

**COMMENTS ON THE REVISED BROAD-BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE (THE CODES) and the B-BBEE TECHNICAL ASSISTANCE GUIDELINES (THE TAG)**

Series	Amendment	Problem/ Issue	Comment/ Suggestion
000			
	<b>Paragraph 3 of Code Series 000</b>		
	1 (c) 3.1.3	It is unclear what is meant by 'economic activity', which is too broad.	The DTI should define 'economic activity'.
	1 (c) 3.1.3	Practically it might be difficult for small and medium sized entities to obtain a B-BBEE certificate from a State Owned Entity like Eskom if they do not submit themselves to measurement / do not obtain a verification certificate.	
	1 (d) 3.4 in its entirety	<p>This could serve as a major disincentive to achieving the objectives of B-BBEE, especially for QSEs. White owned QSEs and EMEs should be <u>encouraged</u> to work on the broad base of BEE even if they cannot, for some reason, deal with ownership and management (narrow base).</p> <p>The inclusion of discounting of scorecard levels and penalties changes the nature of B-BBEE from a voluntary basis to a penal structure. This suggested revision does not support the objectives of the B-BBEE codes and should be revisited.</p>	<p>Use weighting and bonuses to achieve similar results, but keep the outcomes achievable. QSEs should be encouraged rather than penalised.</p> <p>Targets or weighting <i>or</i> qualification points can be made more difficult to achieve and reward achievement, which is still preferable to the change to a penal structure.</p>
	<b>paragraph 4 of Code Series 000</b>		

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	General	The increase in the threshold from 5 million to 10 million is supported.	
	2 (a) 4.3 and 2 (b) 4.4	This change will flood the market with level 2 and level 1 entities and thereby devalue the rating and undermine the objectives of B-BBEE. EMEs with these high ratings have not actually achieved broad based empowerment. They simply happen to be black owned, which is not the only objective of broad based empowerment.	It is recommended that the provisions in the old codes are retained and to keep the entities at level 4 and level 3 if they are >50% black owned.
	2 (c) 4.5	These EMEs should be encouraged to participate in B-BBEE. Because of the penalties attached to white QSEs, a significant incentive has been removed.	Allow the optional upgrade but without the penalties.
	2 (c) 4.6	The cost of obtaining a certificate appears to be more onerous than under the previous codes, which did not require a certificate at all.	Change the requirement to that requiring an accounting officers letter each year.
	<b>Paragraph 5 of Code Series 000</b>		

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	General	<p>QSEs should not have to comply with all the elements.</p> <p>The revised codes appear to be geared primarily towards the larger entities. It should be noted that it is the small and medium sized entities that drive the economy and focus should therefore be at the EME and QSE levels, which is where B-BBEE can make the greatest impact. However, if the revised codes are geared towards the larger entities it will make it difficult for the small and medium sized entities to comply.</p> <p>The increase in threshold for QSEs to 50 million will pose a challenge for many registered auditors. Practitioners will find it difficult to reach a level 3 and comply with Statement 005.</p> <p>As the revised QSE scorecard has not been included, we are uncertain as to whether QSEs will have to comply with the previous 7 elements or the new 5 elements.</p>	The DTI should publish the revised QSE scorecard for comment.
	3	This does not encourage the development of white owned QSEs, which if that is the case the QSE's are likely to find themselves discouraged and therefore not as willing to participate and therefore transfer skills to those who require them.	The previous Codes were achievable, but significant effort was required. This was a perfect balance of incentive and achievability. We recommend that the previous codes should be clarified rather than completely rewritten.
	<b>Paragraph 6 of Code Series 000</b>		
	4 (b) 6.4	The reference to 'should' is not binding.	Replace 'should' with 'must'.

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	<b>Paragraph 7 of Code Series 000</b>		
	5 (b) 7.4	The reference to 'black employees and people' is too vague.	Replace with 'black employees and black people.'
	5 (c) 7.5	The sentence 'who Value-Adding is grammatically incorrect.	Replace with 'who are Value-Adding'.
	<b>Paragraph 8 of Code Series 000</b>		
	6 (b)	<p>The elimination of incentives to employ black people could result in an immediate swing away from black employees, simply because on the whole, white people have historically had the benefit of better education over the vast majority of black people.</p> <p>The broad base of the existing Codes is being systematically removed and the shift in weightings towards the top of the triangle reflects a trend back to more narrowly focussed BEE.</p>	Re-instate incentives to employ black people at all levels from unskilled upwards. Therefore re-think the weightings to embrace the lower levels and encourage empowerment of a broader base of black people.
	6 (c)	If the bar is raised too high, nobody will attempt to achieve the target.	All targets must be reasonably achievable. Retain the old qualifications, to avoid too many Level 1 and Level 2 EMEs, Level 7, 8 and non-compliant QSEs and Generics.
<b>100</b>	<b>Ownership</b>		
	<b>Paragraph 2 of Code 100</b>	Calculation of Net value in terms of the new codes should be clarified.	Include a guideline on how to calculate Net value.
		The codes focus too much on Ownership, which should not be the primary element for addressing B-BBEE. Far more important than ownership is skills development and how black people are empowered. There are thousands of black people who are seeking employment and if given the opportunity can grow to junior and middle management.	

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		The voting requirement of 25% + 1 vote is not aligned to the new Companies Act, 2008. We should include updated requirements which take account of the changes to the companies act.	The DTI should amend this requirement by either aligning it to the new Companies Act, 2008, or include a provision which will have the same effect.
	<b>Paragraph 3 of code series 100</b>	Given the fact that the repayment of many vendor financed deals is dependent on the ability of the measured entity to declare dividends, which in turn is dependent on the financial well- being of the measured entity, the ability to achieve and maintain the 40% target may be challenging	
		One of the inputs to the Net Value formula is the time- based graduation factor, e.g. 10% for the first year after the Current Equity Interest date. The Current Equity Interest date has not been defined	The DTI should Include a definition for Current Equity Interest date.
		Formula A and B include the multiplication factor of 7 which is incorrect and should be 8.	The DTI should change the multiplication factor from 7 to 8.
	(a) 3.2	Penalising will act as a strong dis-incentive and could result in the removal of the lower rungs of the ladder.	Rather keep the 'ladder' intact and encourage by means of bonuses, and other incentives.
<b>200</b>	<b>Management Control</b>		
	General	The codes focus too much on top management. The removal of the category "Junior Management" is counter-productive, and it is recommended that this category be maintained and still attract weighting points. In order to encourage the development of black people in an organisation on a wide scale, it is necessary for them to enter the organisation at a level at which they can gain the necessary knowledge and experience in order for them to move into more senior management positions. If this category is removed, an important link in fostering black talent would be lost.	The "Junior Management" category should be maintained and attract weighting points.  Re-instate incentives to employ black people at all levels from unskilled upwards.

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		<p>Removal of all levels of black employees below Middle Management will be particularly damaging to the vast majority of black people whether unemployed or low-skilled employed, as there is a reduced incentive to employ these individuals.</p>	
		<p>The inclusion of demographic profile will make it very difficult for many organisations/ entities to fill key management positions. The objective of the Legislation was to be broad based and benefit all black people and not distinguish between races within the definition of black people.</p> <p>This will be negatively received in non-black communities especially by Indian/African/Coloured owned businesses that have scored under management and employment equity in the past.</p> <p>The data for regional demographics, if not available, will be a major problem at the time of implementation.</p> <p>Entities, for example in the Western Cape and Kwa Zulu Natal, will not be able to meet national statistics, which will cause an undue disadvantage.</p>	<p>The DTI should remove the further sub categorisation demographic of “black” into race sub-groups.</p>
		<p>The revised codes are more geared for large entities. Smaller entities will have to take significant steps to enhance their scorecard. The current codes are better in this regard and are working well and it is the SMPs that have made a lot of progress with employing black staff.</p> <p>Under the revised codes SMPs will find it much harder to get points for ownership and for those points to be meaningful, leaving them with little incentive to comply, due to the fact that in these instances meeting the ownership requirements</p>	

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		become difficult to achieve.	
		Incorrect duplication of Employment Equity scorecard.	Remove the duplication.
		Paragraphs 3, 4, 5 of Employment Equity Existing Codes have not been deleted.	
	2.2	The use of the word "should" is inappropriate and leaves options available.	Replace the word "should" with "must".
	2.2	The minutiae of distinction between these different "race groups" especially between the "pure" black and Indian and the "mixed" coloured is uncomfortably reminiscent of pre-1994.	Let black remain black as previously defined - they were all equal then and they should remain equal (and in that respect interchangeable) now.  Delete the formula in its entirety, together with all references to it
	<b>Annexe 200(A)</b>		
	C. CALCULATING COMPLIANCE	The minutiae of distinction between these different "race groups" especially between the "pure" black and Indian and the "mixed" coloured is uncomfortably reminiscent of pre-1994.	Delete the formula in its entirety, together with all references to it.
	Definition of <b>C</b> and <b>D</b> in the formula	Avoid using the same symbol " <b>C</b> " to mean different things in the same formula	Use C1, C2, C3 etc.

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		Reference to paragraphs 2.1.1, 2.2.1 etc. are invalid; these are references to Measurement Categories not paragraphs.	Replace "paragraphs" with "Measurement Categories and Criteria".
<b>300</b>	<b>Skills Development Scorecard</b>		
	<b>Paragraph 2 of Code Series 300</b>	The revised codes require that 40% of the skills development target must be achieved. Skills development has 5 targets, and it is unclear as to which target/s the minimum threshold requirement applies to.	Clarify to which target/s the 40% sub minimum applies to.
		The demographic formula is complicated and needs to be clarified, otherwise it might have the opposite effect.	
		Learnerships on fixed term contracts e.g. trainee accountants - If these are included as employees of the entity the amount spent in respect of salaries cannot be claimed under learnerships, and if the amount cannot be claimed as salaries, the 6% target will be onerous for large entities.	Suggest that entities be allowed to claim a percentage of the amount spent.  In an audit firm which also employs consultants not subject to learnerships, the ratio of learnerships should be calculated in relation to the number of auditors only and not the number of auditors and consultants as this will dilute the ratio.
		The Measured Entity concept needs to be clarified.	
		The inclusion of "unemployed black people" in Skills Development is supported.	



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		Bonus points for the number of black people absorbed by measured and industry entity at the end of the learnerships programme is supported.	
		<p>There should be more focus on skills development as opposed to ownership and suggest skills development should be increased by a further 5 points.</p> <p>The DTI should consult with the Department of Education with reference to skills development, e.g. one could consider bonus points for supporting a school or teacher.</p>	The DTI should increase skills development by a further 5 points.
	3 (a) 3.1.1 and 3.1.2	We believe that these provisions are unnecessary. It is not what the entity has made plans to do that matters, but what it has actually done and it will be measured on its actual achievements.	We recommend the removal of these conditions.
	3 (b)	Again, this provision unnecessarily removes an incentive.	We recommend the removal of this amendment.
	<b>Annexe 300B</b>		
	A. CALCULATING COMPLIANCE	The minutiae of distinction between these different "race groups" especially between the "pure" black and Indian and the "mixed" coloured is uncomfortably reminiscent of pre-1994.	Delete the formula in its entirety, together with all references to it.
		Avoid the use of the same symbol " <b>C</b> " to mean different things in the same formula	Use C1, C2, C3 etc.
	C.	Definition of symbols refers to <b>A</b> twice	Use some other symbol in the right hand part of the formula rather than "A" for example "B".

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<b>400</b>	<b>Enterprise and Supplier Development Scorecard</b>		
	<b>Paragraph 2 of Code Series 400 - General</b>	The suggested changes to the preferential procurement scorecard where only Value Adding Suppliers are considered for scoring points and the non-exclusion of foreign procurement in the total measured procurement spend calculation will have a negative impact on the economy as a whole. Entities that have no choice but to import, which operate at low margins and those that have low staff complements, will never achieve the status as Value adding Suppliers, and therefore would not be encouraged to promote the B-BBEE initiatives. This suggested revision does not support the objectives of the B-BBEE codes and should be revisited.	We suggest that the DTI includes a target for Value adding Suppliers with bonus points awarded for compliance, rather than excluding all non- Value adding Suppliers from being recognised for their compliance with B-BBEE.  We further recommend that, rather than disallowing the non- exclusion of all foreign procurement from the “Total Measurement Spend” calculation, that bonus points be awarded for local content.
		The Early payment provisions are a welcome addition.	
		Enterprise and Supplier Development bonus points – compliance targets have not been included.	The DTI should clarify the compliance targets.

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	3 Table 2.1.1 and 2.1.2	Only about 30% of existing certificates indicate "Value Adding". This renders about 70% of existing (and future) certificates worthless.	Remove all references to "Value Adding" and revert to the previous multiplier which was an effective indicator of Added Value. It is further recommended to remove the requirement for VAT registration as it is irrelevant.
	3 Table 2.1.2.1 and 2.1.2.2	This dramatic change in weighting amounts to double counting. Black ownership is largely taken care of in the Ownership element. There is no need to re-introduce this emphasis and certainly not twice (targets <i>and</i> weightings) - it should be the Level that counts as this is the true indicator of B-BBEE achievement - if it is not, then the Codes would have missed the objective of B-BBEE.	Re-balance the targets and weightings.
	3 Table 2.3.1	"New venture" needs to be precisely defined	Replace "new venture" with "new enterprise" or define it clearly.
	3 Table 2.3.3	The reference to "Jobs" is unspecific.	Quantify "Jobs" and clarify what is meant by "multiplier of 1.25" separately.
	2.5	These threshold requirements remove the lower rungs of the ladder and are therefore a distinct disincentive.	Delete these thresholds.
	<b>paragraph 3 of Code Series 400</b>		
	4 (b) 3.3.1	"Black QSE or EME" is not defined.	Use a term that has been defined.
	4 (b) 3.3.2	The "New Enterprise" definition is not a definition.	See definitions below.

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	4 (c) 3.5.9	This exacerbates a problem that arose in the existing Codes and fails to give credit for total spend on black upliftment simply because it has not been smoothed over the years.	Allow an option of average basis or annual basis and allow the option to be exercised every year.
	4 (c) 3.5.11	It is achievement that should be rewarded, not plans to achieve. This would lead to the punishment of great achievers simply because they had no formal plans on how to achieve.	Delete this amendment in its entirety.
	<b>paragraph 5 of Code Series 400</b>		
	6 (c) 5.12	Grammatical errors	Replace 'BEE' with 'The B-BBEE' and again replace 'BEE certificate' with 'B-BBEE certificate.'
	<b>paragraph 6 of Code Series 400</b>		
	6 (d)	This proposal ignores the reality of business throughout the world. Countries trade with each other and we are not an economic island. The existing Codes were too easily circumvented, so they need to be revisited and not completely overhauled.	Replace 6.6.2.1 and 6.6.2.2 of the existing Codes with 'cannot be substituted by alternative locally produced goods or services, and which are, or form part of, an end product or service that cannot be substituted by alternative locally produced goods or services'. An example would be crude oil. Under the existing codes, Iranian crude would be excluded. Under our proposal Sasol petrol can be substituted in place of petrol produced from Iranian crude and therefore Iranian crude would not be excluded.
	<b>paragraph 7 of Code</b>		

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	<b>Series 400</b>		
	8	The reference to 'can' makes the provision optional.	Replace 'can' with 'must'.
	<b>paragraph 8 of Code Series 400</b>		
	9	The reference to 'can' makes the provision optional.	Replace 'can' with 'must'.
	<b>paragraph 11 of Code Series 400</b>		
	ANNEXE 400(B) Qualifying Contributions	The definition is grammatically incorrect and does not give the annual option.	Replace 'or the this' with what this was meant to express. Allow an option of average basis or annual basis and allow the option to be exercised every year.
<b>500</b>	<b>Socio Economic Development</b>		
	General	We suggest to increase the weighting for SED.	
		We suggest that the DTI includes bonus points for education, i.e. if the entity puts money back into education, in order to uplift individuals, they could qualify for bonus points.	
	2.1.1	NPAT is no longer defined	Re-instate 2.1.1 and sub-paragraphs.
	2.2	This exacerbates a problem that arose in the existing Codes and fails to give credit for total spend on black upliftment simply because it has not been smoothed over the years.	Allow an option of average basis or annual basis and allow the option to be exercised every year.
	3.1.2	This exacerbates a problem that arose in the existing Codes and fails to give credit for total spend on black upliftment simply because it has not been smoothed over the years.	Allow an option of average basis or annual basis and allow the option to be exercised every year.

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	3.2.3	This deletion results in only 100% benefit being recognised, for example, when one person in a community of 1000 is not black as defined, then the entire community would receive no benefits as the contribution would be diverted elsewhere.	Paragraph 3.2.2 replace "100%" with "75%" and re-introduce 3.2.3.
	3.2.4.2	Grammatical error	Replace 'i.e.' with 'e.g.'
	<b>SCHEDULE 1 PART 2</b>		
	'Absorption'	The definition is too vague.	Either re-think the entire concept and delete this definition or determine and define the method of measurement.
	'Black new entrants'	The figure was already too high. It simply encourages the allocation of equity to the black super-rich instead of encouraging investment opportunity for new entrants.	Replace 'R50 000 000' with a lower figure.
	'Enterprise Development Contributions'	The redundancy could lead to mis-interpretation. 'black women owned' could mean '100% black women owned'.	Delete 'or black women owned' or define appropriately.
	'New Enterprise'	The 'New Enterprise' definition is not a definition.	Replace the definition with 'an enterprise which has traded for no more than 3 years'.
<b>Overall comments</b>		The technical assistance guidelines: <ul style="list-style-type: none"> <li>• What are the technical assistance guidelines?</li> <li>• Where are they?</li> <li>• What is the legal effect of these guidelines?</li> <li>• In terms of what provisions are they published?</li> </ul>	
		Transitional Provisions are important and have not been mentioned.	
		There are concerns are that many entities might enter into deals before the revised codes become	

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		effective.	
		The sector codes are not aligned with the revised codes.	
		Consideration should be given to practical issues such as whether verification agencies should use Annual Financial Statements or Management Accounts, and clarity required around year ends and periods.	