

B-BBEE CODES OF GOOD PRACTICE GUIDE

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NEWTONS
CHARTERED ACCOUNTANTS



EMAIL ADDRESS

info@newtons-sa.co.za

TELEPHONE

051-403 4100

FAX

051-403 4190

PHYSICAL ADDRESS

27 Park Road, Willows, Bloemfontein

POSTAL ADDRESS

PO Box 20292, Willows, 9320



SERVICES

Accounting services

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B-BBEE Codes of Good Practice Guide

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Important note and disclaimer

This guide is intended as an easy reference, pocket-sized guide for businesses in South Africa on the amended Codes of Good Practice for broad-based black economic empowerment (B-BBEE).

The information contained herein is a summary of some of the key provisions contained in the Government Gazette published on the 11 October 2013 (Notice No 1019 of 2013). It is issued as a general overview of the publication, in order to highlight those aspects of the Codes that will have to be faced in future when meeting the challenge of empowerment.

Broad-based black economic empowerment, and its measurement and compliance, is a highly specialised and complex area, requiring expert knowledge of the general philosophy and policy behind the legislation, as well as the mechanics of measurement and compliance. Due to limitations in length of the guide, many aspects have not been covered. The reader is advised to consult a professional adviser for further assistance and information.

We recommend that professional advice be sought before making any decisions based on this guide's contents or when dealing with any matters relating thereto. The guide should not be treated as a substitute for advice.

All references to the masculine gender shall include the feminine (and vice versa).

While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.

- B-BBEE is a form of economic empowerment initiated by the South African government, and is aimed at empowering “black” people.
- It redresses the inequalities of the past. The Department of Trade and Industry (DTI) is the custodian of B-BBEE in terms of the B-BBEE Act.
- “Black” people in South Africa include Africans, Asians and persons of mixed race. Women of all races are also seen to be previously disadvantaged and B-BBEE encourages the empowerment of all women.
- Through its B-BBEE policy, the government aims to achieve some of the following objectives:
 - ◆ Empower more black people to own and manage enterprises. Enterprises are regarded as black-owned if at least 51% of the enterprise is owned by black people, and black people have substantial management control of the business.
 - ◆ Achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.
 - ◆ Promote access to finance for black economic empowerment.
 - ◆ Increase the extent to which black women own and manage existing and new enterprises, and facilitate their access to economic activities, infrastructure and skills training.
 - ◆ Ensure that black-owned enterprises benefit from the government’s preferential procurement policies.
- The Minister of Trade and Industry, Dr Rob Davies gazetted amended Codes of Good Practice for B-BBEE under Section 9 of the B-BBEE Act, which were published on the 11th October 2013 (Government Gazette, Notice No 1019 of 2013).
- These Codes will come into operation within twelve months from the date of the Government Gazette publication (11 October 2014), however are effective immediately for those who wish to be measured under the amended codes.
- The Codes set out guidelines for facilitating B-BBEE and scoring.

1.1 How compliance is achieved

- In terms of the amended Codes, B-BBEE compliance is achieved by a business by reference to its overall score achieved in respect of five specific B-BBEE elements and measured in accordance with a B-BBEE scorecard.
- Every entity subject to B-BBEE is required to maintain a scorecard prepared and verified by an accredited verification agency.

2.1 Turnover Thresholds

	Amended Code	Current
Large Enterprises (Generic)	Turnover greater than R50 million per year	Turnover greater than R35 million per year
Qualifying Small Enterprises (QSE)	Turnover between R10 million and R50 million per year	Turnover between R5 million and R35 million per year
Exempt Micro Enterprises (EME)	Turnover between R0 and R10 million per year	Turnover between R0 and R5 million per year

2.2 Elements of the Scorecard

- The elements of the scorecard have been reduced from seven to five, scored on five targeted elements totaling 109 points, plus 9 bonus points (currently 100 plus 7 bonus points).

Amended Code	Points	Current	Points
Ownership (Priority element)	25	Ownership	20
Management Control	19	Management Control	10
		Employment Equity	15
Skills Development (Priority element)	20	Skills Development	15
Enterprise and Supplier Development (Priority element)	40	Procurement	20
		Enterprise Development	15
Socio-Economic Development	5	Socio-Economic Development	5

Under the amended Codes:

- All companies are required to comply with all the elements of the amended Codes, except EME's and > 50% black owned QSE's.
- The Generic scorecard is adjusted in accordance with government key priorities.
- Ownership, Skills Development and Enterprise and Supplier Development are Priority Elements.

Priority Elements:

- Large Enterprises are required to comply with all three priority elements.
- QSE's are required to comply with Priority element one, namely Ownership, and either one of Priority element two (Skills Development), or Priority element three (Enterprise and Supplier Development).

2.3 Sector Charters

- Specific charters exist for certain sectors in South Africa, and will apply if a business is involved in these sectors. They are: financial services, chartered accountancy, construction, forestry, property, agriculture, marketing, information and communications technology, tourism and the transport sector.
- An entity falling under a specific sector code must be measured under that code, and may not choose the generic codes.

2.4 Enhanced recognition status of black-owned EME's and QSE's

- Refer to paragraph 4.5 (iii) and 4.6(iv) on page 6 below, for further detail on the enhanced recognition of black-owned EME's and QSE's.

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Transitional period, Adjustment of thresholds and the way forward

3.1 Transitional period

- For the first year (11 October 2013 to 11 October 2014), a measured entity may elect to use the amended Codes, or the Generic Scorecard issued in 2007, and thereafter all B-BBEE compliance measurement will be in accordance with the amended Codes.

3.2 Adjustment of Thresholds

- The Minister may, by notice in the Gazette, adjust the thresholds in paragraphs 4 to 6 of the Gazette (which relate to Exempted Micro Enterprises, Qualifying Small Enterprises and Start-Ups).
- Any such changes apply to compliance reports prepared for a measured entity after a twelve month period following the gazetting of the adjustment.

3.3 Way forward

- All businesses will need to understand how the amended Codes work, and begin planning and revising their B-BBEE strategies.
- The Chapters that follow deal with the provisions of the amended Codes in greater detail.
- The Minister may review the Codes at any stage, and regular reviews will take place to monitor the implementation of B-BBEE throughout the economy.

4.1 Application of the Codes

The following entities are measurable under the Codes (referred to as “measured entities” below):

- (i) all Organs of State and Public Entities.
- (ii) all measured entities that undertake any economic activity with all Organs of State and Public Entities.
- (iii) any other measured entity that undertakes any economic activity, whether direct or indirect, with any other measured entity that is subject to measurement under paragraphs 4.1 (i) to (ii) above, and which is seeking to establish its own B-BEE compliance.

4.2 Measuring compliance

- The basis for measuring the B-BBEE compliance of an entity as defined above, is:
 - ♦ In the case of an EME refer to paragraphs 4.5 and 4.6 on page 6 below.
 - ♦ The Generic Scorecard and QSE Scorecard, in the case of the other measured entities.
 - ♦ A measured entity in a sector in respect of which a sector code has been issued in terms of Section 9 of the BBEE Act as amended, may only be measured for compliance in accordance with that code.

4.3 Priority elements, and subminimum targets

- The introduction of “priority elements”, means that ownership, skills development and enterprise and supplier development have additional targets, which are as follows:
 - ♦ The sub-minimum requirement for Ownership is 40% of the net value (40% of the 8 points) based on the Time Based Graduation Factor.
 - ♦ The sub-minimum requirement for Skills Development is 40% of the total weighting points for skills development.
 - ♦ The sub-minimum requirement for Enterprise and Supplier Development is 40% of each of the three categories within this element, namely preferential procurement, supplier development and enterprise development.

4.4 Compliance with Priority Elements and the discounting principle

- A large enterprise is required to comply with all the priority elements.
- A QSE is required to comply with Ownership as a compulsory element and either Skills Development or Enterprise and Supplier Development.

Discounting Principle Effect

- If a large enterprise does not achieve these three targets, and a QSE does not comply with the Ownership priority element and either one of the remaining two, they will be subject to a “discounting” of one level down. Notwithstanding this fact, the actual points scored by the measured entity and the consequent level that it would have achieved were it not for non-compliance with the 40% sub-minimum requirements will be recognised by the Verification Agency (“the recognition level”).

The requirement to submit data to the Department of Labour under the Employment Equity Act 55 of 1998 is only applicable to ‘designated employers’ who employ 50 or more employees. However, for the purpose of measurement, for both Generic and QSE that employ less than 50 employees, are required to submit sufficient evidence for verification purposes.

4.5 Eligibility as an Exempted Micro Enterprise

- (i) Any enterprise with an annual Total Revenue of R10 Million or less, qualifies as an Exempted Micro Enterprise (EME).
- (ii) An EME is deemed to have a B-BBEE status of “Level Four Contributor” having a B-BBEE recognition level of 100%.

4.6 Enhanced B-BBEE recognition level for an EME

- (i) Despite paragraph 4.5 (ii) above, an EME which is 100% Black owned qualifies for elevation to “Level One Contributor” having a B-BBEE recognition level of 135%.
 - (ii) Despite paragraphs 4.5(ii) and 4.6 (i) above, an EME which is at least 51% Black owned qualifies for elevation to “Level Two Contributor” having a B-BBEE recognition level of 125%.
- Despite paragraphs 4.5 (ii) and 4.6 above, an EME is allowed to be measured in terms of the QSE scorecard, should they wish to maximise their points and move to a higher B-BBEE recognition level.

4.7 Eligibility as a Qualifying Small Enterprise

- (i) A measured entity with an annual total revenue of between R10 million and R50 million qualifies as a Qualifying Small Enterprise (QSE).
- (ii) A QSE must comply with all of the five elements of B-BBEE for the purposes of measurement.
- (iii) A QSE must comply with at least two priority elements : Ownership (compulsory) and either Enterprise and Supplier Development or Skills Development Element.

4.8 Enhanced B-BBEE recognition level for QSE

- (i) A QSE which is 100% Black owned qualifies for a Level One B-BBEE recognition (135% recognition level).
- (ii) A QSE which is at least 51% Black owned qualifies for Level Two B-BBEE recognition level (125% recognition level).

B-BBEE Status	EME / QSE	B-BBEE Recognition Level
Level One Contributor	100% Black owned	135%
Level Two Contributor	≥51%–99% Black owned	125%
Level Four Contributor	<51% Black owned, or white owned	100%

* Both an EME or QSE are only required to obtain a sworn affidavit on an annual basis, confirming the following:

- 1) Annual total revenue of R10 million or less (for an EME) and annual total revenue of R50 million or less (for a QSE)
- 2) Level of black ownership

Any misrepresentation constitutes a criminal offence as set out in the B-BBEE Act.

4.9 Start-Up Enterprises

- A start-up enterprise must be measured as an EME for the first year following their formation or incorporation. This applies regardless of expected total revenue of the start-up enterprise.
- In order to qualify as a start-up, the enterprise must provide an affidavit as per * above.
- Notwithstanding the above, when tendering for any contract, or seeking any other economic activity covered by Section 10 of the B-BBEE Act, with a value higher than R10 million, but less than R50 million, the start-up must submit a QSE Scorecard. Contracts of value R50 million or more, a Generic Scorecard, using annualised data.

4.10 The Elements of B-BBEE in terms of the Generic Scorecard

All companies, except EME's, will be required to comply with the re-organised elements of the B-BBEE Scorecard. Previously the scorecard had seven elements, now it has five elements, due to a consolidation of some of them.

Large Enterprises

Large enterprises (turnover greater than R50 million per year), are measured in terms of all five elements, and are required to comply with all 5 elements.

Should a large enterprise not meet the sub-minimum targets for any of the three priority elements, its overall score will be discounted by one level based on the discounting principle.

Five Elements

The five elements in the revised Scorecard are:

1. **Ownership:** (code series 100) measures effective ownership of entities by black people. Who owns the business (shareholders/members/owners)? This is a priority element.
2. **Management Control:** (code series 200) (incorporating employment equity) measures effective control of entities by black people. Who controls the business (directors/board/owners)? Who works in the business (management/staff) ?
3. **Skills Development:** (code series 300) measures the extent to which employers carry out initiatives designed to develop the competencies of black employees and black people, internally and externally – i.e learnerships and training programmes. This is a priority element.
4. **Enterprise and Supplier Development:** (code series 400) (incorporating preferential procurement) measures the extent to which entities buy goods and services from Empowering Suppliers with strong B-BBEE recognition levels. It also measures the extent to which enterprises carry out supplier development and enterprise development initiatives intended to assist and accelerate the growth and sustainability of black enterprises. Who does the business buy from (suppliers/service providers/landlords)? What is the extent to which the business assists small black owned businesses (with loans, grants, training, discounts, preferred credit terms? This is a priority element.
5. **Socio-Economic Development:** (code series 500), and sector specific contributions element: 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. Measures contributions to black beneficiaries (donations/food/school fees/products).

4.11 The B-BBEE Generic Scorecard

The following table represents the new B-BBEE Generic Scorecard:

Element	Weighting	Code Series Reference
Ownership	25 points	100
Management Control	19 points*	200
Skills Development	20 points	300
Enterprise and Supplier Development	40 points	400
Socio-Economic Development	5 points	500
Total	109 points	

[*Note the Government Gazette refers to Management Control weighting as 15 points in the Generic Scorecard, however the Management Control Scorecard totals 19 points. This guide reflects 19 points as the total, subject to correction].

4.12 B-BBEE Recognition levels

Based on the overall performance of a measured entity, using the Generic Scorecard and QSE Scorecard, the measured entity will receive one of the following B-BBEE statuses with the corresponding B-BBEE recognition level:

B-BBEE Status	Qualification	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%

4.13 Enhanced recognition for certain categories of black people

Various criteria appear throughout the Codes, which advance the interests of certain categories of black people. These include:

- Black women, who should form between 40% and 50% of the beneficiaries of the relevant elements of the Scorecard.
- Black people with disabilities,
- Black youth,
- Black people living in rural areas, and
- Black unemployed people

who should form part of the beneficiaries of the relevant elements of the Scorecard.

- This is a priority element for Large enterprises and QSE's.

5.1 The Ownership Scorecard

The following table represents the indicators and methods for calculating a score for Ownership:

B-BBEE Element	Indicator	Description	Weighting Points	Compliance Target
Ownership	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 Interests of any of the following Black natural people in the Measured Entity		
		Black designated groups; Black participants in Employee Share Ownership Programs; Black people in Broad-based Ownership Schemes; Black people in Co-operatives	3	3%
		New Entrants	2	2%
	Realisation Points	Net Value	8	Time Based Graduation Factor

5.2 Key measurement principles

General Principles

- An entity receives points for participation by black people in its rights of ownership, using the ownership scorecard.
- Black people may hold their rights of ownership in a measured entity as direct participants or as participants through some form of entity such as: a company defined in the Companies Act, 2008 (as amended), a close corporation, a co-operative, a trust, a broad-based ownership scheme, an employee share ownership programme, a partnership or other association of natural persons and any form of juristic person recognised under South African law.

Sub-minimum requirements

- A measured entity is required to achieve a minimum of 40% on Net Value Points (i.e 8 points) based on the Time Graduation Factor formula. Non-compliance with this sub-minimum target will result in the achieved B-BBEE status level being discounted by one level in terms of the discounting principle.

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. If the rights of Ownership of Black people pass through a juristic person, then the rights of Ownership of Black people in that juristic person are measurable. This principle 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 Participant'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.

Modified Flow Through Principle

- A measured entity applying the Modified Flow-Through Principle cannot benefit from the Exclusion Principle.
- The Modified Flow-Through Principle applies to B-BBEE owned or controlled company in the Ownership of the measured entity.
- In calculating Exercisable Voting Rights in the entity in the hands of black people, and Economic Interest in the entity to which black people are entitled, (as per the Ownership scorecard) the following applies:
 - ♦ Where in the chain of Ownership, black people have a flow-through level of participation of at least 51%, and then only once in the entire ownership structure of the measured entity, such Black participation may be treated as if it were 100% Black.

- ◆ The Modified Flow-Through Principle may only be applied in the calculation of the indicators in Exercisable Voting Rights in the entity in the hands of black people, and Economic Interest in the entity to which black people are entitled, (as per the Ownership scorecard). In all other instances, the Flow-Through Principle applies.

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, and this exclusion is effected before any other ownership discounting methods are to be applied.
- In calculating their ownership score, measured entities must apply the exclusion principle to any portion of their ownership held by organs of state or public entities.

B-BBEE Facilitator Status

Despite the exclusions above, the Minister may by notice in the gazette, designate certain organs of state or public entities as B-BBEE facilitators. In calculating their ownership score, measured entities must treat B-BBEE facilitators as having rights of ownership held: 100% by black people, 40% by black women, 20% by black designated groups, without any acquisition debts and without any third party rights.

Mandated Investments

- When determining ownership in a measured entity, rights of ownership of mandated investments may be excluded, and the maximum % of the ownership of any measured entity that may be so excluded is 40%.
- A measured entity that elects not to exclude mandated investments, 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 the 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.
- A measured entity applying the exclusion principle to mandated investments cannot benefit from the modified flow-through principle.

Recognition of ownership after sale or loss of shares by black participants

- A measured entity is allowed to recognise a portion of black ownership after a black participant has exited through the sale or loss of shares subject to the following criteria:
 - ◆ The black participant has held shares for a minimum period of 3 years.
 - ◆ Net value based on the Time Based Graduation Factor as per Annex 100(E) of the Codes must have been created in the hands of black people.
 - ◆ Transformation has taken place within the measured entity using the B-BBEE recognition level from the period of entry of black participants to the exiting period.

- Black participation arising from continued recognition of black ownership cannot contribute more than 40% of the score on the ownership scorecard.
- In the case of a sale or loss of shares by the black participant, the following additional rules apply: A written tripartite agreement between the measured entity, the black participant and a lender must record the loan or security arrangement, unless the measured entity is a lender and the period over which the continued recognition points are allocated or recognised after sale or loss of shares will not exceed the period over which the shares were held.
- The ownership points under this paragraph that are attributable to the measured entity will be calculated by multiplying the following elements:

The value created in the hands of black participants as a % of the total value of the black participants' shareholding in the measured entity at the date of sale or loss of shares

The B-BBEE status of the measured entity based on the balanced scorecard as at the date of measurement, and

The ownership points that were attributable to the measured entity on the date of sale or loss of shares.

Broad-based ownership schemes and employee share ownership programme

- Black participants in Broad-based ownership schemes and employee share ownership programmes holding rights of ownership in a measured entity may contribute:
 - ♦ A maximum of 40% of the total points of ownership scorecard of the measured entity if they meet the qualification criteria set out in Annexe 100 (B): Rules for Broad-Based Ownership Schemes and Annexe 100 (C): Rules for Employee Share Ownership Programmes.
 - ♦ 100% of the total points on the ownership scorecard of the measured entity if they meet the additional qualification criteria set out in Annexe 100 (B) and 100 (C).

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.

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).
- The new Codes set out further aspects applicable to Private Equity Funds in detail.
- In the case of Private Equity Funds that were fully invested prior to 11 October 2014, investments by the Fund Managers will be considered as being made by Black people if the Private Equity Fund Management entities meet the following criteria:

At least 51% of any of the Private Equity Fund Manager's Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership in a Measured Entity, must be held by Black people.

At least 51% of the profits accruing to the Private Equity Fund Manager after realising any investment made by it, must by written agreement, accrue to Black people, and

Private Equity Fund Manager must be a B-BBEE owned company.

Section 21 Companies and Companies Limited by Guarantee

- A measured entity may elect to include or exclude Section 21 companies or companies limited by guarantee for the purposes of measuring ownership.
- Such companies that house a Broad-based ownership scheme or an employee ownership scheme are subject to the provisions governing those types of schemes and not this paragraph.
- When a measured entity elects to exclude such companies, it can do so by excluding up to 40% of the level of their ownership completely from the determination of its compliance with the ownership target.
- A measured entity electing not to exclude such companies 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 those companies, and
- Black participants in such companies holding rights of ownership in a measured entity may contribute:
 - ◆ A maximum of 40% of the total points on the ownership scorecard of the measured entity if they meet the qualification criteria for the Broad-based Ownership schemes and employee share ownership programmes set out in the Rules for Broad-Based Ownership Schemes and Rules for Employee Share Ownership Programmes [Annexe 100 (B) and (C)] respectively.
 - ◆ 100% of the total points on the ownership scorecard of the measured entity if they meet the additional qualification criteria set out for the Broad-based Ownership schemes and employee share ownership programmes in Annexe 100 (B) and 100 (C) respectively.

Trusts

- Black participants in a Trust holding rights of ownership in a measured entity may contribute:
 - ♦ A maximum of 40% of the total points on the ownership scorecard of the measured entity if the Trust meets the qualification criteria for Trusts set out in Rules for Trusts [Annexe 100 (D)].
 - ♦ 100% of the total points on the ownership scorecard of the measured entity if the Trust meets the additional qualification criteria set out for Trusts in Annexe 100 (D).

Options and Share Warrants

- Exercisable Voting Rights and Economic Interest will be recognised where a participant holds an instrument granting the holder the right to acquire an Equity Instrument or part thereof at a future date, if the following requirements are met:
 - ♦ The Exercisable Voting Rights attached to that instrument are irrevocably transferred to the holder for the option period and are exercisable by the holder before acquiring the Equity Instrument.
 - ♦ The Value of any Economic Interest is irrevocably transferred to the holder for the option period and paid to the holder of that instrument before the exercise of that right, and
 - ♦ The value of the instrument must be determined by using a Standard Valuation method for calculating Net Value.

Equity instruments carrying preference rights

- An Equity Instrument carrying Preferential Rights is measurable in the same manner as an ordinary Equity Instrument.
- An Equity Instrument carrying Preferential Rights that have the characteristics of a debt, regardless of whether the debt is that of an Entity or of a Participant, must be treated as an ordinary loan. If the debt is that of a Black participant, it may be subject to measurement under Net Value.
- In evaluating an instrument that has a hybrid nature including the characteristics of a debt, only that portion that represents a debt, will be measured under current equity interest. The remainder is measurable as an ordinary equity instrument.

Annexe's: Examples, Measurement and Rules

- The amended Codes include five Annexe's, detailing the following relating to the Ownership element:
 - Annexe 100 (A): Examples of Mandated Investments
 - Annexe 100 (B): Rules for Broad-Based Ownership Schemes
 - Annexe 100 (C): Rules for Employee Share Ownership Programmes
 - Annexe 100 (D): Rules for Trusts
 - Annexe 100 (E):
 1. Measuring of Voting Rights
 2. Measurement of Economic Interest
 3. Calculation of deemed value
 4. Calculation of Net Value
 5. Calculation of the recognition of ownership after the sale or loss of shares by black Participants

6.1 Management Control Scorecard

The following table represents the criteria used for deriving a score for management control:

Measurement Category and Criteria	Weighting Points	Compliance Targets
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 executive directors	2	50%
Black female Executive directors as a percentage of all executive directors	1	25%
Other Executive Management:		
Black Executive Management as a percentage of all executive directors	2	60%
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%
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%

Measurement Category and Criteria	Weighting Points	Compliance Targets
Employees with disabilities:		
Black employees with disabilities as a percentage of all employees	2	2%

Notes:

- The compliance targets for Senior Management, Middle Management and Junior Management of the Management Control Scorecard are based on overall demographic representation of black people as defined in the Regulations of the Employment Equity Act and Commission on Employment Equity Report, as amended from time to time.
- In determining a Measured Entity's score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black, in accordance with the Employment Equity Act on an equitable representation and weighted accordingly, being:

African male	African female
Indian male	Indian female
Coloured male	Coloured female

6.2 Key Measurement Principles

- A measured entity receives points by meeting the targets for participation of black people and black women at Board, Executive Management, Senior Management, Middle Management, Junior Management level, and black employees with disabilities.
- A measured entity must use the current payroll data in calculating its score under the Management Control Scorecard.
- If a measured entity does not distinguish between Other Executive Management and Senior Management, then Executive Management is measurable as a single indicator with a Weighting of 6 points under "Other Executive Management" ie Black Executive Management as a % of all executive directors and Black female Executive management as a % of all executive directors on the scorecard, split as 4 and 2 points respectively.

6.3 General Principles

- Executive Management positions include Chief Executive officer, Chief Operating Officer, Chief Financial Officer and other Executive Managers that serve on the Board of Directors.
- Other Executive Management positions include all executive management that do not serve on the board, such as human resource executive, transformation executive and other people holding similar positions.

6.4 Measurement of the Management control Criteria

- The new Codes set out the formula's for the measurement of the criteria of the management control element, as follows:
 - ◆ Annexe 200(A) A: Measurement of Senior Management, Middle Management, and Junior Management.
 - ◆ Annexe 200(A) B: Measurement of Management Control Indicators Annexe 200A.
 - ◆ Formula, for the calculation of the management control criteria provided for in the scorecard relating to Board participation and Other Executive Management.
 - ◆ Annexe 200(A)C: Measurement of Employees with disabilities.

7

General Principles for Measuring Skills Development

- This is a priority element.
- Skills has increased from 15 points to 20 (plus potential 5 bonus points) showing the importance of skills development in the economy.
- Some targets have increased: target spend is now 6% of payroll, instead of 3%, and includes the training of unemployed black people.
- Under the new Codes, mandatory training such as health and safety training will no longer qualify as skills development expenditure.
- The Learning Programme Matrix is set out as Annexe 300(A) of the Codes. It sets out:
 - The Categories of Learning, which are:
 - ◆ bursaries
 - ◆ internships
 - ◆ learnerships
 - ◆ apprenticeships
 - ◆ work integrated learning
 - ◆ informal training
 - How each category may be delivered
 - The learning site or location allowed for learning
 - The achievement or qualification achieved.

7.1 The Skills Development Scorecard

The following table represents the criteria used for deriving a score for skills development:

Category	Skills Development Element	Weighting Points	Compliance Targets
Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a percentage of the Leivable Amount			
	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a percentage of the Leivable Amount	8	6%
	Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people with disabilities as a percentage of the Leivable Amount	4	0.3%
Learnerships, Apprenticeships and Internships			
	Number of black people participating in Learnerships, Apprenticeships and internships as a percentage of total employees	4	2.5%
	Number of black unemployed people participating in training specified in the learning programme matrix as a percentage of total employees	4	2.5%
Bonus Points:			
	Number of black people absorbed by the Measured and Industry Entity at the end of the Learnership programme	5	100%

- The compliance targets are for the following on the scorecard:
 - ◆ Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of the leivable amount.
 - ◆ Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people with disabilities as a % of the leivable amount.
 - ◆ Number of black people participating in Learnerships, Apprenticeships and Internships as a % of total employees.
 - ◆ Number of black unemployed people participating in training specified in the Learning Programme Matrix as a % of total employees.
 - ◆ Number of black people absorbed by the Measured and Industry entity at the end of the Learnership programme.

They are based on the overall demographic representation of black people, as defined in the Regulations of the Employment Equity Act and Commission of Employment Equity Report as amended from time to time.

- In determining a measured entity's score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black in accordance with the Regulations of the Employment Equity Act and Commission of Employment Equity Report requirements on equitable representation and weighted accordingly.

7.2 Key measurement principles

- The following criteria must be fulfilled in order to receive points on the scorecard:
 - ◆ Workplace Skills Plan, and Annual Training Report and Pivotal Report, which are SETA approved.
 - ◆ Implementation of Priority Skills programme generally, and more specifically for black people.
 - ◆ The 6% compliance target for Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of the Leviable amount, includes external training expenditure for unemployed black people.
 - ◆ A trainee tracking tool has to be developed in order for the measured entity to score Bonus points (number of black people absorbed by the measured and industry entity at the end of the learnership programme). If less than 100% of the trainees are absorbed as contemplated in this paragraph, the percentage achieved or absorbed will be recognised.

7.3 Sub-minimum and discounting principles

- A measured entity must achieve a minimum of 40% of the targets set out in this element.
- Non-compliance to the threshold targets will result in overall achieved B-BBEE status level being discounted by one level.

7.4 General Principles

These can be summarised as follows:

- Generally, skills development must contribute to the economic growth and social development goals of the country, promote development of industrial skills in critical sectors, support professional and academic learning programmes, and strengthen the skills and human resource base.
- Skills development expenditure (SDE) includes any legitimate expenses incurred for any learning programme offered by a measured entity to its employees evidenced by an invoice or appropriate internal accounting record.
- Skills development expenditure arising from informal and workplace learning programmes or from Category F and G Learning programmes under the Learning Programmes Matrix (being occupationally directed informal instructional programmes, such as workshops or seminars, short courses or conferences, or Work-based Informal Programmes, such as informal training in the workplace) cannot represent more than 15% of the total value of skills development expenditure.
- Legitimate training costs such as accommodation, catering and travelling (non-exhaustive) cannot exceed more than 15% of the total value of skills development expenditure.

- Salaries or wages paid to an employee participating as a learner in any Learning Programme only constitute skills development expenditure if the Learning Programme is a learnership, internship and apprenticeship (Category B, C and D) of the Learning Programme Matrix.
- Expenses on Scholarships and Bursaries for employees generally do not constitute skills development expenditure if the measured entity can recover any portion of these expenses from the employee, or if the grant is conditional. However, if the right of recovery or condition involves either of the following obligations on the employee, then the expenses are recognisable:
 - ◆ the obligation of successful completion of their studies within the time period allocated, or
 - ◆ the obligation of continued employment by the measured entity for a period following successful completion of their studies is not more than the period of their studies.
- Mandatory sectoral training does not qualify as skills development contribution (i.e health and safety in the construction sector).
- Training outside the country in line with the Learning Programme Matrix is measurable if it meets South African Qualification Authority requirement for recognition.

7.5 Legitimate recognisable training expenses

Legitimate recognisable training expenses are listed as:

- costs of training materials
- costs of trainers
- costs of training facilities (including catering)
- scholarships and bursaries
- course fees
- accommodation and travel costs
- administration costs including organising training
- costs of employing a skills development facilitator or training manager.

7.6 Measurement of Skills Development Indicators

- The formula that explains the method of measurement of the criteria in the skills development scorecard is set out in formula "A" in Annexe 300 (B).
- Annexe 300 (B): A & B: Measurement of Skills development Indicators:
Formula 1 (applicable to skills development expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of the leviable amount, and Learnerships, Apprenticeships and Internships).

Formula 2 (applicable to skills development expenditure on any programme specified in the Learning Programme Matrix for black people as a % of the leviable amount and Learnerships, Apprenticeships and Internships).

- This is a priority element.
- “Value adding suppliers” replaced with “Empowering Suppliers” under the amended Codes.
- Combines Procurement and Enterprise Development.

8.1 Enterprise and Development Scorecard

- The following table represents the criteria for deriving a score for Enterprise and Supplier Development:

Criteria	Weighting Points	Compliance Targets
Preferential Procurement		
B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	80%
B-BBEE Procurement Spend from all Empowering Suppliers that are Qualifying Small Enterprises based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	3	15%
B-BBEE Procurement Spend from all Exempted Micro-Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%
B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% black owned based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	9	40%
B-BBEE Procurement Spend from Empowering Suppliers that are at least 30% black women owned based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	12%
Bonus Points:		
B-BBEE Procurement Spend from Designated Group Suppliers that are at least 51% Black owned	2	2%
Supplier Development		
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
Enterprise Development		
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
Bonus Points		
Bonus point for graduation of one or more Enterprise Development beneficiaries to graduate to the Supplier Development level	1	
Bonus point for creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives by the Measured Entity	1	

8.2 Key measurement principles

- The ESD consists of preferential procurement, Enterprise development and Supplier development. Enterprise Development and Supplier Development contributions will be recognised as a % of annual Net Profit After Tax (NPAT).

8.3 Sub-Minimum and Discounting Principle

- A measured entity must achieve a minimum of 40% of each of the targets set out in Preferential Procurement, Supplier Development and Enterprise Development excluding bonus points of the ESD scorecard. Non-compliance will result in the overall achieved B-BBEE status level being discounted one level.

Summary	
Procurement	25 points
Supplier development	10 points
Enterprise development	5 points
Total	40 points
Bonus	4 points

8.4 Empowering Suppliers

An “Empowering Supplier” within a context of B-BBEE is a B-BBEE compliant entity, which is a good citizen SA entity, which complies with all the regulatory requirements of the country and should meet at least three of the following criteria if it is a large enterprise, and one if it is a QSE:

- At least 25% of cost of sales (excluding labour cost and depreciation) must be procured from local producers or a local supplier in South Africa. For the service industry labour costs are included but capped to 15%.
- 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.

- (c) At least 25% transformation of raw material/beneficiation which include local manufacturing, production and/or assembly, and/or packaging.
- (d) Skills transfer - at least spend 12 days per annum assisting black EME's and QSE's beneficiaries to increase their operation or financial capacity.
- EME's and Start-Ups are automatically recognised as Empowering Suppliers.
- The weighting points in the ESD scorecard represent the maximum number of points possible for each of the criteria.
- If a measured entity procures goods or services from a supplier that is:
 - i) A recipient of a supplier development contributions from a measured entity under Code series 400 has a minimum 3 year contract with the measured entity, the recognisable B-BBEE Procurement Spend that can be attributed to that supplier is multiplied by a factor of 1.2;
 - ii) A black owned QSE or EME which is not a supplier development beneficiary but has a minimum 3 year contract with the measured entity, the recognisable B-BBEE Procurement Spend that can be attributed to that supplier is multiplied by a factor of 1.2;
 - iii) A first time supplier to that measured entity, the recognisable B-BBEE Procurement Spend that can be attributed to that supplier is multiplied by a factor of 1.2.
- Procurement of goods and services and any other activities that fall under Preferential Procurement on the scorecard will not qualify for scoring under Supplier Development and Enterprise Development on the scorecard, and vice versa.
- Beneficiaries of Supplier Development and Enterprise Development are EME's or QSE's which are at least 51% black owned or at least 51% black women owned.

8.5 Some General Principles of ESD:

Some of the general principles of ESD are:

- to strengthen local procurement in order to help build SA's industrial base in critical sectors of production and value adding manufacturing, which are largely labour-intensive industries.
- to actively support procurement from black owned QSE's and EME's by identifying opportunities to increase procurement from local suppliers in order to support employment creation.
- to support procurement from black owned and black women owned businesses in order to increase the participation of these businesses in the main stream economy.
- to promote the use of black owned professional service providers and entrepreneurs as suppliers.
- measured entities receive recognition for any Enterprise Development and Supplier Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.
- measured entities are encouraged to align their Enterprise Development and Supplier Development initiatives with the designated sectors of government's localisation and value adding programmes.

- measured entities are encouraged to align their enterprise development and supplier development initiatives with their supply chain requirements thereby linking Enterprise Development and Supplier Development with Preferential Procurement.
- Qualifying Enterprise Development and Supplier Development Contributions of any measured entity are recognisable on an annual basis.
- Measured entities are encouraged to develop and implement an Enterprise Development Plan and Supplier Development Plan for Qualifying beneficiaries. The plan should include clear objectives, priority interventions, key performance indicators, and a concise implementation plan with clearly articulated milestones.
- Measured entities will not get recognition for the same activities undertaken under Supplier Development and Enterprise Development on the scorecard, they will only get recognition for one of the two.
- No portion of the value of any Qualifying Enterprise Development and Supplier Development Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this element.

8.6 Total Measured Procurement Spend

- The Codes identify the procurement that is measurable within Total Measured Procurement Spend under the general headings of Cost of sales, Operational expenditure and capital expenditure.
- Public Sector procurement, Exclusions, Empowerment related procurement, imports are all expanded upon in the amended Codes.

8.7 Measurement of B-BBEE Procurement Spend

- B-BBEE Procurement Spend can be measured in terms of formula “A” in Annexe 400(A) of the Codes.

8.8 Calculation of Preferential Procurement Contributions to B-BBEE

- A measured entity receives a score for procurement in proportion to the extent that it meets the compliance target.
- The measured entity’s score for Preferential Procurement contributions to B-BBEE under the preferential procurement scorecard can be calculated in terms of formula “B” in Annexe 400(A) of the Codes.

The Codes provide for the following under the ESD element, which provisions, have not been included in this guide, due to limitations in length:

- Enterprise Development and Supplier Development Contributions
- Monetary and Non-Monetary Contributions
- Measurement of Enterprise Development and Supplier Development Contributions:
 - ◆ Annexe 400(A): A: B-BBEE Procurement Spend Formula
 - ◆ Annexe 400(A):B:Calculation of Preferential Procurement Contributions to B-BBEE
 - ◆ Annexe 400(B): Enterprise Development and Supplier Development Benefit Factor Matrix.

9.1 The Socio-Economic Development Scorecard

A The Net Profit After Tax (NPAT) or average target applies unless:
(i) the company does not make a profit last year or on average over the last five years
(ii) the net profit margin is less than a quarter of the norm in the industry.
B If the Turnover is to be used, the target will be set at:
(i) 1% of Indicative Profit Margin (NPAT/Turnover) x Turnover
(ii) Indicative Profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm.

- The following table represents the criteria and method used for deriving a score for Socio-Economic Development (SED):

Criteria	Weighting Points	Compliance Target
Annual value of all SED Contributions by the measured entity as a % of the target.	5	1% of NPAT

- The weighting points in the SED Scorecard represent the maximum number of points possible for each criteria.

9.2 Key measurement principles

General Principles

- Measured entities receive recognition for any SED contributions quantifiable as a monetary value using a Standard Valuation Method. SED contributions of any measured entity are recognisable annually, and no portion of the value of any SED contribution that is payable to the beneficiary after the date of measurement can form part of any calculation.

SED Contributions

- SED contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by a measured entity with the specific objective of facilitating income generating activities for targeted beneficiaries.
- The full value of SED contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people.
- If less than 75% of the full value of SED contributions directly benefits black people, the value of the contribution made multiplied by the % that benefits black people, is recognisable.
- The following is a non-exhaustive list of SED contributions:
 - Grant contributions to beneficiaries of SED contributions, guarantees given or security provided for beneficiaries, direct costs incurred by a measured

entity in assisting beneficiaries, overhead costs of a measured entity directly attributable to SED contributions, developmental capital advanced to beneficiary communities, preferential terms granted by a measured entity for its supply of goods or services to beneficiary communities, payments made by the measured entity to third parties to perform SED on the measured entity's behalf, subject to paragraph (e) below, provision of training or mentoring to beneficiary communities which will assist them to increase their financial capacity, and subject to paragraph (f) below, the maintenance by the measured entity of a SED unit which focuses only on support of beneficiaries and beneficiary communities.

- (e) Providing training or mentoring to beneficiary communities by a measured entity. (Such contributions are measurable by quantifying the cost of time (excluding travel or commuting time) spent by staff or management of the measured entity in carrying out such activities. A clear justification must support any claim for the time costs incurred, commensurate with the seniority and expertise of the trainer or mentor).
- (f) Maintaining a SED unit by the measured entity. (Only that portion of salaries and wages attributable to time spent by the staff in, and the other expenses related to, promoting and implementing SED constitute contributions).
- (g) Payments made by the measured entity to third parties to perform SED on the measured entity's behalf.

9.3 Measurement of SED and Contributions

The new Codes set out the formula for measurement of SED Contributions [Annexe 500(B)].

9.4 The Benefit Factor Matrix

The new Codes set out the current Benefit Factor Matrix [Annexe 500(A)], and measurement of Qualifying Contributions [Annexe 500(B)].

10 Penalties and Enforcement

10.1 New Penalties imposed

- **Fronting:** Proposed amendments to the B-BBEE Act provide for penalties for fronting as follows:
 - ◆ A fine of up to 10% of annual turnover for the offending business, and
 - ◆ Anyone implicated in the misrepresentation of B-BBEE status risks criminal prosecution and up to 10 years imprisonment.

10.2 New Commission proposed

- Objectives:
 - ◆ to monitor and evaluate B-BBEE
 - ◆ to investigate complaints and breaches of the B-BBEE Act, such as fronting.

SOME IMPORTANT DEFINITIONS IN THE NEW CODES

Absorbition means a measure of the measured entity's ability to successfully secure formal permanent or long-term contract employment for the Learner or to assist the Learner's proceed with further education and training.

Apprenticeship 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.

Associated entity means an entity with which a Seller has concluded a Qualifying transaction.

B-BBEE means broad-based black economic empowerment.

B-BBEE Controlled Company means a juristic person having a shareholding or similar members interest in which black participants enjoy a right to Exercisable 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 a 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 Act means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended.

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 the Enterprise and Supplier Development Element and the Socio-Economic Development Element.

Black Designated Groups means:

- Unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;
- Black people who are youth as defined in the National Youth Commission Act of 1996;
- 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;
- Black people living in rural and under developed areas;
- Black military veterans who qualify 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 entities which has a total value of more than R50,000,000, measured using a standard valuation method.

Black people is a generic term which means African, Coloureds and Indians:

Who are citizens of the RSA by birth or descent; or

Who became citizens of the RSA by naturalization (i) before 27 April 1994 (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

Broad-based ownership scheme means an ownership scheme which meets the rules set out in Annexe 100B of the Codes.

Certified Learning Programme means any Learning Programme for which the measured entity has:

- (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 such certification:
- (b) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in the Skills Development element confirming the employee has:(i) enrolled for, is attending, and is making satisfactory progress in the Learning Programme; or (ii) enrolled for but not attended the Learning, or (iii) attended the Training Programme but has failed an evaluation of their learning progress.

Codes means the Codes of Good Practice including all statements as issued under Section 9 of the B-BBEE Act.

Companies Act means the Companies Act, No. 71 of 2008 as amended or substituted.

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 means skills that are: (a) value-adding to the activities of the measured entity in line with its core business (b) in areas the measured entity cannot outsource, or (c) within the production/operational part of the measured entity’s value-chain; as opposed to the supply side; services or downstream operations.

Critical skills means those skills identified as being critical by any SETA.

EAP means the 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 Flow Through principles.

EE Act means the Employment Equity Act of 1998, as amended.

EE Regulations means the regulations under the Employment Equity Act.

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, align with the Employment Equity Act.

Employee ownership scheme means a worker or employee scheme.

Employed learner means in terms of Section 18(1) of the Skills Development Act, 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.

Enterprise Development Contributions 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: (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.

Entity means a legal entity or a natural or juristic person conducting a business, trade or profession in the Republic of South Africa.

Exercisable Voting Right means a voting right of a participant that is not subject to any limit.

Internship means an opportunity to integrate career related experience into an undergraduate education by participating in planned, supervised work.

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.

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.

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 of the Codes.

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 (b) black people hold at least 51% of the economic interest as determined under Code Series 100; and (c) has earned all the points for the Net Value under Ownership element.

51% Black Women owned means an entity which (a) Black women hold at least 51% of the exercisable voting rights as determined under the Ownership element (b) Black women hold at least 51% of the economic interest as determined under the Ownership element, and (c) has earned all the points for Net Value under the Ownership element.

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 extraordinary 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 extraordinary items as determined by (GAAP) Generally Accepted Accounting Practices.

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.

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% black women owned, black youth in rural, and underdeveloped areas in the Enterprise and Supplier Development element.

Start-Up Enterprise means a recently formed or incorporated entity that has been in operation for less than 1 year, and does not include any newly constituted enterprise which is merely a continuation of a pre-existing enterprise.

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. SED 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.

Target means targets for the various elements in the Generic and QSE Scorecard.

Voting Rights 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 and QSE Scorecards.

Important Note:

This list does not include all the definitions contained in the amended Codes, and is not comprehensive. For a full list, refer to pages 91 to 112 of the amended Codes.

Interpretation

Definitions are given specific meaning within the context of the B-BBEE Act in terms of their interpretation and application.

