

Ultimate National Guide

for

Broad Based Black Economic Empowerment



By

 **East Rand Chamber of Commerce**

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1. WHAT IS THE DIFFERENCE BETWEEN BEE AND BBBEE

BEE (Narrow based with the emphasis on ownership)

Since the inception in 1993, of Black Economic Empowerment (BEE), the emphasis on the transfer of ownership in BEE was very important. In the decade after 1994 focus was placed predominantly on provisionally securing property rights and it was seen to be unlikely to have large positive effects on productivity or economic growth.

Moreover, enduring property rights security certainly required a broader base than could be provided for by such a policy. It was therefore believed that the policy needed to be changed to de-emphasise ownership and increase the focus on aspects clearly linked to increased productivity and the broader transformation of the economy. A simple change in policy to achieve this shift in focus would have been sufficient. The suggested changes at the time were:

- To change the weights in the BEE Codes. To downgrade ownership and increase the importance of enterprise development and skills development.
- To create a mechanism with which to evaluate the impact of the policy on any of the outcomes which it was supposed to influence. While industry charters had set various targets for future dates the policy remained open ended with no reported outcomes.

Ultimately there was uncertainty in the minds of businesspersons and investors. However, basic economic analysis suggested that BEE ought to be only a transitory policy. At the time, we also noted that it might not be desirable for the government to announce a terminal date.

The appropriate response was to immediately create an institution that can properly evaluate the policy by 2014 when many targets were supposed to be met.

The immediate effect then was that governmental departments and local metropolitans demanded black ownership for tender adjudication. This was then referred to as narrow based BEE. The Narrow Based Empowerment instituted in the country during 2003/2003 came up against very harsh criticism. There was a fear that due to the tender adjudication being harsh there would be a mass exodus and closure of small to medium sized businesses. 80% of South Africa's employment possibilities are provided by this sector. Based on this fear the Department of Trade and Industry (DTI) introduced and gazetted the;

BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE)

While Narrow Based Black Economic Empowerment led to the enrichment of a few black (Black African, Coloured or Indian) individuals, the goal of BBBEE was to distribute wealth across as broad a spectrum of black South African Society as possible. In contrast, Narrow Based Empowerment measures only equity ownership and management representation.

2014 has arrived what is the situation now?

On 11 October 2013 Mr. Rob Davies Minister of Trade and Industry, issued and gazetted an amended codes of good practice under section 9 (1) of the Broad Based Black Economic Empowerment Act, 2003 (act No 53 of 2003).

It was determined that the amended codes, will come in to operation within 12 months from date of publication of the new codes.

It is clear that these new codes, even with their fair amount of mistakes and unclear descriptions, is aimed at readdressing and emphasizing ownership as being the predominant element. Thus moving back to 1993 and again not considering the devastating effect on the small to medium sized business entities.

The general feeling of business in South Africa is that unless the government returns to the real purpose of BBBEE which is to uplift the masses and reduce poverty it will remain a tool to enrich a favored few. Unfortunately, because of the loss of business confidence low job creation will become the norm.

2. HOW EMPLOYMENT EQUITY FITS INTO BEE AND WHAT WE SHOULD DO TO IMPLEMENT EE

This is the definition of EE as per Wikipedia;

Affirmative action (known as **employment equity** in, Canada and elsewhere) refers to policies that take factors including "race, color, religion, sex, or national origin into consideration in order to benefit **an underrepresented group** "in areas of employment, education, and business "The concept of affirmative action was introduced in the early 1960s as a way to combat **racial discrimination** in the hiring process and, in 1967, the concept was expanded to include sex.

In South Africa the primary use of EE was to correct the injustices of the Apartheid era and did form a critical part of the 7 element BEE scorecard currently still in use. However in the new codes it has been incorporated in to the management element with rest of staff being excluded from BEE calculations

Changes to employment equity and BBEE guidelines have been coming so thick and fast that many people find it difficult to keep track of them all.

Summary: The most important changes

- The Employment Equity Amendment Bill of 2012 (the EE Bill);
- The Broad-Based Black Economic Empowerment Amendment Bill of 2012 (the BEE Bill); and
- The revised generic codes of good practice of October 2013 (the revised codes).

Both the EE and BEE Bills have been approved by the National Assembly and promulgated in the Government Gazette.

The revised codes were published in the Government Gazette on 11th October 2013 and are intended to replace earlier codes which came into operation in 2008. The new codes are not scheduled to come into effect until 10th October 2014, but firms may choose to have their BEE status measured under the new codes with immediate effect.

Under both the current and revised codes, firms are expected to increase black representation to 50% at board level, 60% at executive and senior management levels, and 75% in the middle management sphere. At the junior management level, the new target under the revised codes is 88%, up from 80% at present. The representation of black women is expected to increase to half of each of these targets. Rest of staff, although still a criteria under the EE amendment Act No 47 of 2013, has no effect on the BEE score card

THE EMPLOYMENT EQUITY AMENDMENT BILL OF 2012

The EE Bill not only strips away key defences for businesses battling to meet unrealistic racial quotas but also more than triples current fines. In addition, it cuts short the enforcement process to make prosecutions easier and faster.

When they discuss employment equity, employers must make sure they include workers from:

- all job categories and levels;
- designated groups (black people, women and people with disabilities); and
- workers who are not from designated groups.

Based on legislation in Section 16, of the Employment Equity Act

What Should Employers Discuss With Workers?

Employers must talk to workers or their unions about their employment equity:

- studies;
- plans; and
- reports.

3. WHAT ARE THE GOVERNMENT REQUIREMENTS AND LAWS ON BUSINESSES WITH REGARDS TO BEE

Section 217 of the South African Constitution states that when an organ of state in national, provincial or local government, or any institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. It stipulates the need to implement a procurement policy that will provide for preferable categories in the allocation of contracts; and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination.

The Preferential Procurement Policy Framework Act (PPPFA) was enacted as a result of the aforementioned Section of the Constitution. The PPPFA stipulates that when government assesses contracts, it must take into account a preference point system which prescribes functionality, price and reconstruction development programme (RDP) goals.

The preference point system determines that:

- Contracts below R500 000, 80 points will be allocated for price and functionality and the remaining 20 points for RDP goals. For contracts above R500 000, 90 points will be allocated for price and functionality and 20 points for RDP goals.
- In December 2006, when the B-BBEE Codes of Good Practice were approved for gazetting, Cabinet directed the DTI and National Treasury to amend the PPPFA, so as to advance the objectives of the B-BBEE Act and its related strategy. These two pieces of legislation were found to be not appropriately aligned.

The abovementioned process led to the amendment of the Preferential Procurement Regulations as interim measures to align themselves to the B-BBEE Codes of Good Practice.

Although the BEE Act does not place legal onus on the private sector to comply with its provisions, it does place legal onus on organs of state to contribute to BEE, including among other aspects, when developing and implementing a preferential procurement policy.

In addition to achieving the 20 points allocated to the preferential procurement element of the Codes of Good Practice, government entities must procure goods and services from companies with a good BEE status. This has a trickle-down effect which applies pressure on all suppliers and service providers to meet these standards. The impact that this cascading implementation has on procurement in general is the increase in market access for black companies.

The (interim measures) draft regulations proposed the 80/20 preference point system for the procurement of goods and services with a rand value of R1 million, and a 90/10 preference point system for the procurement of goods and services with a rand value of above R1 million, to strengthen the contribution of small, medium and micro-sized enterprises (SMMEs).

The draft proposed the allocation of point systems on the following basis:

With regard to the 80/20 principle, 20 points are allocated to a bidder in respect of its B-BBEE status level, as contemplated in the draft. Regarding the 90/10 principle, 10 points are allocated in respect of the bidder's B-BBEE status level.

In addition, the draft regulations recommend how to address the objectives of the Industrial Policy Action Plan, especially those aimed at promoting the procurement of domestically produced goods and services. The draft regulations stipulate that the DTI is able to designate specific industries of critical and/or strategic importance for tenders. This stipulation indicates that only locally manufactured products with a prescribed minimum threshold for local content will be considered.

Where the DTI is yet to designate an industry on organ of state, it may prescribe the minimum local content of a product based on research that includes strategic sourcing methodologies, on-going industry analysis and local manufacturing capacity. In such cases a two-stage bidding process may be followed.

B-BBEE Verification

The BEE Verification process evolved since the release of the B-BBEE Strategy in 2003 and the promulgation of the Broad-based BEE Act, which set the scene for the regulation of the BEE measurement/verification industry. The gazetting of the B-BBEE Codes moved the industry from a self-regulated one to a BEE verification industry.

The DTI appointed the South African National Accreditation System (SANAS) to conduct the accreditation of Verification Agencies

4. WHAT IS THE ROLE OF THE DTI CONCERNING BEE

The DTI appointed the Broad-Based Black Economic Empowerment Advisory Council.

The Broad-Based Black Economic Empowerment Act, No. 53 of 2003, (the Act) makes provision for the establishment of the Broad-Based Black Economic Empowerment Advisory Council (The B-BBEEAC). In order to fulfil the legal mandate as outlined in the Act, President Jacob Zuma appointed the members of the Advisory Council, contemplated in section 6(1)(c) and (d) of the Act, on 03 December 2009.

The Advisory Council will provide guidance and monitoring on the state of B-BBEE performance in the economy with a view of making policy recommendations to address challenges in the implementation of this transformation policy.

Functions of the Council

- The Council is responsible for providing leadership and direction in the implementation of B-BBEE in the country. The functions of the Council are to:
- Advise government on black economic empowerment;
- Review progress in achieving black economic empowerment;
- If requested to do so, advise on draft transformation charters; and
- Facilitate partnerships between organs of state and the private sector that will advance the objectives of this Act.

Members of the Council

Nominations were considered from all the relevant constituencies, including organised labour, the private sector, community-based organisations and academic institutions.

The members are the following:

1. President Jacob Zuma, Chairperson of the Council;
2. The lead Minister, the Minister of Trade and Industry, Rob Davies;
3. Minister of Labour, Membathisi Mdladlana;
4. Minister of Economic Development, Ebrahim Patel;
5. Minister of Women, Children and Persons with Disabilities, Noluthando Mayende-Sibiya;
6. Professor Mohammed I. Jahed, professor of macro-economic policy, economics and public finance at the Wits University Graduate School of Public and Development Management;
7. Prof Eltie Links, a professor extraordinaire at University of Stellenbosch Business School and also lectures on international trade and economic issues at the University of Pretoria's Investment and Trade Policy Centre;

8. Ms Wendy Lucas-Bull, a businesswoman and the founder of Peotona Group Holdings, and a former CEO of First Rand and Executive Director of Rand Merchant Bank;
9. Mr Andile Lungisa, Chairperson of the National Youth Development Agency, with extensive experience on issues of youth development;
10. Ms Sebenzile Matsebula, an independent consultant and former Director in the Office on the Status of Disabled Persons in the Presidency, who has worked in the human rights sector from 1986 to date;
11. Mr Jerry Vilakazi, chief executive officer of Business Unity South Africa and a former Managing Director of the Black Management Forum;
12. Dumisani Mthlane, a member of the National Working Committee of the South African National Civics Organisation;
13. Ms Ellen Tshabalala, a business and management consultant with expertise in small, medium and micro-sized enterprises development, banking and marketing;
14. Adv Matshego Ramagaga, Vice-President of Black Lawyers Association and former Chairperson of the Gauteng Branch from 2006 to 2008;
15. Ms Tsakani Matshazi, President of the Association of Black Accountants and Vice-President of the Confederation of Black Business Organisations, with expertise in the provision of financing solutions to SMMEs operating in various sectors of the regional economy;
16. Mr Sidumo Dlamini, President of the Congress of South African Trade Unions, representing the labour sector;
17. Mr Sandile Zungu, businessman with extensive experience having served in various companies at a senior level including NAIL and Denel;
18. Don Mkhwanazi, a former president of the Black Management Forum with a good track record in campaigning for broad-based black economic empowerment;
19. Dr Claudia Manning, businesswoman who has worked extensively as adviser on policy issues as well as transaction advice pertaining to Public Private Partnerships B-BBEE and local and regional economic development strategy; and
20. Chantyl Mulder, senior executive for transformation and growth at the SA Institute of Chartered Accountants, who has served as facilitator of the BEE Charter process amongst other work on economic transformation.

The Roles of the Sub-Committees

One of the functions of the Secretariat is to facilitate the establishment of the Sub-Committee for the Council. This task will be carried out as advised by the Council. The main responsibilities of these Sub-Committees will include the following:

- To deal with specific matters pertaining to the implementation of B-BBEE and make recommendations to the Council;
- To analyse and request sectoral research in order to have informed position on the performance of different sectors in the implementation of B-BBEE;
- To assess progress or lack of progress on different elements of the B-BBEE's scorecard;
- Recommend action to address non-compliance with B-BBEE legislative framework by different organs of state and other entities;
- Recommend action to address misrepresentation and fraudulent activities reported to the Council.

In establishing the Sub-Committees, the Secretariat will consider experts and practitioners of B-BBEE in the private and government sectors to assist the Council on technical matters relating to the B-BBEE and the economic transformation legislations. This approach will ensure that Sub-Committee members with required content will be invited to serve on the Committees.

Constitution

Section 7 (1) of the Act provides that the Minister of Trade and Industry must establish a constitution for the Council. In fulfilment of this provision, the Minister has drafted the constitution for the Council's consideration.

The constitution outlines amongst other things, the powers of the Council, frequency of meetings, quorums and decisions, qualification criteria for membership of Council, termination of membership, conflict of interest, reporting to Parliament on transformation and others.

The Act states that the Minister may amend the constitution of the Council from time to time, after consultation with the Council. The Act further requires that the Council may, by resolution, and after consultation with the Minister, make rules to further regulate the proceedings of the Council.

Council Meeting Schedules

The Council will meet at least four (4) times a year and the Council may hold ad-hoc meetings as and when required to deal with urgent matters regarding the implementation of B-BBEE.

The Sub-Committee may meet on a monthly basis to deal with specific matters discussed at the Council meetings.

Council Secretariat

The Secretariat of the Council is located at the DTI, and it works closely with the Presidency to administer the work of the Council.

The DTI has already established the Secretariat which is made up of the members of staff in the B-BBEE Unit from the DTI, namely;

- Ms. Nomonde Mesatywa - Chief Director
- Mr. Takalani Tambani – Director
- Ms. Lindiwe Madonsela - Deputy Director

The Secretariat is accountable to the Minister of Trade and Industry and must:

- Keep full and proper records of all income and expenditure of the Council;
- Within three months of the end of the financial year, prepare and submit to the Council financial statements reflecting the income and expenditure of the Council;
- Keep accurate minutes of all Council meetings and circulate these to Council members;
- Make all the necessary logistical arrangements for Council meetings;
- Facilitate the appointment of Sub-Committee members of the Council;
- Facilitate B-BBEE studies and research on behalf of the Council and its Sub-Committees;
- Develop working relationships with key stakeholders, including Sector Council and others, to facilitate their reporting on B-BBEE;
- Carry out any other task assigned to the Secretariat by the Minister of Trade and Industry, after consultation with the Council

5. WHAT ARE THE BENEFITS OF BECOMING BEE CERTIFIED

It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change." - Charles Darwin

Why should especially the smaller companies pay any attention to BEE? The answer really lies in good business sense. As with any other major policy change implemented by government, the implications are bound to be far-reaching and should be considered in the long-term planning and SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis of any company.

BEE is not going to go away and businesses, including the smaller companies, can either respond to this as a business opportunity or a business threat. Darwin's quote applies equally to businesses. Those that can adapt and change will be in a position to not only survive, but to take advantage of the opportunities and thrive.

The market is changing

Statistics give us a hint as to the impact of BEE on the business market. It is estimated that there are 4 million economically active white people in South Africa, a figure dwarfed by 11 million economically active black people.

Traditionally, purchasing power was concentrated in the white market, but this market is no longer growing and may even be shrinking. Thus, competition for the same number of traditional households is stiff, while a huge emerging market with disposable income is positioned right next to it. It makes sound business sense to take note of these figures and re-position a business in line with the opportunities.

As the benefits of BEE filter through, more black people will be brought into the mainstream economy. It is further predicted that in a few years, the vast majority of people in LSM 7-10 will be black. This should make any marketing person or business owner sit up and take notice.

Competitive advantage

Complying with BEE legislation, even though it may not be required, is one way to approach such a new market. A black partner in the business could open up access to markets a traditional white company may not have access to otherwise. This new market will certainly prefer to be serviced in their own language and by a person they can identify with, so employment equity becomes a competitive advantage.

The supply side of procurement

Even the traditional market will change, as companies in all sectors begin to look for ways to meet their procurement targets. Any company on the supply side of the economy can certainly position themselves as being BEE providers of those goods and services that clients can add to their procurement points.

Even though smaller companies may not be tendering for government contracts, the effects of BEE will create a ripple effect through the economy and eventually the SMME's will have to change.

Giving 50,1% away

Once the company agrees that BEE could be a competitive advantage, it does not simply give 50,1% of the company away.

This certainly is not empowerment. BEE is not only about ownership as direct ownership counts only 20% of the DTI's proposed BEE scorecard. The bottom line is this: there are more ways of becoming BEE compliant than simply giving away ownership.

The DTI's proposed BEE Scorecard focuses equally (30% of the total score each) on:

- Direct empowerment, through ownership (20%) and management (10%) of enterprises and assets;
- Human resource development through skills development (20%) and employment equity (10%);
- Indirect empowerment in the form of preferential procurement (20%) and enterprise development (10%).

The remaining 10% is to be determined by the sector or company and allows for flexibility according to the unique circumstances. This could include corporate social investment, beneficiation of raw materials or the support of rural enterprises.

This flexibility will allow for a company with no black ownership to still score well on the scorecard, by emphasising the other areas, such as skills development and procurement. It may even be possible for such a company to score better than a black-owned company, which does not score in any other area. Thus, the scorecard approach, to some extent, does address the problem of "fronting" and creates a more level playing field.

Other options, therefore, exist. You may consider implementing a learnership programme in your company, claiming the government funding and the tax rebates through your industry Seta. You may start looking for suppliers of paper, coffee or IT equipment who are BEE and score on the procurement side. Even your bank charges, company insurance and cell phone airtime expenses through a BEE company (*the financial sector charter and the proposed Information Communication and Technology (ICT) charter will soon see the banks, insurers and cell phone companies announcing their BEE status*), could count towards procurement points.

A one-man business can also contribute through enterprise development however this does not mean you have to invest all your savings in a black entrepreneur. Perhaps you have a spare office that he/she could use free of charge for a year or you may have computer equipment that you can make available to a black entrepreneur. Perhaps you could become a mentor and transfer skills, even if it involves just one person. It could be as simple as developing another entrepreneur by paying their invoices within 10 days, instead of 30 days, to help a small company with critical cash flow which is the downfall of many small business entrepreneurs.

Ownership is not the only solution but it remains an option. Moses Kgosana, Chairman of KPMG, says: *"BEE does not mean companies must give away 50% of their ownership. It should be a business strategy geared towards building a stronger company. In the first instance, BEE partners should raise the money needed to pay for the shareholding they are*

receiving. If this is not possible, the deal could be structured differently, for example, the value of the shareholding can be repaid over time from the profits generated. The value of the shareholding could perhaps be offset against the value of a BEE partner bringing in more business or creating a market share. Prospective partners and owners must collaborate to find ways of adding value to the company through BEE."

There are many options and possibilities, and what is required is that each company contributes to the transformation of the country in their own unique way, however small the contribution. With BEE knowledge is power and change can be scary, but it is inevitable. Armed with good information and a willingness to embrace change, even smaller companies may find that BEE is a great opportunity for those who are flexible and creative.

6. HOW DO YOU BECOME CERTIFIED, WHERE DO YOU BECOME CERTIFIED AND HOW LONG DOES A CERTIFICATION LAST

It is not mandatory to get a verification agency to audit a BEE Scorecard. It is however a requirement to have suitable documentation or evidence to score any points. SANAS (South African National Accreditation System) and IRBA (Independent Regulatory Body for Auditor) has been mandated with accrediting the Verification Agencies. This accreditation has been put in place to ensure the consistency of the independent verification of B-BBEE contributions.

BEE Certificates can be issued by any Verification Agency so long as they are approved to do so by SANAS or IRBA. Accounting officers registered in term of the Close Corporation Act of 1984 can also issue the BBEE certificates for EMEs

The Certificate can only be issued once a full verification has been performed and the documentation presented by your company has been verified.

On the certificate, the following information should be listed:

- Company name and number:
- Type of Certificate (Group/Entity/Division)
- BEE Category (EME/QSE/Generic)
- BEE Level (1–8)
- Procurement Recognition %
- Black Ownership %
- Black Women Ownership %
- Value Adding Supplier (Yes/No)
- Certificate Issue Date
- Certificate Expiry Date

No additional information is required to a business' customers. A BEE Certificate is sufficient evidence of a business' B-BBEE Compliance. All certification is/certificates are valid for one year from date of issue.

7. WHAT ARE THE DIFFERENT LEVELS OF CERTIFICATION/VERIFICATION.

Industry Specific Measurement

Companies may choose to be measured using the Generic Scorecard (as described above and created by the government) or their individual sector scorecards. Various Sector scorecards have already been finalised, including construction, tourism, forestry, transport, finance, information technology, mining, petroleum and others. Industry scorecards are created to address industry specific issues and complications with regard to implementing BBBEE.

All industry specific scorecards must align themselves to the generic scorecard. Companies may not measure their suppliers according to their own sector scorecards. For example, a large banking institution may not measure their ICT service providers according to the financial sector scorecard. The ICT company will present a verification certificate to the financial institution based on the generic scorecard or the ICT sector scorecard.

Generic enterprises must apply code 000-700 of the act and stringent reporting techniques.

Generic Enterprises

Generic enterprises are those enterprises that have a turnover of greater than R35 Million or R50 Million on the new scorecard. It is estimated that only 4% of South African Enterprises fall into this category. Generic Enterprises must again apply all seven pillars of BBBEE to calculate their score as per the Generic Scorecard. On the new scorecard the 7 elements were reduced to 5.

Qualifying Small Enterprises (QSE)

Qualifying Small Enterprises (QSEs) are enterprises that have a turnover of between R5 Million and R35 Million. On the new score card the bracket will be between R10 Million and R50 Million and they apply code 800 to calculate their scorecards. Code 800 is a simplified version of code 000-700 which includes less stringent scorecards for each element. QSEs can choose the best four of their seven elements, with each element accounting for 25% of their scorecard out of 100.

While code 800 is a simplified version of the other 7 pillars, it has been ruled by the DTI that any issues not specifically discussed in Code 800 should then be applied as per Code 100–700.

Exempted Micro Enterprises (EME)

Exempted Micro Enterprises (EMEs) are enterprises with a turnover of less than R5 Million. On the new score card it is R10Million. EMEs do not need to be rated but they do need to be able to provide reasonable evidence that they are an EME. EMEs automatically qualify as 100% contributors towards Preferential Procurement. If they are greater than 50% black owned they qualify as 110% contributors towards Preferential Procurement.

8. THE BEE SCORECARD

Broad-Based Black Economic Empowerment is currently measured using seven pillars, each with a relative weighting. Unlike Narrow Based Empowerment, ownership and management account for only 30% of the total contribution.

Direct Empowerment:

- Equity Ownership – 20%
- Management – 10%

Indirect Empowerment:

- Employment Equity – 15%
- Skills Development – 15%
- Preferential Procurement – 20%
- Enterprise Development – 15%
- Socio-economic Development – 5%

The new 5 element codes which were gazetted on 13 October 2013 and that will be enforced from 14 October 2014 has changed the score card as follows;

- The Generic scorecard has been adjusted in accordance with government key priorities
- 5 Scorecard elements, total points increased from 100 to 105.
- Broad based groups elevated into the main Ownership scorecard
- All companies except Exempted Micro Enterprises to comply with all elements
- Scorecard points & qualification criteria for awarding of B-BBEE status levels adjusted
- Enhanced the recognition status of black owned EMEs and QSEs

AMENDED GENERIC PRINCIPLES

- Employment Equity and Management Control merged into one element: Management Control (MC)
- Preferential Procurement and Enterprise Development merged into one element: Enterprise and Supplier Development (ESD)
- Introduction of minimum requirements for priority elements:
- Ownership,
- Skills Development,
- Enterprise and Supplier Development

All measured entities to comply with priority elements under the following conditions:

- QSEs to comply with at least two of the priority elements
- Ownership is compulsory and either;
- ESD or Skills Development;
- Large entities to comply with all priority elements;

Entities who do not meet the thresholds in priority elements, the overall score will be discounted as follows:

- Large entities score : two (2) levels down
- QSE score : one (1) level down
- An EME that is 100% owned by black people qualifies as a level 1 contributor
- An EME that is more than 50% owned by black people qualifies as a level 2 contributor.

Early payment is applicable to Exempted Micro Enterprises and QSEs that are more than 50% black owned.

HOW WILL THE MARKET BE AFFECTED BY THE NEW CODES?

<u>SIZE OF THE Entity</u>	<u>Number of entities National (SARS)</u>	<u>%</u>	<u>BEE compliance Requirement</u>
Survivalists, Micro and Very Small (EME's)	878 032	95%	No compliance
QSE (R 10 m to R 50 m)	34 118	3%	Relaxed compliance
Large (More than R 50 m)	11 871	2%	Full Compliance

Statistics according to the South African Revenue Services, as per the figures above, clearly indicate that the larger companies are the aim of the new emphasis on ownership. The results might be contrary to the purpose of BBBEE and will create very little poverty relief, but will continue to enrich the so-called black elite. It seems that the bad experiences of early payment systems to emerging contractors who disappear with pre-paid funds will continue to deplete funds meant for upliftment of the underprivileged.

9. WHAT IS BEE-FRONTING AND WHAT ARE THE DANGERS ASSOCIATED

Fronting practices

"Fronting" means any practices or initiatives which are in contravention of or against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to black economic empowerment under the codes;

Fronting practices include, but are not limited to:

9.1 Window-dressing: This includes cases in which black people are appointed or introduced to an enterprise on the basis of tokenism and may be:

- discouraged or inhibited from substantially participating in the core activities of an Enterprise; and
- discouraged or inhibited from substantially participating in the stated areas and/or levels of their participation;

9.2 Benefit Diversion: This includes initiatives implemented where the economic benefits received as a result of the BEE Status of an enterprise do not flow to black people in the ratio as specified in the relevant legal documentation.

9.3 Opportunistic Intermediaries: This includes enterprises, which have concluded an agreement with other enterprises with a view to leveraging the Opportunistic Intermediary's favourable BEE Status in circumstances where the agreement involve:

- Significant limitations or restrictions upon the identity of the Opportunistic intermediary's suppliers, service providers, clients or customers;
- The maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
- Terms and conditions which are not negotiated at arms-length on a fair and reasonable basis.

If found guilty of fraud or misrepresentation by a court of law, an enterprise and its directors may be blacklisted and the bill provides for penalties: up to 10 years in jail and 10% of the company's turnover. However to date there has been no leading court case to test this bill.

In cases in which high or excessive fronting risks have been identified by Verification Agencies, it is incumbent upon the agencies to add a paragraph on the Verification Certificate, which describes the fronting risks.

10. WILL THE IMPLEMENTATION OF BEE MAKE YOUR COMPANY MORE PROFITABLE

10.1 With regard to the three different sizes of businesses and the impact of BEE on the ten dimensions of business performance, results indicate that;

10.1.1 Large multinational companies (those with a turnover of more than R35 million per annum where full BEE compliance is mandatory) significantly disagreed more with the notion that BEE would have a positive impact on and improve their business performance in most of the dimensions. However, in the case of dimension 1 (overall domestic and the impact of black economic empowerment (BEE) on South African businesses global competitiveness) and dimension 6 (production performance), no such similar significant disagreement was found as in the case of the other eight dimensions.

10.1.2 Generally, medium-size businesses (with turnover of between R5 and R35 million per year) that need to comply with at least four of the seven elements in terms of the current BEE scorecard, disagreed less than the large multinational companies, but more than the small enterprises and micro-enterprises, that the impact of BEE would improve their performance in the ten dimensions of business performance. Finally, although small enterprises and micro-enterprises do not have to demonstrate BEE compliance they nevertheless generally disagreed that the impact of BEE would improve business performance in the ten dimensions (see Figure 1).

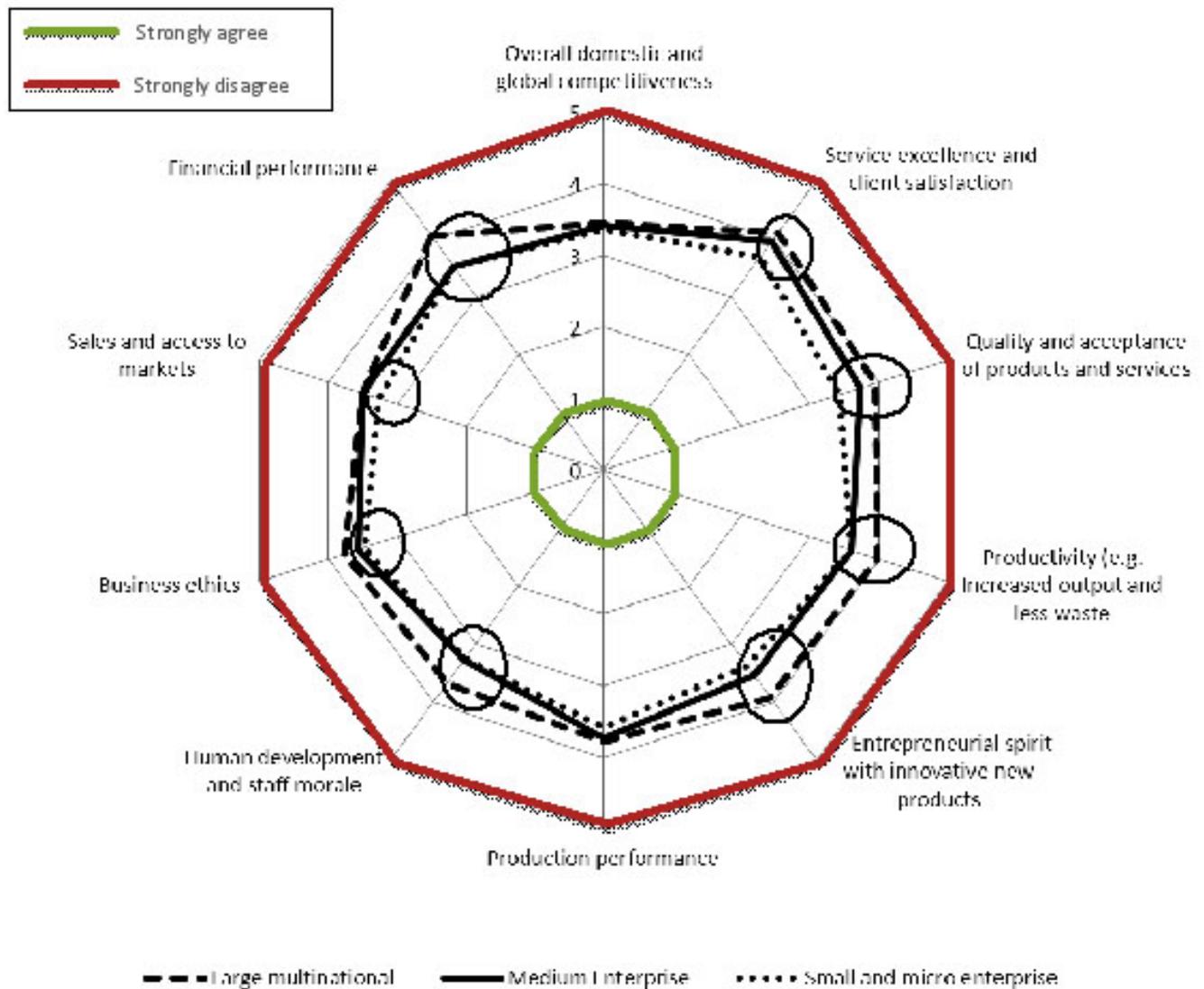


Figure 1: Radius plot for the impact of BEE on ten dimensions of business performance

Ten dimensions of Business performance

1. Overall domestic and global competitiveness
2. Service excellence and client satisfaction
3. Quality and acceptance of products and services
4. Productivity (e.g. increased output and less waste)
5. Entrepreneurial spirit with innovative new products
6. Production performance
7. Human development and staff morale.
8. Business ethics
9. Sales and access to markets
10. Financial performance

Note: The closer the value is to the middle point (or 'bull's eye'), the stronger the agreement that BEE will have a positive impact on that particular dimension of business performance.

The opposite is also true – the further the value is from the middle point, the stronger the disagreement of improvement. The circled points (all dimensions except 1 and 6) indicate statistically significant differences in values between small enterprises and microenterprises, medium businesses and large multinational companies.

11. HOW TO MINIMISE THIS NEGATIVE IMPACT OF BEE ON YOUR COMPANY

Carl Duerr the American business Guru (Jenson Interceptor) from the sixties once said:

“The more government interfere with private business the more millionaires are created”

This is also true in South Africa today, BEE, be it narrow based or broad based is here to stay for quite some time and an astute business person will seize the opportunity to use it as a business tool. So how do you turn it around?

Firstly you will be well advised to employ the services of a good and reliable BEE consultant and you may want to speak to the East Rand Chamber of Commerce & Industry in this regard.

Seen that ownership has become the focus point let us start there. A good consultant will always advise you against any form of fronting. Therefore, if you are told to “promote” your garden engineer to the status of shareholder and that you should ‘give” him shares be careful, with good advice he might just end up with 51% shareholding in your company and you end up tending to the garden.

However should you be considering an employee’s trust with one representative in your shareholders meetings you are now thinking in the right direction. Remember the Trust is the shareholder and the workers become beneficiaries, should a beneficiary leave your employment he is no longer entitled to any further benefits from the trust and he is not a shareholder, therefore he leaves empty handed.

Be well advised however not to allow the Trust to become just another fronting tool again. There are multiple advantages for both the employer and the employees in this arrangement such as;

- Employees get to know that they will share in profits therefore expect productivity to increase
- Employees will be motivated to bring down employee numbers so that those remaining will have a bigger piece of the pie

They will soon realise what the difference is between a dividend and a bonus.

Therefore if done correctly and with the watertight trust formation documents you can expect BEE to work for you. (Ask the East Rand Chamber to provide you with such a document by sending us an email.)

The other elements can also become positive challenges when approached correctly and again with your cooperation, a BEE consultant from the East Rand Chamber will be able to provide you with sufficient knowledge so that you may obtain a positive result in all the elements.

12. HOW CHAMBERLINK CAN HELP YOU WITH BEE

Members who utilize the BEE consulting services of The East Rand Chamber of Commerce & Industry receive the following;

- A pre-Audit
- Report on current BEE standing
- Budget to determine future status
- Procurement assistance to determine the BEE Status of Suppliers
- Pre-Verification Audit prior to Final audit by a Verification Agency

In the absence of an existing BEE certificate the Chamberlink consultant would need to pre-determine the BEE status of the entity requesting consultation and a pre-audit is done by obtaining the following documents from the applicant

THE FOLLOWING INFORMATION WOULD BE OBTAINED AT THE PRE-AUDIT

1.1 OWNERSHIP - Pertaining to the financial year end

- * CK 1, CM 1 (not older than 1 year) OR
- * CK 2, CM 9 OR CM 29 (not older than 1 year)
- * Id copy of all members or directors, beneficiaries of trustees
- * Id copy of all owners or partners, beneficiaries and trustees
- * Share certificates
- * Shareholders agreement/trust agreements/loan agreements
- * Vat submission form indicating vat number

1.2 EMPLOYMENT DETAILS - for the Audit Period

- * Employee List with Names, Surnames, Race, Gender and Occupation description and Management Levels: Top Management, Senior Management, Middle Management, Junior Management, Rest of Staff, Temporary Staff.
(List should include monthly and weekly paid employees as well as Members, Owners or Directors) as per Annexure A
List should indicate management and supervisory levels.
- * Ensure that the stafflist is pertaining to the financial year end
- * EEA2 and/or EEA4 - Also submit staff list that accompanied submission or where

data was obtained from.

Please Note: The EEA 2 & EEA 4 documents are required to score in this element.

1.3 SKILLS DEVELOPMENT (TRAINING) - FOR THE AUDIT PERIOD

- * Proof of submission of latest Workplace Skills Plan (a pre-requisite to score under this element). If entity is exempt of submitting Workplace Skills Plan, please submit letter stating exemption on entity's letterhead.

External Training

- * Invoices & matching proof of payments indicating cost of training pertaining to the financial year submitted.

- * Certificates indicating who was trained and / or attendance registers

Internal Training

- * Detailed attendance registers showing who was trained (race & gender), dates & duration of each training session, name of facilitator and signatures of all parties.

- * Also submit payslips of facilitators for the applicable period that the training occurred.

- * Any evidence of additional expenses incurred during internal training.

(In-house training can only be valid if it is not obtainable externally and if proper record can be provided)

- * 12 Months of EMP 201 pertaining to the financial period concerned.(This is your monthly Employees Tax, SDL and UIF return that you submit to SARS)

- * The above must pertain to the financial year that you are submitting.

1.4 PROCUREMENT (SUPPLIERS) - FOR THE AUDIT PERIOD

A list of ALL suppliers that you purchase from with:

- * (Incl. Those paid in cash or by debit order, e.g: telephone, cellphone, insurance, bank charges, medical aid, motor vehicle expenses, security, electricity & water)

- * their telephone, fax numbers and email addresses

- * total amounts spent for the financial year that you are submitting per supplier

Please keep in mind that the suppliers amounts must balance to the cost of sales on your

financial statements and pertain to the financial year of assessment.

- * IMPORTS: If you import, we need a separate list of the suppliers that you import from, with the amounts spent per supplier for the financial year you are submitting.
- * (We need examples of invoices from each import. These invoices must relate to the financial year you are submitting.)
- * We also need to know if your imports are obtainable in RSA and why you are importing. Please state this information clearly on your company letterhead.
- * (We have to send out letters to all your suppliers who will need to fax or email their BEE status to you or us. They normally prefer sending it to you, as they deal with you. Please fax or email these certificates to our office when you receive them. If your supplier's name does not appear on the certificate, write their name on the certificate in order for us to match it with the suppliers list.
- * This process takes two weeks and therefore it is important to give us the list as soon as possible

1.5 ENTERPRISE DEVELOPMENT - FOR THE AUDIT PERIOD

- * Documented proof of what enterprise development involves.
- * Letter from entities/persons confirming the nature of the enterprise development as well as certified ID copies of the beneficiaries.
- * Proof of amounts involved.
- * Proof of BBEE status of beneficiary(BEE certificate for beneficiary)
- * A contractual agreement between the beneficiaries and yourself.
- * The above must pertain to the financial year that you are submitting.

1.6 DONATIONS - FOR THE AUDIT PERIOD

- * Thank you / confirmation letters / receipts with dates and amounts stipulated on them.
- * Paperwork showing recipients and/or mission of entity.
- * Proof of payment e.g. Remittance advice, EFT's, cheques, Petty cash slips
- * Evidence of a percentage of beneficiaries being black South African citizen and the breakdown of amount that benefitted black persons.

- * The above must pertain the financial year that you are submitting.
- * A letter from organization stating the % of black SA Beneficiary's and the % of admin fee used for organization

1.7 FINANCIALS - FOR THE AUDIT PERIOD

- * Signed Annual Financial Statements from Bookkeeper
OR
- * Signed Audited Annual Financial Statements from Auditor
- * Please keep in mind that your latest available statements must be submitted, as Legislation stipulates (we cannot work on old history).
- * All the documents, proof and amounts that you submit must pertain to the to the financial year that you are submitting.

1.8 CONSTRUCTION SECTOR

- * If type of Industry & Construction, please submit a letter from the auditor or accounting officer stipulating the percentage turnover derived from construction related activities as well as the amount of turnover derived from South African operations for financial period being assessed.

Construction Activities

The design, planning, expansion, creation and or maintenance at fixed assets related to residential or non-residential buildings, infrastructure or any other form of construction works in South Africa.

1.9 TOURISM

- * Should an entity operate in the tourism sector, please submit proof of membership to TOMSA (Tourism Marketing Levy South Africa)

To book a free BEE consultation
with the East Rand Chamber of
Commerce, simply email
admin@chamberlink.co.za