

Amendments to Generic Codes of Good Practice on B-BBEE

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On 9 April 2019, the Minister of Trade and Industry signed four amendments to the Amended Generic B-BBEE Codes of 2013 (Codes). These amendments were gazetted last Friday and will come into effect on 31 November 2019.



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The noteworthy amendments to the Codes are highlighted below:

Amendments to Amended Codes Series 000: General Principles

- The deemed Level Two Contributor status, available to 51% black-owned exempted micro-enterprises (EME) or qualifying small enterprises (QSE) are now only available to such entities if they are at least 51% black-owned on a flow-through basis.
- Similarly, the deemed Level One Contributor status, available to 100% black-owned EMEs or QSEs are now only available to such entities if they are 100% black-owned on a flow-through basis.
- Guidance has now been provided on how unincorporated joint ventures will be measured, in essence providing for the compilation of a consolidated verification certificate using the compliance data of the joint venture partners in proportion to their shares in the joint venture.

Amendments to Amended Code Series 300: Skills Development

- The 6% target for skills development expenditure on learning programmes for black people has now been reduced to 3.5% for a weighting which has been reduced from 8 to 6 points.
- A new sub-element for skills development expenditure on bursaries for black students has now been introduced. The target for this sub-element is 2.5% for 4 points.
- The target for the number of black people participating in learnerships, apprenticeships and internships as a percentage of total employees no longer includes a specific target for black unemployed people and is now set at 5% for a total of 6 points.

- The 5 bonus points for absorption by a measured or industry entity at the end of a learnership is clarified to also pertain to internships and apprenticeships.
- It has been clarified that the calculation of the 40% minimum threshold to avoid discounting by one BEE level cannot include bonus points.
- Recognition for skills development expenditure arising from informal and workplace learning programmes was previously limited to 15% of the total value of skills development expenditure. This limit is now increased to 25%.

Amendments to Amended Code Series 400: Enterprise and Supplier Development (including Preferential Procurement)

- The amendments clarify that for an entity to meet the 40% minimum threshold to avoid discounting by one BEE level for this element, the calculation of the 40% cannot include bonus points. In other words, in order to achieve the minimum threshold of this priority element, an entity must achieve at least 10 points for procurement, 4 points for supplier development and 2 points for Enterprise Development.
- The target for procurement from 51% black-owned companies has increased from 40% of total procurement spend to 50% of total procurement spend, and the number of points awarded for such procurement has increased from 9 points to 11 points.
- The criteria to receive the multiplying factor of 1.2 for procurement from a recipient of supplier development contributions has been amended, and this enhanced recognition status is no longer limited to QSEs or EMEs. It may now also be claimed for procurement from large entities which are 51% black-owned on a flow-through basis.
- Beneficiaries of enterprise development or supplier development initiatives which are currently limited to EMEs and QSEs that are 51% black-owned, now also include large entities (which are 51% black-owned on a flow-through basis) provided that when the entity first received assistance from the measured entity, the Beneficiary was an EME or QSE. Recognition for assistance to 51% black-owned large entities will be limited to five years from the time when the beneficiary first received assistance from the measured entity.
- Procurement from large entities which are 51% black-owned on a flow-through basis will also qualify as procurement from EMEs or QSEs for a period of five years from the date on which procurement from the entity first occurred, provided that when that procurement first occurred the entity was in fact an EME or QSE.
- The amendments clarify that a Supplier Development Beneficiary is a part of the Measured Entity's supply chain, whereas an Enterprise Development Beneficiary is not.
- Previously only 3% of the amount of any guarantee provided could be recognised as supplier or enterprise development contributions. This has now been increased to 50%, which will act as a major catalyst for companies providing guarantees rather than having to actually spend money. This has both positive and negative consequences.

The amendments to this element of the generic scorecard are likely to act as a catalyst for the implementation of 51% black-ownership transactions. Importantly, the structuring of these transactions could not be reliant on the modified flow-through principle, if the full benefits of the proposed amendments are to be reaped.

Amendments to the Schedule 1 to the Codes which contains the interpretation and definitions sections

Most of the changes to Schedule 1 are aesthetic in nature and aimed at neatening up some of the definitions used in the Codes. However, some more noteworthy changes include:

The term "Absorption" for purposes of the Y.E.S B-BBEE recognition targets and the Skills Development bonus points is no longer confined to Learners. It now includes employees, interns and apprentices.

The new defined term, "Designated Group Supplier", has been introduced. It refers to a supplier that is not only 51% black-owned but also owned by unemployed black people, black youth, black people with disabilities; black people living in rural and underdeveloped areas and/or black military veterans. This term was not previously defined. Its introduction provides clarity on how to earn the 2 points on the preferential procurement scorecard to procure from a Designated Group Supplier.

The fifth criteria to qualify as an "Empowering Supplier" which was introduced in May 2015 has been deleted. This read "at least 85% of labour costs should be paid to South African employees by service industry entities". Now large enterprises must comply with three out of the four remaining elements to qualify as an Empowering Supplier.

The term "long-term contract of employment", defined as "a legal agreement between an individual and an entity that this individual would work for until his or her mandatory date of retirement", has been introduced. This relates to the definition of the term "Absorption".

The introduction of a definition of "Current Equity Interest Date" clarifies the determination of the graduation factor calculation for "Net Value".

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