

An EMPOWERDEX Guide



The Codes of Good Practice

Codes Definitions



Definitions

ABET: Means Adult Basic Education and Training as determined by the National Qualifications Authority

Accreditation Body: Means the South African National Accreditation System or any other entity appointed by the Minister from time to time to

- (a) accredit verification agencies; and
- (b) develop, maintain and enforce the verification standards

Acquisition debt: Means the debts of:

- (a) black participants incurred in financing their purchase of their equity instruments in the company; and
- (b) juristic persons or trusts found in the chain of ownership between the eventual black participants and the company but excluding debts incurred by the company for the same purpose as those in (a)

Associated Enterprise: Means an entity with which a seller has concluded a qualifying transaction

B-BBEE: Means broad-based black economic empowerment

BEE Controlled Company: Means a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to exercisable voting rights that is more than 50% of the total such rights measured using the Flow Through Principle

BEE Owned Company: Means juristic person, having shareholding or similar members interest, that is BEE controlled, in which black participants enjoy a right to economic interest that is more than 50% of the total such rights measured using the Flow Through principle

BEE Procurement Recognition Level: Means the percentage BEE procurement recognition levels as determined:

- (a) for enterprises that are neither Qualifying Small Enterprises nor Exempted Micro-Enterprises
- (b) for Qualifying Small Enterprises; and
- (c) for Exempted Micro-Enterprises, a deemed BEE Procurement Recognition of 100% and BEE Status of Level 4 Contributor

BEE Status: Means the BEE status of a company as determined by their compliance with the Generic or QSE scorecard

Benefit Factor: Means a factor specified in the Benefit Factor Matrix applicable to fixing the monetary value of Enterprise Development and Socio-Economic Development contributions

Benefit Factor Matrix: Means the Benefit Factor Matrix for Enterprise Development and Socio-Economic Development contributions

Black designated groups: Means

- (a) Unemployed not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution
- (b) Black people who are youth as defined in the National Youth Commission Act of 1996
- (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act
- (d) Black people living in rural and under-developed areas

Black new entrants: Means black participants who hold rights of ownership in a company and who, before holding those have not held equity, which has a total value of more than R20 million, in any other entity

Black People: Has the meaning defined in the B-BBEE Act qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent; or are citizens of the Republic of South Africa by naturalization:

- (a) occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993 or

- (b) occurring after the commencement date of the constitution of the Republic of South Africa Act of 1993, but who, without the apartheid policy would have qualified for naturalization before then

Broad-Based Ownership Scheme: Means an ownership scheme which meets the rules set out by the code on ownership

Black Professional Service Provider: Means black individuals who provide services of a professional nature

Certified Learning Programme: Means any Learning Programme for which the company has:

- (a) any form of independent written certification 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 confirming the employee has:
 - o enrolled for, is attending and is making satisfactory progress in the learning programme; or
 - o enrolled for but not attending the learning programme; or
 - o attending the training programme but has failed an evaluation of their learning progress

Companies Act: Means the Companies Act 61 of 1973 as amended or substituted

Company limited by guarantee: Means a company as referred to in section 19(1)(b) of the Companies Act

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 company in line with its core business
- (b) in areas the company cannot outsource; or
- (c) within the production/operational part of the company'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

Disabled Employees: Refer to Key Aspects of Disability in the Workplace issued under section 54 of the Employment Equity Act

EAP: 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 a company representing a return on ownership and is similar in nature to a dividend right. Economic interest is measured using the Flow Through and, where applicable, the Modified Through Principles

EE Act: Means the Employment Equity Act of 1998, as amended

EE Regulations: Means the regulations under the Employment Equity Act

Elements: Means the measurable quantitative or qualitative elements of BEE compliance in the Generic Scorecard and the primary Codes

Employee: Bears the meaning as defined in the Labour Relations Act 66 of 1995 as amended

Employee Ownership Scheme: Means a worker or employee scheme

Entrepreneur: Means a person who starts and/or operates a business which includes identifying opportunities in the market, taking risks with a view of being rewarded with profits

Entity: Means a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa

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) Category A enterprise development contributions involves enterprise development contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black women owned
- (b) Category B enterprise development contributions involves enterprise development contributions to any other enterprise that is 50% black owned or black women owned; or 25% black owned or black women owned with a BEE status of between Level One and Level Six

Equity Equivalent contribution: Means an equity equivalent contribution made by a Multinational under an Equity Equivalent Programme

Equity Equivalent Programme: Means a public programme or scheme of any government department, provincial or local government in the Republic of South Africa or any other programme approved by the Minister as an equity equivalent programme

Equity instrument: Means the instrument by which a participant holds rights of ownership in a company

Equivalency Percentage: Means a percentage ownership performance for all the indicators in the associated enterprise's ownership scorecard arising from a qualifying transaction included in the ownership scorecard of the beneficiary entity

Executive Members of the Board: Means those members of the board who are executive directors as defined in the King Report

Exercisable Voting Right: Means a voting right of a participant that is not subject to any limit

Exempted Micro Enterprises: Means a company with an annual turnover of less than R5 million

Global Practice: Means a globally and uniformly applied practice of a Multinational, restricting alienation of equity in or the sale of businesses in its regional operations. The practice must have existed before the promulgation of the B-BBEE Act

Grant Contribution: Means the monetary value of qualifying contributions made by a company to a beneficiary in the form of grants, donations, discounts and other similar quantifiable benefits which are not recoverable by the company making the contribution

Higher Education Institution: Means a higher education institution as defined under the Higher Education Act of 1997

Inception Date: Means a date specified by a company as being the date from which its contributions are measurable before the commencement date of the Codes

Independent Non-Executive Board Members: Means those members of the board that are independent directors as defined in the King Report

Indicator Percentage: Means the percentage compliance of the associated entity for all the indicators of the associated enterprises ownership scorecard. The calculation of indicator percentages follows the rules in the ownership statement and uses the actual percentage compliance for each indicator and not the resulting scores

King Report: Means the King Report on Corporate Governance for South Africa 2002 by the King Committee on Corporate Governance of the Institute of Directors in Southern Africa

Learning Programmes: Means any learning programme set out in the Learning Programme Matrix

Learning Programme Matrix: Means the Learning Programme Matrix used as part of measurement for skills development

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

Management Fees: Means the total economic interest received by the broad-based ownership scheme in any year less the amounts distributed or applied to beneficiaries and the amounts reserved for future distribution or application

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, who mandate is governed by that legislation. Mandated investments include pension funds and unit trusts.

Measured Entity: Means a company as well as an organ of state or public entity subject to measurement under the Codes

50% black owned: Means company in which:

- (a) black people hold more than 50% of the exercisable voting rights
- (b) black people hold more than 50% of the economic interest
- (c) has earned all the points for net value

50% black women owned: Means a company in which:

- (a) black women hold more than 50% of the exercisable voting rights
- (b) black women hold more than 50% of the economic interest
- (c) has earned all the points for net value

30% black women owned: Means company in which:

- a) black women hold more than 30% of the exercisable voting rights
- b) black women hold more than 30% of the economic interest
- c) has earned all the points for net value

Multinational Business: Means a company with a business in the Republic of South Africa and elsewhere which maintains its international headquarters outside the Republic

National Skills Development Strategy: Means the national skills development strategy referred to in section 5(1)(a)(ii) of the Skills Development Act

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 extra ordinary 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 extra ordinary items as determined by (GAAP) Generally Accepted Accounting Practices

Net Value: Means the percentage of equity held by a black participant that is debt-free

Net-Value Date: Means the later occurring of the date of commencement of the Codes and the date upon which the earliest of all still operative transactions undertaken by the company to achieve black rights of ownership, became effective and unconditional

Non-Profit Organisation: Means a non-profit organization registered under the Non-Profit Organisation Act of 1997

Outsourced Labour Expenditure: Means any expenditure incurred in:

- (a) procuring the services of or from a labour broker; and
- (b) procuring the services of any person who receives remuneration or to whom any remuneration accrues because of any services rendered by such person to or on behalf of a labour broker

Ownership Fulfillment: The full repayment of all debt by the black participant

Participant: Means a natural person holding rights of ownership in a company

Priority Skills: Means core, critical and skills as well as any skills specifically identified:

- (a) in a Sector Skills Plan issued by the Department of Labour of the Republic of South Africa; and
- (b) by the Joint Initiative for Priority Skills Acquisition (JIPSA) established as part of the Accelerated and Shared Growth Initiative – South Africa (ACGISA)

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

Public Benefit Organisation: Means a company as defined in section 30 of the Income Tax Act of 1962

QSE: Means a Qualifying Small Enterprise that qualifies for measurement under the Qualifying Small Enterprise scorecard with a turnover of between R5 and R35 million

Qualifying Transaction: Means a sale of a business, valuable business assets or shares that results in the creation of sustainable business opportunities and transfer of specialized skills or productive capacity for black people

Realisation Points: Means the ownership fulfillment point added to the net value points in the ownership scorecard

Related Enterprise: Means an entity controlled by a company whether directly or indirectly controlled by the natural persons who have direct or indirect control over that company or the immediate family of those persons

Rights of Ownership: Is a collective term for the right to economic interest and the right to exercisable voting rights

Scarce Skills: Are those skills identified as being scarce by any SETA

Section 21 Company: Means an association not for gain incorporated under section 21 of the Companies Act

Sector Code: Means a Code which is applicable to a particular sector

Sector Specific Programme: Means sector specific programmes that are recognized on the bases set forth in the sector code governing them

Seller: Means the company or the person concluding a qualifying transaction with the associated enterprise

Senior Top Management: Means employees of a company who are:

- (a) Members of the occupation category of “top management” as determined using the EE Regulations as qualified in a Sector Code
- (b) Appointed by or on the authority of the board to undertake the day-to-day management of that company and who:
 - (i) have individual responsibility for the overall management and for the financial management of that company; and
 - (ii) are actively involved in developing and implementing the company’s overall strategy

Skills Development Expenditure: Comprises the money that a company spends on skills development. It excludes the skills development levy payable by the company under the Skills Development Levies Act

Socio-Economic Development Contributions: Is a collective term for socio-economic development programmes and contributions, approved socio-economic development programmes and sector specific programmes

Approved Socio-Economic Development Contributions: Means monetary or non-monetary contributions carried out for the benefit of any projects approved for this purpose by any organ of state or sectors including without limitation:

- (a) projects focusing on environmental conservation, awareness, education and waste management; and
- (b) projects targeting infrastructural development, enterprise creation or reconstruction in underdeveloped area; rural communities or geographic area identified in the government’s integrated sustainable rural development or urban renewal programmes

Socio-Economic Development Programmes: Socio-economic development programmes 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 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

Standard Valuation Method: Means a standard valuation method for an asset, an economic interest or any other instrument or right relevant to measurement under ownership, undertaken using normal valuation methods that represent standard market practice

Start-up Enterprise: Means a recently formed or incorporated entity that has been in operation for less than 1 year. A start-up enterprise does not include any newly constituted enterprises which are merely a continuation of a pre-existing enterprise

Subsidiary: Has the meaning defined in section 1(3) of the Companies Act

Superior Contributor to BEE: Is a Level One to Level Four Contributor to BEE

Supplier: Means any supplier or service provider to a company if any portion of the supply or service provision falls within the definition of Total Measured Procurement Spend

Target: Means the targets for the various elements in the Generic and QSE Scorecard

The Act: Means the Broad-Based Black Economic Empowerment Act 53 of 2003

The Codes: Means the Codes of Good Practice including all the statements as issued under section 9 of the Act

The Generic Scorecard: Means the balanced BEE scorecard

The PFMA: Means the Public Finance Management Act 1 of 1999 as amended

The QSE Scorecard: Means the balanced scorecard as applied to QSEs

The Skills Development Act: Means the Skills Development Act of 1998

The Skills Development Levies Act: Means the Skills Development Levies Act of 1999

The Strategy Document: Means the document entitled: "South Africa's Economic Transformation – A Strategy for Broad-Based Black Economic Empowerment", published by the department of trade and industry in March 2003 as amended or substituted under section 11 of the Act

Third Party Rights: Means third party legal or commercial rights that restrict, withhold or defer any benefit associated with ownership of any equity instrument. Third party rights include only those rights:

- (a) created against a black participant to secure, for a lender, repayment of a loan advanced to that Participant for financing their purchase of their equity instrument in the company
- (b) held against a juristic person or trust that is in the chain of ownership between the company and that the eventual black participant serving the same purpose mentioned in (a) above

Top Manager: Means employees of a company who hold rights of ownership, serve on the board, undertake the day-to-day management, have overall responsibility for the overall financial management and are actively involved in developing and implementing the overall strategy of that company

Total Labour Cost: Means the total amount of remuneration paid by a company to its employees determining using section 3(4) of the Skills Development Levies Act of 1999 and the Fourth Schedule of the Income Tax Act of 1992

Total Revenue: Means the total income of a company from its operations as determined under South African Generally Accepted Accounting Practice (GAAP)

Transformation Charters: Means the sectoral transformation charters referred to in section 12 of the Act

Uncertified Learning Programme: Means any learning programme of a company that is not a certified learning programme

Unincorporated Joint Venture: Means a joint venture between two or more companies affected by agreement without incorporation

Value-Adding Enterprise: Means a company registered as a vendor under the Value-Added Tax of 1991, whose Net Profit Before Tax summed with its Total Labour Cost exceeds 25% of the value of its total revenue

Voting Right: Means a voting right attached 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 Scorecard

Workplace Skills Plan: Means the company plan approved by the relevant SETA