

BEE ARTICLE FOR FASA

What is BEE?

Broad-based black economic empowerment (BEE) has been a central part of government's economic transformation strategy for a number of years and is likely to remain so for 2009. The main purpose of BEE is to increase the number black people that manage, own and control the country's economy and as a result, to reduce income inequalities and to contribute to economic transformation in South Africa.

The core aspects of BEE are:

- **Direct empowerment** through ownership and control of enterprises and assets;
- **Human resource development** through skills development and employment equity;
- **Indirect empowerment** through preferential procurement policies aimed at ensuring that black people benefit from government and private sector procurement and through the development of black owned and controlled enterprises.

The legislation supporting the BEE strategy is the Broad-Based Black Economic Empowerment Act, which became law in 2003. Implementation of this legislation occurs in terms of the Codes of Good Practice on Broad-Based Black Economic Empowerment. The Codes were promulgated in February 2007 as regulations to the Act.

How is BEE measured?

The Codes establish a "scorecard" system for evaluating an entity's BEE status. In terms of the scorecard, points are awarded for various identified BEE criteria, such as the proportion of the entity's equity which is held by black persons and black women, the extent to which black persons and black women have management control over the entity, employment equity issues, preferential procurement, skills development issues and enterprise development. The higher the number of points scored by an entity in each category, the higher the BEE rating of the entity will be.

The BEE rating of an entity is known as the "BEE Contribution Level" and this is mainly used in measuring BEE in tender processes and preferential procurement. For example, procurement from a level four contributor can be counted as 100% 'black' spend for purposes of measuring an entity's BEE procurement levels. An entity with less than 30 points achieved on the generic scorecard is regarded non-BEE compliant. The BEE Contribution Levels are as follows:

BEE Status	Qualification	BEE procurement
Level One Contributor	100 points on the Scorecard	135%
Level Two Contributor	85-100 points	125%
Level Three Contributor	75-85 points	110%
Level Four Contributor	65-75 points	100%
Level Five Contributor	55-65 points	80%
Level Six Contributor	45-55 points	60%
Level Seven Contributor	40-45 points	50%
Level Eight Contributor	30-40 points	10%
Non Compliant Contributor	less than 30 points	0%

The generic scorecard in the Codes (which applies to all enterprises other than start ups and exempted micro enterprises – see below) measures seven elements of BEE with the weightings for each specified below:

Element	Weighting	Primary Codes reference
Ownership	20 points	Code 100
Management control	10 points	Code 200
Employment equity	10 points	Code 300
Skills Development	10 points	Code 400
Preferential Procurement	20 points	Code 500
Enterprise development	10 points	Code 600
Residual	10 points	Code 700

The scorecards in the Codes will apply in the franchise industry as there is no separate franchise industry transformation charter.

BEE compliance must generally be supported by a rating provided by a BEE rating agency. A rating agency would carry out an audit to confirm BEE scoring under the scorecards in the Codes.

Exempted Micro-Enterprises

The Codes have categorised different types of enterprises for purposes of measurement in terms of the Codes. The main purpose of the categorisations is to simplify the BEE compliance and measurement principles applicable to small, medium and micro enterprises and to start-up enterprises and reduce the “red-tape”. Small, medium and micro enterprises and start-up enterprises are in most instances exempted from measurement in terms of the main generic scorecard contained in the Codes, should they so choose.

Enterprises with an annual total revenue (meaning the total income of an enterprise determined according to South African generally accepted accounting practice) of R5 million or less qualify

as an Exempted Micro-Enterprise. This can be verified by an auditor's certificate or a certificate from an accounting officer or BEE verification agency.

Exempted Micro-Enterprises are exempt from measurement in terms of the Codes and are deemed to have a BEE status of "level four contributor" which means that for purposes of procurement from such enterprises, 100% of Rand spent with such enterprises will be regarded as BEE spend.

Qualifying Small Enterprises

Enterprises with an annual total revenue of between R5 million and R35 million qualify as a Qualifying Small Enterprise (QSE). Most franchises will fall in the Qualifying Small enterprise category and the following is an example of a Qualifying Small Enterprise scorecard:

BEE Elements	Indicators	Weight	Target
Ownership	Exercisable Voting Rights by Black People	6%	25% + 1 vote
	Economic interest in the Enterprise to which Black People are entitled	9%	25%
	Ownership Fulfilment	1%	Y
	Net Equity Interest	9%	25%
	Bonus Points Ownership by Black Women Ownership by EOS, BBOS or Co-op	2% 1%	10% 10%
Management:	Black Representation at Top Management Level	25%	50.1%
	Bonus Point: Black Women Representation at Top Management Level	2%	25%
Employment Equity	Black Employees in Management using the Adjusted Recognition for Gender	15%	40%
	Black Employees in Company using the Adjusted Recognition for Gender	10%	60%
Skills Development	Skills Development on Black Employees using the Adjusted Recognition for Gender as a % of Leviaible Amount	25%	2%
Preferential Procurement	Weighted BBBEE Procurement Spend from All Suppliers	25%	40%
Enterprise Development	Average Annual Value of all Enterprise Development Contributions as a % of NPAT	25%	2%
Residual Element	Average Annual Value of all Socio-Economic Development Contributions as a % of NPAT	20%	1%

A QSE must select any four of the seven elements of BEE for purposes of measurement under the QSE scorecard. If a selection is not made, the QSE's four best element scores will be used for purposes of measurement.

The weighting for each element in the QSE scorecard is 25 points per element, which is different to the weightings contained in the generic scorecard applicable to large companies. The compliance targets under each element of the QSE scorecard are similar to those in the generic scorecard, although it has been simplified and the QSE employment equity and

preferential scorecards for example, have initial targets for the first five years of the Codes and then increased targets for the second five years of the Codes.

Start-Ups

A start-up enterprise is defined as a recently formed entity that has been in operation for less than a year.

Start-up enterprises must be measured as Exempted Micro-Enterprises for the first year following their formation or incorporation, notwithstanding the expected level of total revenue of the start-up enterprise. In order to qualify as a start-up enterprise under the Codes, the enterprise must provide an independent confirmation of its status. This could be done by a verification agency or an independent auditor or attorney, for example.

Notwithstanding the status conferred on a start-up enterprise referred to above, if a start-up enterprise tenders for any contract or any other business with an organ of state or public enterprise governed by section 10 of the Act (for example, the issuing of a licence or concession, sale of assets or public private partnership), with a value higher than R5 million but less than R35 million, the start-up enterprise must submit a score in terms of the QSE scorecard. If the value of the contract or business is higher than R35 million, the start-up enterprise must submit a score in terms of the generic scorecard in the Codes.

Why BEE?

The Act and the Codes do not establish a mandatory BEE process for non-governmental entities and the private sector is accordingly not compelled implement BEE initiatives. There is however an economic, political and moral imperative for businesses in all industries to apply BEE.

The economic imperative is basically driven by the procurement chain. All state owned enterprises and government departments are legally obliged to apply BEE in their procurement activities. This means that private sector businesses that contract with government entities or departments will need to be BEE compliant in terms of the Codes. These businesses can only become BEE compliant by measuring the BEE compliance of the other companies that they procure from.

Implementation of BEE is also seen as part of good corporate governance. Businesses can

expose themselves to negative publicity if they are perceived as being non-BEE compliant.

A high BEE score will give a company a competitive advantage. The lower the BEE score (as per the BEE Contribution Level table above), the less BEE points a company will get when it procures from low scoring BEE companies. Companies will become more and more reluctant to do business with enterprises which have poor BEE ratings because their BEE rating will in turn be negatively affected.

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