OF 2018 FOR 60 DAY PUBLIC COMMENTARY

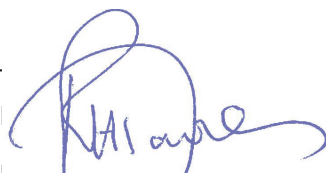
DEPARTMENT OF TRADE AND INDUSTRY CODES OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC EMPOWERMENT

I, **Dr Rob Davies**, Minister of Trade and Industry hereby:

- (a) Publish the following Amended **Draft Schedule 1 of 2018** for public commentary in terms of **section 9 (5)** of the Broad-Based Black Economic Empowerment Amendment Act 2003, (Act No. 53 of 2003) as amended by the B-BBEE Act 46 of 2013;
- (b) Invite interested persons to submit inputs and comments on the **Draft Schedule 1 of 2018** within 60 days from the date of this publication.

Interested parties are requested to forward their comments in writing for the attention of The B-BBEE Policy Unit to the following address (es):

E-mail: JManus@thedti.gov.za
Or
The dti Campus
77 Meintjies Street
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0002
Enquiries: 012 394 5469



Dr Rob Davies, MP
Minister of Trade and Industry
29 May 2018

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

_____ Words underlined with a solid line indicate insertions into existing enactments

BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT

SECTION 9 (5) CODES OF GOOD PRACTICE AS AMENDED

SCHEDULE 1

INTERPRETATION AND DEFINITIONS

Part 1: Interpretation

The Codes of Good Practice must be interpreted according to the following provisions unless the context requires a different meaning:

1. In interpreting the provisions of the Codes any reasonable interpretation consistent with the objectives of the Act and the B-BBEE Strategy must take precedence.
2. Words importing persons shall where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisation having legal capacity.
3. The Schedules and Annexes to the Codes are an integral part of the Codes and a reference to the Codes includes a reference to the Schedules.

Part 2: Definitions

In these Codes unless the context otherwise requires:

<p>“Absorption”</p>	<p>means a measure of the Measured Entity’s ability to successfully secure [formal permanent or] long-term contract of employment for the Learner [or to assist the Learner’s proceed with further education and training;]</p>
<p>“Acquisition Debt”</p>	<p>means the debts of:</p> <p>(a) Black participants incurred in financing their purchase of their equity instruments in the Measured Entity; and</p> <p>(b) Juristic persons or trusts found in the chain of ownership between the eventual Black Participants and the Measured Entity for the same purpose as those in (a);</p>
<p>“Apprenticeship”</p>	<p>means an agreement between an apprentice and an employer for a set period of time during which the apprentice works and receives training in the workplace;</p>
<p>“Associated Entity”</p>	<p>means an Entity with which a Seller has concluded a Qualifying Transaction;</p>
<p>“B-BBEE”</p> <p>Empowerment;</p>	<p>means Broad-Based Black Economic</p>
<p>“B-BBEE Controlled Company”</p>	<p>means a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to Exercisable</p>

	Voting Rights that is at least 51% of the total such rights measured using the Flow Through Principle;
“B-BBEE Owned Company”	means a juristic person, having shareholding or similar members interest, that is B-BBEE controlled, in which Black participants enjoy a right to Economic Interest that is at least 51% of the total such rights measured using the Flow Through Principle;
“B-BBEE Recognition Level”	means the percentage B-BBEE Recognition Levels as determined: <p>(a) for Entities that are neither Qualifying Small Enterprises nor Exempted Micro-Enterprises, using statement 000;</p> <p>(b) for Qualifying Small Enterprises, using statement 000; and</p> <p>(c) for Exempted Micro-Enterprises, the applicable deemed B-BBEE Recognition under statement 000;</p>
“B-BBEE Status”	means the B-BBEE status of a Measured Entity as determined under statement 000;
“B-BBEE Verification Professional Regulator”	means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals;
“Benefit Factor”	means a factor specified in the Benefit Factor Matrix applicable to fixing the monetary value of Enterprise Development

	and Supplier Development and Socio Economic Development Contributions claimable under statement 400 and 500;
“Benefit Factor Matrix”	means the Benefit Factor Matrix for Enterprise Development and Supplier Development and Socio Economic Development Contributions annexed to statement 400 and 500;
“Black Designated Groups”	means: <ul style="list-style-type: none"> (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;

“Black New Entrants”	means Black participants who hold rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, have not held equity instruments in [other]any Entity [ies] which has a total value of more than R50,000,000 [,].00 measured using a standard valuation method;
“Black People”	<p>Is a generic term which means Africans, Coloureds and Indians</p> <p>(a) who are citizens of the Republic of South Africa by birth or decent; or</p> <p>(b) who became citizens of the Republic of S[s]outh Africa by naturalisation –</p> <p style="padding-left: 40px;">(i) before 27 April 1994;</p> <p style="padding-left: 40px;">(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.</p>
“Broad-Based Ownership Scheme”	means a ownership scheme which meets the rules set out in Annexe 100B;
“Certified Learning Programme”	<p>means any Learning Programme for which the Measured Entity has:</p> <p>(a) any form of independent written certificate as referred to in the “Learning Achievements” column of the Learning Programme Matrix; or if it does not have</p>

	<p>such certification:</p> <p>(b) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in statement 300 confirming the employee has:</p> <p>(i) enrolled for, is attending and is making satisfactory progress in the Learning Programme; or</p> <p>(ii) enrolled for but not attended the Learning; or</p> <p>(iii) attended the Training Programme but has failed an evaluation of their learning progress</p>
“Companies Act”	means the Companies Act, No. 71 of 2008 as amended or substituted;
“Company Limited by guarantee”	means a company <u>limited by guarantee</u> as referred in the Companies Act, No. 71 of 2008;
“Competent Person”	means a person who has acquired through training, qualification and experience the knowledge and skills necessary for undertaking any task assigned to them under the codes;
“Core Skills”	<p>means skills that are:</p> <p>(a) value-adding to the activities of the Measured Entity in line with its core business;</p>

	<p>(b) in areas the Measured Entity cannot outsource; or</p> <p>(c) within the production/operational part of the Measured Entity's value-chain; as opposed to the supply side; services or downstream operations;</p>
<p>“Critical Skills”</p> <p>by <u>[any]</u>the relevant SETA;</p>	<p>means those skills identified as being critical</p>
<p>“Designated Group Supplier”</p>	<p>means a supplier to the Measured Entity that is at least 51% owned by one or more of the following categories of ownership within its structure:</p> <p>(a) <u>unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;</u></p> <p>(b) <u>Black people who are youth as defined in the National Youth Commission Act of 1996;</u></p> <p>(c) <u>Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act;</u></p> <p>(d) <u>Black people living in rural and under developed areas;</u></p>

	<u>(e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;</u>
EAP	Economically Active Population as determined and published by Stats SA. The operative EAP for the purposes of any calculation under the Codes will be the most recently published EAP;
Economic Interest	means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through and, where applicable, the Modified <u>Flow Through Principles</u> ;
“EE Act “	means the Employment Equity Act of 1998, as amended;
“EE Regulations”	means the regulations under the Employment Equity Act
“Elements”	means the measurable quantitative or qualitative elements of B-BBEE compliance in the Generic Scorecard and the Codes;
“Employed Learner”	In terms of section 18 (1) of the Skills Development Act it means a learner that was in the employment of the employer party to the learnership agreement concerned when the agreement was concluded. The learner's contract of employment is therefore not affected by the agreement.
“Employee with a Disability”	has the meaning defined in the Code of Good Practice on Key Aspects of Disability

	in the Workplace issued under section 54 of the Employment Equity Act; aligned with the Employment Equity Act
“Employee”	bears the meaning as defined in the Labour Relations Act 66 of 1995 as amended;
“Employee Ownership Scheme”	means a worker or employee scheme;
“Empowering Supplier”	<p>An Empowering Supplier within a context of B-BBEE is a B-BBEE compliant entity, which is a good citizen South African entity, comply with all regulatory requirements of the country and should meet at least three if it is a large enterprise or one if it is a QSE of the following criteria:</p> <p>(a) At least 25% of cost of sales excluding labour cost and depreciation must be procured from local producers or local supplier in SA, for service industry labour cost are included but capped to 15%.</p> <p>(b) Job creation – 50% of jobs created are for Black people provided that the number of Black employees since the immediate prior verified B-BBEE Measurement is maintained.</p> <p>(c) At least 25% transformation of raw material/beneficiation which include local manufacturing, production and/or assembly, and/or packaging.</p> <p>(d) Skills transfer - at least spend 12 days per annum of productivity deployed in assisting Black EMEs and QSEs beneficiaries to increase their operation or financial capacity.</p>

<p>“Enterprise Development Contributions”</p>	<p>means monetary or non-monetary contributions carried out for the following beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries:</p> <p>(a) Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are at least 51% Black owned or at least 51% Black women owned;</p>
<p>“Entity”</p>	<p>means a legal entity or a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa;</p>
<p>“Entrepreneur”</p>	<p>means a person who starts and / or operates a business which includes identifying opportunities in the market, taking risks with a view of being rewarded with profits;</p>
<p>“Equity Equivalent contribution”</p>	<p>means an equity equivalent contribution made by a Multinational under an Equity Equivalent Investment Programme;</p>
<p>“Equity Equivalent Investment Programme”</p>	<p>means a public programme or scheme of any government department, provincial or local government in the Republic of South Africa or any other programme approved by the Minister as an Equity Equivalent Investment Programme;</p>
<p>“Equity Instrument”</p>	<p>means the instrument by which a Participant holds rights of ownership in an Entity;</p>
<p>“Equivalency Percentage”</p>	<p>means a percentage ownership performance</p>

	for all the indicators in the Associated Enterprise's Ownership Scorecard arising from a Qualifying Transaction included in the Ownership Scorecard of the beneficiary entity;
"Executive Members of the Board"	means those members of the Board who are executive directors as defined in the King Report;
"Exempted Micro Enterprise"	means an Entity with an annual turnover of R 10 (ten) million or less;
"Exercisable Voting Right"	means a voting right of a Participant that is not subject to any limit;
"Global Practice"	means a globally and uniformly applied practice of a Multinational, restricting alienation of equity in or the sale of businesses in its regional operations. The practice must have existed before the promulgation of the Act;
"Grant Contribution"	means the monetary value of Qualifying Contributions made by the Measured Entity to a beneficiary in the form of grants, donations, discounts and other similar quantifiable benefits which are not recoverable by the Measured Entity;
"Group Structure"	means an ownership arrangement whereby one or more Measured Entities that are juristic persons are subsidiaries of another Measured Entity that would qualify as a holding company;
"Higher Education Institution"	means a higher education institution as defined under the Higher Education Act of 1997;
"Indicator Percentage"	means the percentage compliance of the

	Associated Entity for all the indicators of the Associated Enterprises ownership Scorecard. The calculation of indicator Percentages follows the rules in statement 100 using the actual percentage compliance for each indicator and not the resulting scores;
“Industry Specific Initiatives”	means the qualifying contributions that are unique to the industry in which enterprises operate. For the purposes of the Codes an industry may be grouped in major divisions in accordance with the Standard Industrial Classification Coding System used by Statistic South Africa;
“Internship”	means an opportunity to integrate career related experience into an undergraduate education by participating in planned, supervised work;
“Junior Management”	means an employee of the Measured Entity who is a member of the occupational category of “Junior Management” as determined using the Employment Equity regulations;
“Learnership”	means a work-based route to a qualification. It is a workplace education and training programme comprising both structured practical workplace (on-the-job) experience and structured theoretical training.
“Learning Programmes”	means any learning programme set out in the Learning Programme Matrix;
“Learning Programme Matrix”	means the Learning Programme Matrix

	annexed as Annexe "300A" in statement 300;
"Leviable Amount"	bears the meaning as defined in the Skills Development Levies Act of 1999 as determined using the Fourth Schedule to the Income Tax Act;
"long-term contract of employment"	<u>A legal agreement between an individual and an entity that this individual would work for until his or her mandatory date of retirement</u>
"Management Fees"	means the total Economic Interest received by a Broad-Based Ownership Scheme or Black participants in any year less the amounts distributed or applied to beneficiaries and the amounts reserved for future distribution or application;
"Mandated Investments"	means any investments 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 a third party, which mandate is governed by that legislation. Some examples of domestic mandated investments and the portions of those investments subject to the exclusion principle are contained in Annexe 100A attached to statement 100;
"Measured Entity"	means an Entity as well as an organ of state or public entity subject to measurement under the Codes;
"51% Black Owned "	means an Entity in which: (a) Black people hold at least 51% of the exercisable voting rights as determined under Code series 100;

	<p>(b) black people hold at least 51% of the economic interest as determined under Code series 100; and</p> <p>(c) has earned all the points for Net Value under statement 100;</p>
“51% Black Women Owned ”	<p>means an Entity in which:</p> <p>(a) Black women hold at least 51% of the exercisable voting rights as determined under Code series 100;</p> <p>(b) Black women hold at least 51% of the economic interest as determined under Code series 100; and</p> <p>(c) has earned all the points for Net Value under statement 100;</p>
“30% Black Women Owned”	<p>means an Entity in which:</p> <p>(a) Black women hold <u>at least</u> [more than] 30% of the exercisable voting rights as determined under Code series 100;</p> <p>(b) Black women hold <u>at least</u> [more than] 30% of the economic interest as determined under Code series 100; and</p> <p>(c) has earned all the points for Net Value under statement 100;</p>
“Middle Management”	<p>means an employee of the Measured Entity who is a member of the occupational</p>

	category of "Middle Management" as determined using the Employment Equity regulations;
"Multinational Business"	means a Measured Entity with a business in the Republic of South Africa and elsewhere which maintains its international headquarters outside the Republic;
"National Skills Development Strategy"	means the national skills development strategy referred to in section 5(1)(a)(ii) of the Skills Development Act;
"Net Profit After Tax"	means the operating profit of a measured entity after tax. It incorporates both the equity / loss figures and abnormal items, but excludes extra ordinary items as determined by (GAAP) Generally Accepted Accounting Practices;
"Net Profit Before Tax"	means the operating profit of a measured entity before tax. It incorporates both the equity / loss figures and abnormal items, but excludes extra ordinary items as determined by (GAAP) Generally Accepted Accounting Practices;
"Net Value"	means the percentage resulting from the formula in Annexe 100(C) of statement 100;
["Net-Value date"] <u>Current Equity Interest Date</u>	means the later occurring of the date of commencement of statement 100 and the date upon which the [earliest of all still operative] transaction[s] undertaken by the Measured Entity in order to achieve black rights of ownership, became effective and unconditional;

“New Enterprise”	means an early stage business which is similar to a start-up. However, an early stage business is typically 3 years old or less.
“Non-Profit Organisation”	means a non-profit organisation registered under the Non-Profit Organisation Act of 1997;
“Outsourced Labour Expenditure”	<p>means any expenditure incurred in:</p> <p>(a) procuring the services of or from a labour broker; and</p> <p>(b) procuring the services of any person who receives any remuneration or to whom any remuneration accrues because of any services rendered by such person to or on behalf of a labour broker;</p>
“Participant”	means a natural person holding rights of ownership in a Measured Entity;
“PIVOTAL report”	means a report on ‘Professional, Vocational, Technical and Academic Learning’ programmes that meet the critical needs for economic growth and social development, generally combining course work at universities, universities of technology and colleges with structured learning at work.
“Priority Skills”	<p>means Core, Critical and Scarce Skills as well as any skills specifically identified:</p> <p>(a) in a Sector Skills Plan issued by the Department of Labour of the Republic of South Africa;</p>

	<p>(b) National Skills Development Strategy III;</p> <p>(c) New Growth Path; and</p> <p>(d) National Development Plan Remove.</p>
“Private Equity Fund”	means 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;
“Public Benefit Organisation”	means an entity as defined in section 30 of the income Tax Act of 1962;
“Qualifying Enterprise and Supplier Development Contributions”	means a collective term describing Enterprise Development and Supplier Development Contributions targeting EME's and QSE's which are at least 51% black owned or at least 30% <u>51%</u> black women owned, black youth in rural, and underdeveloped areas in statement 400;
“Qualifying Small Enterprise”	means an Entity that qualifies for measurement under the Qualifying Small Enterprise scorecard with a turnover of R10 million or more but less than R50 million;
“Qualifying Socio-Economic Contributions”	Is a collective term for Socio-Economic Project Contributions and Socio-Economic Contributions;
“Qualifying Transaction”	means a sale of a business, valuable business assets or shares that results in the creation of sustainable business opportunities and transfer of specialised

	skills or productive capacity to Black people;
“Related Enterprise”	means an Entity controlled by a Measured Entity whether directly or indirectly controlled by the natural persons who have direct or indirect control over that Measured Entity or the immediate family of those natural persons;
“Rights of Ownership”	Is a collective term for the right to Economic Interest and the right to Exercisable Voting Rights;
“Scarce Skills”	are those skills identified as being scarce by any SETA;
“Section 21 Company”	means an association not for gain incorporated under section 21 of the Companies Act;
“Sector Code”	means a code in series 003 which is applicable to a particular sector;
“Seller”	means the Entity or the person concluding a Qualifying Transaction with the Associated Enterprise;
“Senior Management”	means an employee of the Measured Entity who is a member of the occupational category of “Senior Management” as determined using the Employment Equity regulations;
“Skills Development Expenditure”	comprises the money that a Measured Entity spends on skills development. It excludes the skills development levy payable by the Measured Entity under the Skills Development Levies Act;
“Socio-Economic Development Contributions”	means monetary or non-monetary contribution implemented for communities,

natural persons or groups of natural persons where at least 75% of the beneficiaries are Black people. The objective of Socio-Economic Development Contributions is the promotion of sustainable access for the beneficiaries to the economy. Socio-Economic Development Contributions commonly take the following forms:

- (a) development programmes for women, youth, people with disabilities, people living in rural areas;
- (b) support of healthcare and HIV/AIDS programmes;
- (c) support for education programmes, resources and materials at primary, secondary and tertiary education level, as well as bursaries and scholarships;
- (d) community training; skills development for unemployed people and adult basic education and training; or
- (e) support of arts, cultural or sporting development programmes;

“Socio-Economic Project Contributions”

means monetary or non-monetary contributions carried out for the benefit of any projects approved for this purpose by any organ of state or sectors including

	<p>without limitation:</p> <p>(a) projects focusing on environmental conservation, awareness, education and waste management; and</p> <p>(b) projects targeting infrastructural development or reconstruction in underdeveloped areas; rural communities or geographic areas identified in the government's integrated sustainable rural development or urban renewal programmes;</p> <p>(c) New projects promoting beneficiation;</p>
“Standard Valuation”	means a standard valuation method for an asset, an Economic Interest, or any other instrument or right relevant to measurement under statement 100, undertaken using normal valuation methods that represent standard market practice;
“Start-up Enterprise”	means a recently formed or incorporated Entity that has been in operation for less than 1 year. A start-up enterprise does not include any newly constituted enterprise which merely a continuation of a pre-existing enterprise;
“Subsidiary”	has the meaning defined in section 1(3) of the Companies Act;
“Superior Contributor to B-BBEE”	is a Level One to Level Three Contributor to B-BBEE;
“Supplier”	means any supplier or service provider to a Measured Entity if any portion of the supply

	or service provision falls within the definition of Total Measured Procurement Spend;
“Supplier Development Contributions”	<p>means monetary or non-monetary contributions carried out for the benefit of value-adding suppliers to the Measured Entity, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries:</p> <p>(a) Supplier Development Contributions to suppliers that are Exempted Micro-Enterprises or Qualifying Small Enterprises which are at least 51% black owned or at least 51% black women owned;</p>
“Target”	means the targets for the various Elements in the Generic and QSE Scorecard;
“the Act”	means the Broad-Based Black Economic Empowerment Act 53 of 2003;
“the Codes”	means the Codes of Good Practice including all the statements as issued under section 9 of the Act;
“the Generic Scorecard”	means the balanced B-BBEE scorecard as contained in statement 000;
“the PFMA”	means the Public Finance Management Act 1 of 1999 as amended;
“the QSE Scorecard”	means the QSE scorecard referred to in statement 000;
“the Skills Development Act”	means the Skills Development Act of 1998;
“the Skills Development Levies Act”	means the Skills Development Levies Act of 1999;

“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 as amended or substituted under section 11 of the Act;
“Third Party Rights”	<p>means third party legal or commercial rights that restrict withhold or defer any benefit associated with ownership of any Equity Instrument. Third party rights include only those rights:</p> <p>(a) created against a black Participant to secure, for a lender, repayment of a loan advanced to that Participant for financing their purchase of their equity instrument in the Measured Entity;</p> <p>(b) held against a juristic person or trust that is in the chain of ownership between the Measured Entity and that the eventual black Participant serving the same purpose mentioned in (a) above;</p>
“Total Labour Cost”	means the total amount of remuneration paid by an Entity to its employees determined using section 3(4) of the Skills Development Levies Act of 1999 and the Forth Schedule of the Income Tax Act of 1962;
“Total Revenue”	means the total income of an Entity from its operations as determined under South African Generally Accepted Accounting

	Practice;
“Transformation Charters”	means the sectoral transformation charters referred to in section 12 of the Act;
“Unemployed Learner”	means a learner that was not in the employment of the employer party to the learnership agreement concerned when the agreement was concluded. The employer and learner must therefore enter into a contract of employment. Refer to the Skills Development Act.
“Unincorporated Joint Venture”	means a joint venture between two or more Measured Entities effected by agreement without incorporation;
“Voting Right”	means a voting right attaching to an Equity Instrument owned by or held for a participant measured using the Flow through Principle or the Control Principle;
“Weighting”	means the weightings applied to various Elements in the Generic Scorecard and QSE Scorecard;
“Workplace Skills Plan”	means the plan of a Measured Entity approved by the relevant SETA.