

Broad-Based Black Economic Empowerment Act 53 of 2003 (B-BBEEA) and Codes of Good Practice

Topic: Black Economic Empowerment

IN A CALABASH

Introduction

Broad-Based Black Economic Empowerment (B-BBEE) refers to a policy of the South African government which seeks to correct the discriminatory and exclusionary practices of the past. It is commonly known as affirmative action.

BEE targets broad-based activities that benefit black people, defined to mean African black, coloured or Indian people who are South African citizens by birth or became a South African citizen before 27 April 1994.

Objectives of the Act

The objectives of the B-BBEEA are to facilitate broad-based black economic empowerment in South Africa by–

- promoting economic transformation in order to enable meaningful participation by black people in the South African economy;
 - implementing schemes whereby more black people will have ownership of and participate in the management of commercial entities;
 - implementing structures and programmes which will result in the education and development of black people;
 - implementing laws which will force entities in South Africa to employ black people;
 - promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
 - empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and
 - promoting access to finance for black economic empowerment.
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Application of the Act and its implication to Tourism

The B-BBEEA and the Codes of Good Practice are binding on all state bodies and public entities.

The Government is required to apply them when making economic decisions on

- procurement;
- licensing and concessions;
- public-private partnerships; and
- the sale of state-owned assets or businesses.

Whilst the B-BBEEA and the Codes of Good Practice are not directly binding on a privately-owned entity (listed or private entities), these entities including all those operating in the tourism industry, are bound indirectly by the Codes of Good Practice and are encouraged through a system of incentives and points to apply them (the scorecard) if they want to do business with the government, any state-owned enterprise, organ of state or a privately- or publically-owned entity.

In this regard and as an example, a number of service providers operating within the tourism industry will have to, under various laws, apply for licenses, permits, concessions and authorisations in respect of their business, and any such application made by such person will have to set out that person's compliance levels with B-BBEEA and any contribution it has made towards uplifting previously disadvantaged persons in South Africa.

Furthermore, a specific BEE Charter was developed by the tourism industry to apply directly to any person who is involved in the tourism industry.

Summary of the provisions of the Act

BEE compliance is measured by means of a scorecard known as a broad-based scorecard.

The scorecard involves an independent verification process which measures the following main elements:

- **Ownership** – this measures the percentage of shares in the business that are owned by black people;
- **Management** – this measures the percentage of directors and executives who are black people who are employed by the entity or business;
- **Employment Equity** – this measures the number of black persons employed and trained within the business;
- **Skills Development** – this measures the amount of money spent on training black people employed within the business;
- **Procurement** – this measures the money spent by the business on goods and services which are provided by black suppliers;
- **Enterprise Development** – this looks at the money which the business spends helping other black-owned enterprises; and
- **Socio-Economic Development** – this looks at the financial assistance given by the business to black-based charitable organisations.

Each element has a number of points attributed to it, and compliance with the element awards the allocated points or part of the points where there is not full compliance.

Different types of companies are measured in different ways depending on their size.

Exempt Micro Enterprises (EME) are entities that have an annual turnover of less than R5 million per annum. These entities do not have to comply with any of the Codes of Good Practice, they just have to prove that they have a turnover of less than R5 million.

EMEs automatically obtain a Level 4 B-BBEE status, and if they happen to be black-owned, they are promoted to Level 3 status.

Qualifying Small Enterprises (QSE) are entities that have an annual turnover between R5 million and R35 million. QSEs must conform to a QSE scorecard but only have to comply with four of the seven elements, with each element rating out of 25 points making up a total score of 100.

Large Enterprises are entities with annual turnovers of more than R35 million. They have to comply with all seven of the measurement criteria.

An entity will be measured out of a maximum of 100 points, but for good behavior and effort, an entity can obtain more than 100 points, known as bonus points.

The elements covered under the scorecard are each allocated a number of points which total up to 100 plus an extra 10 bonus points, as illustrated below:

COMPONENT	ELEMENTS	POINTS LARGE over R35 million	POINTS QSE under R35 million but not less than R5 million
Direct Empowerment	Ownership	20	25
	Management	10	25
Human Resource Development	Employment equity	15	25
	Skills development	15	25
Indirect Empowerment	Preferential procurement	20	25
	Enterprise development	15	25
Residual	Socio-economic development	5	25

Once you have calculated a B-BBEE score, this score gets converted to a LEVEL.

The levels are set out in the table below.

Points to level conversion

Points	Level
Above 100 points	Level 1
85–100 points	Level 2
75–85 points	Level 3
65–75 points	Level 4
55–65 points	Level 5
45–55 points	Level 6
40–45 points	Level 7
30–40 points	Level 8
Less than 30 points	Non-compliant

Codes of Good Practice

In order to promote and explain the purposes of the B-BBEEA, Codes of Good Practice on Black Economic Empowerment have been brought into operation.

These Codes of Good Practice include important information, including–

- interpretation of and definition of broad-based black economic empowerment and the interpretation of and definition of different categories of black empowerment entities;
- qualification criteria for procurement and other preferential economic activities;
- indicators to measure broad-based black economic empowerment;
- the weighting to be attached to broad-based black economic empowerment;
- guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector;
- targets to be achieved by an entity which are consistent with the objectives of the B-BBEEA; and
- the period within which the targets must be achieved.

Sector codes

Different industries are required to draw up their own charters on BEE, so that all sectors can adopt a uniform approach to empowerment and how it is measured.

The Tourism BEE Charter

The Tourism BEE Charter and Scorecard was established by the Department of Environmental Affairs and Tourism as part of the integrated socio-economic strategy outlined by the B-BBEEA.

The Tourism BEE Charter and Scorecard is orientated towards mitigating the socially detrimental effects of apartheid and its continuing legacy, and therefore aims to include all South Africans in an active and meaningful engagement in the national economy.

The Charter is designed to include all privately-owned enterprises within the sector, which can be divided up as follows: accommodation (all hotels, bed and breakfasts, game lodges, backpackers, etc.), hospitality and related services (restaurants, catering services, conference facilities, etc.) and travel distribution systems (travel agents, tour wholesalers, tour operators, coach operators, etc.). The travel insurance sector should also benefit from increased tourism-related activities.

The Tourism BEE Charter applies to all members of the tourism industry.

In line with the BEE Codes of Good Practice, the tourism charter defines EMEs, QSEs and generics.

The EME thresholds under the Tourism Sector Code have been dropped to R2,5 million and QSE thresholds have been dropped to between R2,5 million to R35 million, as compared to a threshold of R5 million set out in the Generic Codes. This decrease seeks to ensure that a significant number of enterprises doing business in the tourism industry are not excluded from compliance with the Sector Code.

The weightings for the charter are as follows:

	Points 2012	Points 2017	Codes of Good Practice
Ownership	15	23	23
Management	17	13	11
Employment equity	17	15	18
Skills development	20	18	15
Procurement	15	20	20
Enterprise development	14	10	15
Socio-economic development	8	10	5
Total including bonus points	106	109	107

Any person in the tourism industry will be measured according to the Tourism BEE Charter and Scorecard, which are closely aligned to the generic Code of Good Practice on Broad-based Black Economic Empowerment.



WHAT HAPPENS IF YOU DO NOT COMPLY?

By not complying with the B-BBEEA, work from government agencies will not be available to you and work from other companies will dry up as your competitors build up their BEE scores.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

Educate and train

All entities should familiarise themselves with the B-BBEEA and the Codes of Good Practice and educate and train all relevant employees within the operation who have to apply and comply with the provisions.

Entity type

Each entity should determine whether it is an EME, SME or large entity, as this will determine the elements of the scorecard with which it has to comply.

Scorecard

Each entity should study the scorecard and determine which elements are achievable, which elements are not, and how it will have to implement measures in order to achieve them.

Rating

A company or entity has to be rated by a verified rating agency.

The purpose of verification is to calculate your BEE score using the BEE scorecard.

FURTHER INFORMATION

Regulators

Department of Trade and Industry

Websites

www.thedti.gov.za