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**GENERAL NOTICE**

**Trade and Industry, Department of**

*General Notice*

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## GENERAL NOTICE

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### NOTICE 1162 OF 2009

Issued in terms of Section 9 (1) of the BBBEE Act 53, 2003

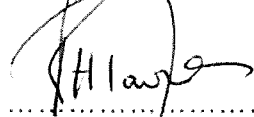
(DEPARTMENT OF TRADE AND INDUSTRY)

### CODES OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC EMPOWERMENT

Whereas, the Minister of Trade and Industry:

- (a) Has issued a **DRAFT TRANSPORT SECTOR CODE (THE DRAFT CODE)** provided for in Code 000 Statement 003 of the Codes of Good Practice under **Section 9 (5)** of the Broad-Based Black Economic Empowerment (Act No. 53 of 2003) on the **24<sup>th</sup> December 2008**
- (b) In terms of which the public and interested persons were invited to comment on the Draft Sector Charter within a period of **60 days** from the date on which the Draft Sector having been published,
- (c) The public having commented, I, **Dr Rob Davies**, now publish the **TRANSPORT SUB-SECTOR CODES** as a **SECTOR CODES** on black economic empowerment in terms of **Section 9 (1)** of the BBBEE Act, 53 of 2003.

This notice is effective from the date of publishing and means that the **TRANSPORT SUB-SECTOR CODES** are binding on all stakeholders operating in the **TRANSPORT** Sector within which the Sub-Sector Codes apply.



.....  
**DR ROB DAVIES**

MINISTER OF TRADE AND INDUSTRY

DATE: 28/7/09

# **INTEGRATED TRANSPORT SECTOR CODES**

**GAZETTED IN TERMS OF SECTION 9 (1) OF THE  
BBBEE ACT 53 OF 2003**

**JULY 2009**

## PREAMBLE

The parties to this Charter, organized as Government, Organised Labour, Industry and Interest groups, commit themselves to actively promote a transformed, vibrant, and globally competitive transport sector that reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible transport services to all South Africans, particularly Black people, and their participation in the transport industry.

The parties to this Sector Codes attest that this Integrated Transport Sector Codes provides guidelines for transformation in the transport sector and represents a partnership of programmes as outlined in the Government's Strategy for Broad-based Black Economic Empowerment and is aligned with the Department of Trade and Industry's Code of Good Practice.

The parties to this Sector Codes concur that the Sector Codes constitutes a framework that establishes the principles upon which Broad-Based Black Economic Empowerment will be implemented in the transport sector and in terms of which each principle shall be underpinned by targets, responsibilities, implementation mechanism and monitoring tools for the transformation of the sector.

The parties to this Sector Codes confirm that all the processes of targets, responsibilities, reviews, implementation and monitoring, shall be carried out primarily by the Transport Sector Black Economic Empowerment Council that shall be established specifically for this purpose.

The parties to this Sector Codes, commit to use Black Economic Empowerment as a tool to unlock efficiencies throughout the transport sector, maximizing all the sub sectors to promote an integrated, intermodal and multifaceted transport logistics system that supports both public and freight for the benefit of our economy.

Lastly the parties to this Sector Codes agree on embarking on a deliberate strategy to increase access to skills, capital and economic opportunities and, therefore raise the economic value added (or productivity) of every employee and enterprise in the transportation industry, while creating opportunities for the unemployed and working poor to enter the formal economy.

## DEFINITIONS

For purposes of clarification and for avoidance of ambiguity, the following terms apply to the all the gazetted Broad Based Economic Empowerment (B-BBEE) Sub-Sector Codes:

TERM	DEFINITION
<b>Acceptable Valuation Standard</b>	Means a valuation of an asset, an Economic Interest, an Enterprise or another instrument or right relevant to measurement under the ownership indicator undertaken in accordance with normal valuation methodologies which represent standard market practice in the context of the nature as well as the stage of development of the asset, Equity Interest or Enterprise being valued.
<b>Aged Persons Act</b>	Means the Aged Persons Act 81 of 1967, as amended.
<b>Airline Service Providers</b>	Are those service providers that give services to airlines companies e.g catering services, travel news magazines etc
<b>Allowable Exclusions From Total Procurement</b>	Refers to procurement by a measured entity as defined in Code 500 of the Generic Codes of Good Practice gazetted on February 2007 and subsequent amendments.
<b>Associated Enterprise</b>	Means any black Enterprise other than the Measured Enterprise with which the Measured Enterprise has concluded a Qualifying Transaction.
<b>Black aged people</b>	Black people who are also aged people as defined in the Aged Persons Act 81 of 1967, as amended or substituted.
<b>Black designated groups</b>	(a) means 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 Practise on employment of people with disabilities issued under the Employment Equity Act. (d) Black people living in rural and under-developed areas.
<b>Black Enterprise</b>	Is one that is 50,1% owned by black persons and where there is substantial management control.
<b>Black Empowered Enterprise</b>	Is one that is at least 25.1% owned by black persons and where there is substantial management control.
<b>Black New Entrants</b>	Means a black Partnership(s) (which includes without limitation, black Participants in Broad-Based Ownership Schemes) holding in aggregate in excess of 5% of the total Voting Rights and Economic Interest in a Measured Enterprise who has not, prior to their acquisition of their Equity Interest in the Measured Enterprise, concluded similar transactions in respect of any other Enterprise, which in aggregate have a cumulative value of

TERM	DEFINITION
	R20,000,000.00 measured in accordance with an Acceptable Valuation.
<b>Black People</b>	has the meaning defined in the Act qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent; or are citizens of the republic of South Africa by naturalisation: (a) occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993; or (b) occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalisation before then.
<b>Black unemployed people</b>	Black people who are unemployed, are not attending or are not required by law to attend an educational institution and who are not awaiting admission to an educational institution
<b>Black Women-Owned Enterprise</b>	is one with a minimum of 50,1% representation of black women in the ownership structure, which includes related economic interest and exercisable voting rights.
<b>Black workers</b>	Black Persons employed in market production activities are those (aged 15-64 years) who during the reference week, even if it was for only one hour, did any of the following:  a) Worked for a wage, salary, commission or payment in kind (including paid domestic work).  b) Ran any kind of business, big or small, on their own or with one or more partners.  c) Helped without being paid in a business run by another household member.  d) Were temporarily absent from their jobs or businesses to which they would definitely return.
<b>Black youth</b>	Black persons who are also youth as defined in the National Youth Commission Act 19 of 1996, as amended or substituted.
<b>Broad Based Black Economic Empowerment (B-BBEE)</b>	Government defines B-BBEE as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country's economy, as

TERM	DEFINITION
	well as significant decreases in income inequalities. Thus the B-BBEE process will include elements of human resource development, employment equity, enterprise development, preferential procurement, as well as investment, ownership and control of enterprises and economic assets.
<b>Community or broad based enterprise</b>	has an empowerment shareholder who represents a broad base of members such as a local community or where the benefits support a target group, for example black women, people living with disabilities, the youth and workers.
<b>Control</b>	of a business entity can be achieved in a number of ways a) a majority shareholding position i.e. 50% + 1 share, b) an effective controlling shareholding; c) a majority of a board of directors; and/or d) a shareholders agreement.
<b>Co-operative or Collective Enterprise</b>	An autonomous association of persons who voluntarily join together to meet their economic, social and cultural needs and aspirations through the formation of a jointly – owned enterprise and democratically controlled enterprise.
<b>Development</b>	Includes but not limited to Joint Ventures, sub-contracting, and supplier development initiatives. It also includes but not limited to the facilitation provided by established company to its B-BBEE partners e.g. discounts, access to cash flow, guarantees or put options deferred payments, and other vendor financing models.
<b>Direct Empowerment</b>	The process of BEE should/may result in an increase in the ownership and control of the economy by black persons. This means that a significant portion of a black persons ownership of assets and enterprises must be a controlling interest, reflecting genuine participation in decision making at board executive management and operational levels, and the assumption of real risk. In this Charter, direct empowerment focuses on ownership of enterprises and assets through shares and other instruments that provide the holder thereof with voting rights and economic benefits such as dividends or interest payments.
<b>Disabled employees</b>	For the purpose of this Charter, the definition of employees with disabilities as contained in the Employment Equity Act is used. It means employees who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into or advancement in employment. The total number of employees with disabilities (irrespective of race or gender) is expressed as a percentage of the total number of employees (irrespective of race or gender) in all levels of the organisation.
<b>Enterprise Development ventures</b>	Includes business ventures such as sub-contracting, joint ventures, driver owner schemes, twinning, etc, which involves the development or setting up of business



TERM	DEFINITION
	ventures which involves black operators, suppliers and especially or black SMME's (small, medium and micro enterprises).
<b>Exclusions from Total Measured Procurement</b>	Generally has the same meaning as that contained in the Codes of Goods Practice gazetted on the 9 February 2007 and as amended however the list of inclusions/exclusions as per Annexure A of this Charter takes precedence.
<b>Executive Management</b>	Means the most senior position in the organisation as well as the overall heads of major divisions or functions (e.g. finance, engineering, operations, human resources etc.) responsible for planning, policymaking and directing of such functions.
<b>Exempted Micro Enterprises</b>	These are enterprises with a turnover of R5 million or less for the purposes of this charter. They have an automatic recognition level of Level 4 in the B-BBEE Recognition Levels in the B-BBEE Codes of Good Practice. This affords companies procuring from these entities 100% B-BBEE recognition of spend.
<b>Fronting</b>	The deliberate misrepresentation of information in order to gain an advantage over another individual or entity. In addition, it includes the use of questionable ownership structures in order to unjustifiably gain points to get preference points in any business/ tender adjudication process.
<b>Growth</b>	Relates to the National Economic Growth, Industry Growth as well as Enterprise Development growth
<b>Indicator</b>	The indicator represent the key measurement yardstick included to determine the BEE contribution made by taxi enterprises within each broad-based BEE factor of Ownership, Strategic Representation (Management), Employment Equity, Skills Development, Preferential Procurement, Enterprise Development, Social Development and Industry Specific.
<b>Indirect Empowerment</b>	<p>a core component of this BEE Strategy is the creation and nurturing of new enterprises established or owned by black people. Preferential procurement by the State, Parastatals and the private sector is an effective and efficient instrument to drive BEE. A second element of indirect empowerment is enterprise development. This can take two forms:</p> <ul style="list-style-type: none"> <li>• Investment in black owned and black empowered enterprises.</li> <li>• Joint Ventures with black owned and black empowered enterprises that result in substantive skills transfers.</li> </ul>

<b>TERM</b>	<b>DEFINITION</b>
<b>Indirect ownership</b>	Occurs where a company or any other institution owns equity in a company on behalf of beneficiaries and there is no direct participation by the beneficiaries in the voting rights.
<b>Job Creation</b>	Refers to the creation of opportunities for sustainable permanent employment.
<b>Job Creation Target</b>	This is not a payroll tax but refers to a stakeholder commitment to create opportunities for unemployed learners for which there is a tax rebate from government. These employees must account for 5% of the workforce.
<b>Learners</b>	Refers to the people participating in learnerships or other learning interventions.
<b>Leviable Amount</b>	Bears the meaning as defined in the Skills Development Levies Act of 1999 as determined using the Fourth Schedule to the Income Tax Act.
<b>Locally-owned Enterprise</b>	A commercial undertaking or business where 50% or more of shareholding is held within the borders of the Republic of South Africa.
<b>Management</b>	Refers to the effective control of economic activities and resources. This involves the power to determine policies as well as the direction of economic activities and resources. Management control measures black representation at board of directors' level and executive management level.
<b>Managerial or Supervisory Employees</b>	Means employees who are working in supervisory or managerial positions i.e. those who have other employees reporting to them and who are responsible to oversee and supervise subordinates and/or processes.
<b>Midibus</b>	Minibus means a motor vehicle designed, or lawfully adapted by a registered manufacturer in compliance with Road Traffic Act, 1989 (Act No. 29 of 1989), to carry from nine to 18 seated persons, excluding the driver.
<b>Net Asset Value</b>	Within the context of this Sub-Sector Code this term refers to Total Asset less Liabilities.
<b>Net Value</b>	This is the portion of equity in the hands of black shareholders that is fully paid up. Essentially it is the value of the shareholding, less the outstanding amounts owed by that shareholder to third party funders or the principle entity in which the stake was acquired.
<b>Net Economic Interest</b>	Is the percentage of the shareholding by black shareholders that is unencumbered by any financial obligations to third parties or to the principle company in which the stake is held.
<b>Non-Discretionary spend</b>	Non-discretionary spending is spending that is required and by law.

TERM	DEFINITION
<b>Ownership</b>	refers to equity participation and the ability to exercise rights and obligations that accrue under such ownership. These rights and obligations include the right the economic interest flowing from the shareholding and the right to exercisable voting rights in proportion to that shareholding. It also refers to the net economic interest, in other words paid up capital. The parties to this Charter agree that the measurement of the extent of the achievement of this target of the aggregate value of the equity will be based on the asset values per the audited accounts of the entities concerned and that the net economic interest will be calculated according to the market value of the shareholding less the outstanding amounts owing to third parties or the principle company by the black shareholders.
<b>People Living With Disabilities</b>	Disabled employees. For the purpose of this Charter, the definition of employees with disabilities as contained in the Employment Equity Act is used. It means employees who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into or advancement in employment. The total number of employees with disabilities (irrespective of race or gender) is expressed as a percentage of the total number of employees (irrespective of race or gender) in all levels of the organisation. Types of disabilities include: Spinal injuries-quadriplegic, paraplegic; Physical disabilities and deformities-post polio, amputations, arthritis, cerebral palsy; Epilepsy; Traumatic brain injuries & neurological disorders, strokes; Visual impairments - blind, degrees of blindness, retinitis pigment, albinism; Hearing impairments- deaf, degrees of deafness; Psychiatric conditions- depression, bi-polar, personality disorders, mood disorders; Learning disabilities - dyslexia, downs syndrome; and Communication/speech problems
<b>Preferential Procurement</b>	Is a measure designed to widen market access for entities, in order to integrate them into mainstream of the economy. Preferential Procurement will create economic empowerment benefits indirectly but meaningfully as it multiplies the effects of private and public sector intervention to promote broad-based BEE.
<b>Scorecard</b>	means the standard B-BBEE scorecard used by the transport sector.
<b>Skills Development</b>	Refers to all expenditure on Black skills development; education and training (including the Skills Development

TERM	DEFINITION
	Levy). The actual expenditure on Black skills development, education and training that has been conducted during the last completed financial year to be used as a basis for the calculation. The total expenditure on Black skills development, education and training is expressed as a percentage of the total payroll costs. Total payroll costs include all remuneration related expenditure such as basic wages/salaries, overtime, and employment related company contributions.
<b>Socio-economic Development</b>	Specifically aimed at targeted socio-economic development projects or initiatives. Organisations are encouraged to support, develop and invest in targeted community projects – this includes e.g. poverty alleviation initiatives, HIV/ Aids programmes, study bursaries, programmes or projects for the disabled, occupational health programmes, youth camps, crime prevention programmes, alcohol and drug awareness, and internships.
<b>Stakeholders</b>	Refers to a range of interest groups who directly and indirectly participated in this process. These groups included Government, Private Industry, Parastatals, Agencies, Financial Institutions (Private and Public), Organised Labour, Civil Society Associations, B-BBEE operators, suppliers, SMME's as well as individuals.
<b>Taxi Recapitalisation</b>	The overall goal of the Taxi Recapitalisation (TRP) initiated by Government in 1999 is the replacement of the current ageing fleet that constitute the bulk of the taxi industry with new vehicles that are safe and reliable. The programme also sought to ensure the sustainability of the industry as a business, as well as ensure its formalisation and effective regulation.
<b>Total Measured Procurement Spend</b>	Generally has the same meaning as that contained in the Codes of Good Practice gazetted on 9 February 2007 and as amended however the list of exclusions as per Annexure A of this Charter takes precedence.

Definitions of terms and concepts not captured in this Charter are contained in the Codes of Good Practice gazetted on 9 February 2007.