

Codes Of Good Practice For Broad-Based Black Economic Empowerment- B-BBEE



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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA



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BACKGROUND: BEE STRATEGY

- ◆ **Since 1994 BEE has been a major thrust of all government policies but there was no coherent strategy towards the implementation of BEE**
- ◆ **The BEE commission released a report in 2000 which gave the first attempt at broadly defining BEE**
- ◆ **The receipt of this report by government played a pivotal role in the development by government of a strategy towards the implementation of BEE**
- ◆ **In 2003 a strategy for Broad-Based Black Economic Empowerment (B-BBEE) was released which defines B-BBEE as**
 - ◆ an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities.
 - ◆ Thus the BEE process will include elements of human resource development, employment equity, enterprise development, preferential procurement, as well as investment, ownership and control of enterprises and economic assets.

BACKGROUND: BEE ACT 53 OF 2003

The strategy laid the foundation for the B-BBEE Act

- ◆ **Section 9 of the B-BBEE Act states that the Minister may by notice in the Gazette issue codes of good practice on black economic empowerment that may include-**
 - ◆ the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
 - ◆ qualification criteria for preferential purposes for procurement and other economic activities
 - ◆ indicators to measure broad-based black economic empowerment:
 - ◆ the weighting to be attached to broad-based black economic empowerment indicators
 - ◆ guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector; and any other matter necessary to achieve the objectives of this Act.

BACKGROUND: BEE ACT 53 OF 2003

- ◆ **Section 10 of the B-BBEE Act further gives the status of the codes by stating that:**
- ◆ **Every Organ of State and Public Entity must take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in –**
 - ◆ Determining qualification criteria for the issuing of licenses, concessions or other authorisations in terms of any law;
 - ◆ Developing and implementing a preferential procurement policy;
 - ◆ Determining qualification criteria for the sale of state-owned enterprises; and
 - ◆ Developing criteria for entering into partnerships with the private sector

Why the need for the Codes

- ◆ **For BBEE to work properly consistency, visibility and clearer direction is needed**
- ◆ **BEE initiatives to date have been characterised by:**
 - ◆ lack of understanding leading to inconsistent application and appreciation of B-BBEE
 - ◆ lack of clarity resulting in delays in the implementation of B-BBEE initiatives
 - ◆ disparity in Charter definitions and targets between various sectors of the economy
 - ◆ lack of implementation guidelines resulting in 'Most going to few', 'Fronting' or 'Sham' transactions
 - ◆ Lack of underlying economic substance to many BEE transactions
 - ◆ Focus on narrow based BEE leading to a narrow base of beneficiaries

BROAD BASED BENEFICIARY BASE

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Equitable Economic Opportunities

Ownership
And Management

The Opportunity Barrier

Affirmative
Procurement

Enterprise
Development

The Business Barrier

Skills Development
& Employment
Equity

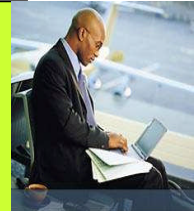
The Skills Barrier

Employment
Equity/Job creation

Corporate
Social Investment

The Poverty Barrier

Emerging black
middle class &
Investors



Black entrepreneurs



Black workers and
job-seekers

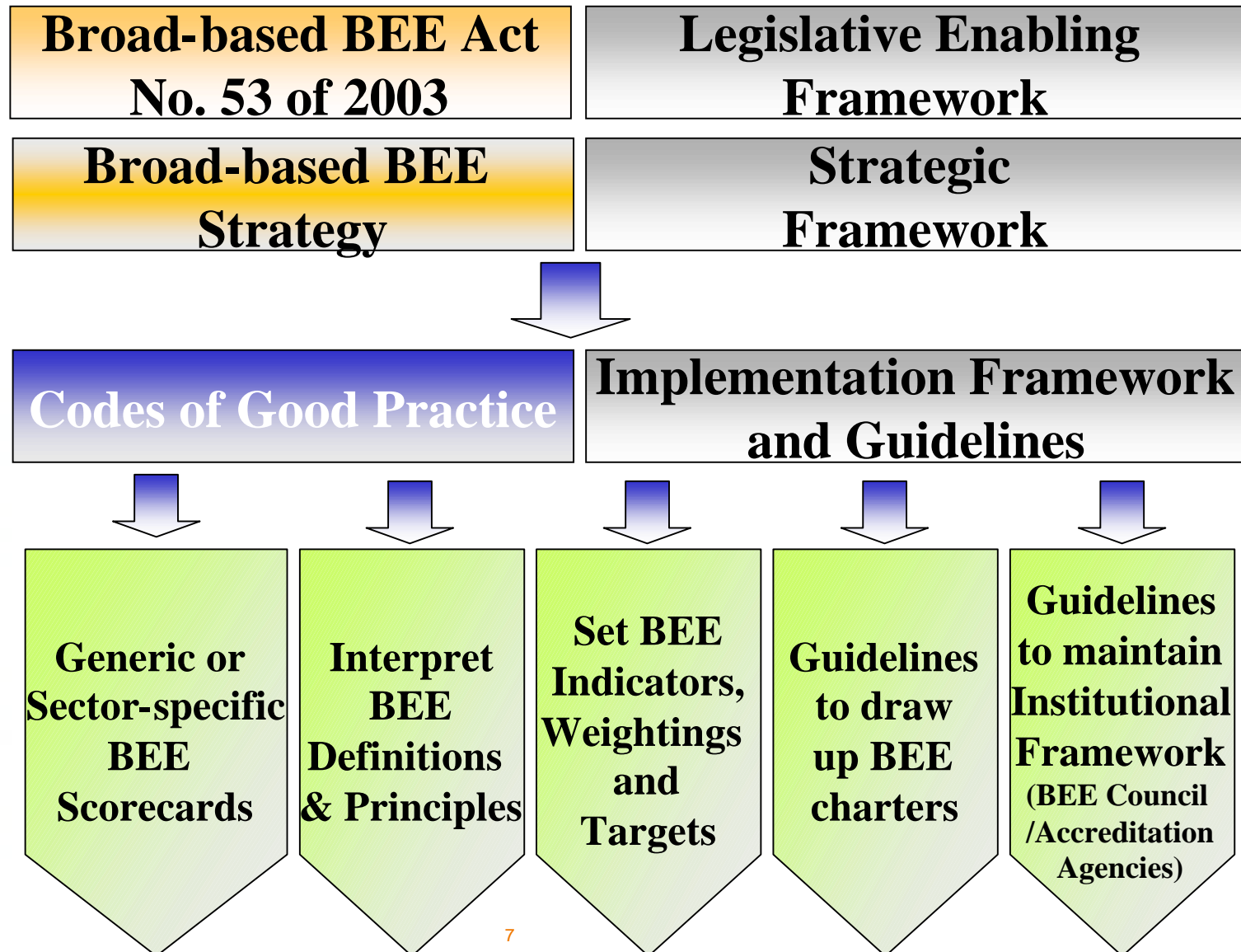


Black unemployed &
rural poor



**Broad-based
Beneficiary Base**

B-BEE Codes of Good Practice Implementation Framework



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ARRANGEMENT OF THE CODES

Code	What is it?
000	Conceptual Framework of B-BBEE
100	Ownership
200	Management Control
300	Employment Equity
400	Skills Development
500	Preferential Procurement
600	Enterprise Development
700	Socio- Economic Development
800	Qualifying Small Enterprises

General Principles and the Generic Scorecard

Measures effective ownership of enterprises by black people

Measures effective control of enterprises by black people

Measures initiatives intended to achieve equity in the workplace

Measures the extent that employers carry out initiatives designed to develop the competencies of black employees

Measures the extent that enterprises buy goods and services from BEE Compliant suppliers as well as black owned entities

Measures the extent to which enterprises carry out initiatives contributing to Enterprise Development

Measures the extent to which enterprises carry out initiatives contributing to socio-economic development

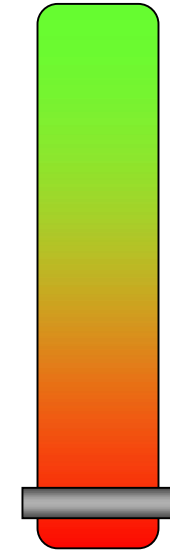
Measures the extent to which enterprises carry out contributions made by Qualifying Small Enterprises

CODE 000 : GENERIC SCORECARD

Element	Weighting	Compliance Targets
Ownership	20 points	25% +1
Management control	10 points	(40% to 50%)
Employment Equity	15 points	(43% to 80%)
Skills Development	15 points	3% of payroll
Preferential Procurement	20 points	70%
Enterprise Development	15 points	3% (NPAT)
Socio-Economic Development	5 points	1% (NPAT)
TOTAL	100 points	

CODE 000 : BEE STATUS

Level	BEE Score	BEE Recognition Level
1	>100	135 % (e.g. R1 = R1.35)
2	85 ~ 100	125 %
3	75 ~ 85	110 %
4	65 ~ 75	100 % (e.g. R1 = R1)
5	55 ~ 65	80 %
6	45 ~ 55	60 %
7	40 ~ 45	50 %
8	30 ~ 40	10 %
Not Compliant	< 30	0 % (e.g. R1 = R0)



- BEE status for companies will be recognised based on the status table above
- Customers (public and private sector) will prefer to interact and procure from companies with higher BEE status (for its own recognition)

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CODE 000 : Key Principles

Key Principles	Description	Implication
Substance over Form	Broad-based BEE must be measured and reported according to economic reality rather than legal form	<ul style="list-style-type: none"> ◆ Penalize the use and reporting of 'fronting' or 'sham' BEE structures and entities
Broad-based BEE Scorecard	BEE is measured based on seven core elements: ownership, management, employment equity, skills development, preferential procurement, enterprise development and socio-economic development	<ul style="list-style-type: none"> ◆ Facilitate changes in business behaviour (in all key elements) ◆ Extend BEE benefits to as many beneficiaries as possible ◆ Systematic and quantifiable approach
BEE Recognition Tiers and Multiplier Effect	All companies measure BEE based on a score system, and receive higher recognition for higher BEE compliance	<ul style="list-style-type: none"> ◆ Foster competition among companies and industries ◆ Encourage all companies to implement and monitor BEE compliance in all its economic interactions

CODE 000 : General Principles

General Principles	Description
Parity Principle	<ul style="list-style-type: none">◆ Beneficiaries should compromise:◆ Black women: 40 – 50 %◆ Black people with disabilities, black youth, black people living in rural areas and black unemployed people: 2 – 3 % (“Black Designated Groups”)
Transitional Period	<ul style="list-style-type: none">◆ 12 Months transitional period to allow for conversion from narrow-based to scorecard approach◆ Provide mechanism to facilitate the adoption of scorecard in reporting and decision-making
Non Circumvention	<ul style="list-style-type: none">◆ Further confirms the principles of Economic Substance over Legal Form

CODE 000 : ACCREDITATION OF VERIFICATION AGENCIES

- Different standards and methodologies are currently being applied by various verification agencies.
- Different companies and government departments have expressed preferences for the use of specific agencies at the exclusion of others.
- DTI was requested by the market to provide guidance on appropriate verification standards to be applied.
- South African National Accreditation System (SANAS), a Public Entity which is also an internationally accredited body, has been tasked with developing accreditation standards for verification agencies and to accredit them.
- This involvement by SANAS is meant to provide a single set of standards for verification agencies and to provide for the regulation of the industry.
- We encourage the establishment of an industry body to set standards, enforce a code of conduct and facilitate continuous training and complaint resolution.
- The process of application for accreditation has already started.

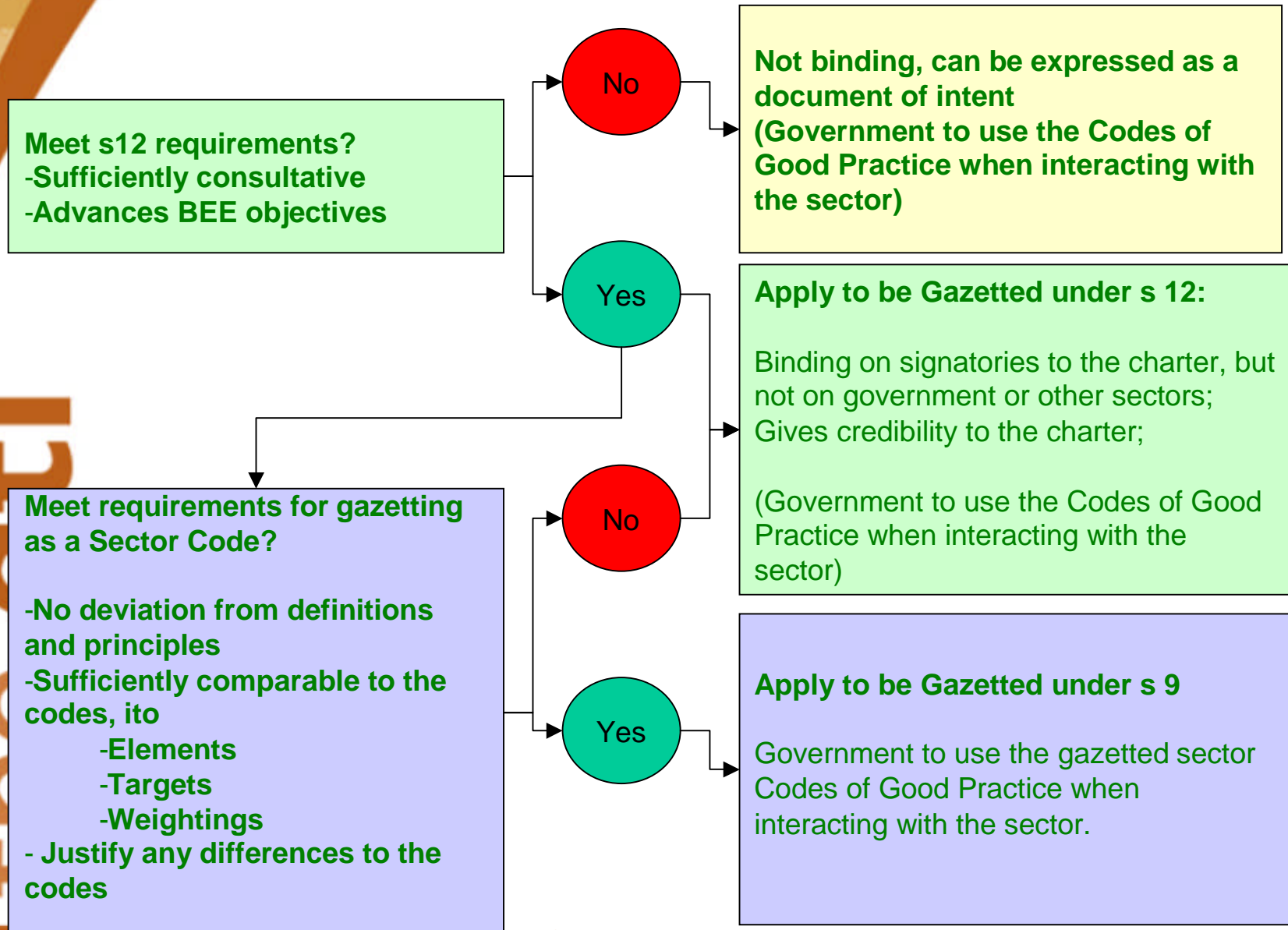
CODE 000 : Guidelines for the Development and Gazetting of Transformation Charters and Sector Codes

◆ Objectives:

- ◆ Outline recommended charter formulation process
- ◆ Describe the role and constitution of charter councils
- ◆ Specify principles for gazetting charters as:
 - for information purposes and to give credibility to the charter (s12 of BEE Act)
 - for implementation as a code of good practice (s9 of BEE Act)
 - encourage alignment of key principles and definitions throughout all sector charters with the codes

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CODE 000 : Status of Transformation Charters



CODE 100 – OWNERSHIP KEY PRINCIPLES

Description	Key principles	Implication
Ownership	<p>Ownership is measured as an entitlement to both voting rights and economic interest.</p> <p>Net Equity Value – measures economic substance vs. legal form</p> <p>Excluded Equity Principle</p> <p>Sale of Assets</p>	<ul style="list-style-type: none"> ◆ Any financing structure that passes the test will be able to obtain ownership points ◆ Entities encouraged to facilitate the funding of BEE transactions ◆ Allows for the exclusion of shareholding by managed investments, government owners, s21 companies, etc. when determining BEE ownership targets ◆ Set out conditions under which the sale of assets, equity instruments and other businesses will be recognised
Equity Equivalents	<ul style="list-style-type: none"> ◆ Equity Equivalent contributions are measured against the ownership element of the scorecard ◆ Measurable against the compliance target of 25.1% of the South African operation ◆ Interest persons may make written submission to the Minister of Trade and Industry requesting approval of equity equivalents ◆ Approval to participate in an Equity Equivalent is subject to qualification criteria (i.e. Global practice, etc.) 	<ul style="list-style-type: none"> ◆ Multinationals are able to claim ownership points on the scorecard based on their equity equivalent programmes ◆ Promotion of initiatives that will further advance BEE objectives

CODE 100 - KEY PRINCIPLES

Description	Key principles	Implication
Ownership - Broad Based Schemes	<ul style="list-style-type: none"> ◆ Encourage full participation of beneficiaries in all structures of the scheme ◆ Encourage accountability by fiduciaries to the intended beneficiaries ◆ Specific governance requirements ◆ A maximum of 40% of the total points on the ownership scorecard of the measured entity is allowed if the BB scheme is unable to meet some of the requirements 	<ul style="list-style-type: none"> ◆ Accrual of benefits tends to be conditional and vest after a long period of time ◆ Discourages a practice where no real powers of ownership accrue to employees or beneficiaries ◆ Discourages a practice where shares remain unallocated perpetually resulting in control still being retained by the traditional shareholders ◆ Discourages the use of broad based schemes as employee retention strategies – master/ servant relationship ◆ Avoid the sole inclusion of ESOPS to the exclusion of new entrants (i.e. entrepreneurs) ◆ Encourages the structuring of deals made up of a combination of black women, black designated groups black new entrepreneurs (i.e. black new entrants), and broad based schemes

CODE 100 - KEY PRINCIPLES

Description	Key principles	Implication
Mandated Investments (Indirect Ownership)	<ul style="list-style-type: none"> ◆ Option to include such ownership if the following criteria is met: <ul style="list-style-type: none"> Demonstrate value attributable to black people in terms of both economic interest and net value; Demonstrate how shareholders activism is promoted; Inclusion of one results in inclusion of all; Inclusion limited to a maximum of 40% of target; ◆ Option to exclude from the top and the bottom ◆ Exclusion limited to 40% of total value of measured entities equity 	<ul style="list-style-type: none"> ◆ Align rights and obligations of beneficiaries of such ownership schemes to those of ordinary shareholders in a company; ◆ Promote direct participation by black investors in companies that they invest in; ◆ Promote a balanced mix of shareowners; ◆ Promote shareholder activism; ◆ Maintain a minimum level of direct ownership by black investors;

CODE 100 - KEY PRINCIPLES

Description	Key principles	Implication
The recognition of ownership after the sale or loss of shares by black partners	<ul style="list-style-type: none"> ◆ The extent to which ownership points can be maintained after the exit of black partners will be based on both the net value created in black hands as well as the level of transformation in the measured entity ◆ Black shareholders must have their equity stake for at least 3 years prior to exit ◆ There must be demonstrative net value created in the hands of black people ◆ There must be a level of BEE transformation within the measured entity ◆ BEE shareholding arising from the sale or loss of shares by black people cannot contribute more than 40% of the points on the ownership scorecard ◆ It allows for a limited amount of BEE ownership recognition after sale / loss of equity by black shareholders (EXIT) 	<ul style="list-style-type: none"> ◆ Linking a company's performance on the scorecard as well as wealth created in black hands to allow for recognition for contributing towards the promotion of ownership by black people over a limited period of time ◆ To introduce liquidity in the hands of Black investors after a reasonable period of time ◆ To encourage enterprises not to lock in BEE partners for a long time in order to maintain BEE ownership status ◆ To provide enterprises with enough time to enter into another BEE ownership transaction in order to retain their BEE status ◆ To encourage the retention of black direct investment of at least 15% on a continuing basis

CODE 100 - KEY PRINCIPLES

Description	Key principles	Implication
New Entrants	<ul style="list-style-type: none"> ◆ Involvement in the ownership of the enterprise of black new entrants 	<ul style="list-style-type: none"> ◆ Encourage entities to include new entrepreneurs in ownership transactions thereby broadening the base of beneficiaries
Private Equity Funds	<ul style="list-style-type: none"> ◆ measured enterprise may treat any of its ownership arising from private equity funds as black owned and controlled if it meets the following criteria: <ul style="list-style-type: none"> ◆ More than 50% of exercisable voting rights are in the hands of black people ◆ More than 50% of profits accrue to black people ◆ Private Equity Fund manager must be a black owned company ◆ More than 50% of the value of funds invested by private equity fund must at all times be invested in black owned enterprises 	<ul style="list-style-type: none"> ◆ To encourage the emergence of Private Equity Funds owned and controlled by Black People. ◆ To encourage Private Equity Funds to drive investment in black owned enterprises.

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CODE 100 : THE GENERIC OWNERSHIP SCORECARD

Category	Ownership indicator	Weighting points	Compliance Target
Voting rights:			
	Exercisable Voting Rights in the Enterprise in the hands of black people	3	25%+1 vote
	Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
Economic Interest:			
	Economic Interest of black people in the Enterprise	4	25%
	Economic Interest of black women in the Enterprise	2	10%
	Economic Interest of the following black natural people in the Enterprise: 1. black designated groups; 2. black Participants in Employee Ownership Schemes; 3. black beneficiaries of Broad based Ownership Schemes; or 4. black Participants in Co-operatives	1	2.5%
Realisation points:			
	Ownership fulfilment	1	
	Net Value	7	
Bonus points:			
	Involvement in the ownership of the Enterprise of black new entrants;	2	10%
	Involvement in the ownership of the Enterprise of black Participants: 1. in Employee Ownership Schemes; 2. of Broad-Based Ownership Schemes; or 3. Co-operatives.	1	10%

CODE 200 & 300 – MANAGEMENT CONTROL & EMPLOYMENT EQUITY

Elements	Key principles	Implication
Management Control & Employment Equity	<ul style="list-style-type: none"> ◆ Setting Targets for Board Representation and Executive Involvement of black people ◆ Targets from Junior management up to senior management level ◆ Alignment with existing legislation ◆ Alignment with EAP targets ◆ Minimum targets set at 40% of overall targets 	<ul style="list-style-type: none"> ◆ Encourage a proper representation of black people on company boards in an executive and non-executive capacity ◆ Counters market trend in appointing black non-executives rather than executives ◆ Encourage advancement of black people in areas where there is a lack of representation ◆ Prevents contradiction in terminology and efforts in the implementation of EE initiatives in both the EE Act and the B-BBEE Act ◆ Measured entities will only claim full points once they have met the EAP targets

CODE 200 : THE GENERIC MANAGEMENT CONTROL SCORECARD

Category	Management Control indicator	Weighting points	Compliance Target
Board participation:			
	Exercisable Voting Rights of black Board members who are black adjusted using the Adjusted Recognition for Gender	3	50%
	Black Executive Directors adjusted using the Adjusted Recognition for Gender	2	50%
Top Management:			
	Black Senior Top Management adjusted using the Adjusted Recognition for Gender	3	40%
	Black Other Top Management adjusted using the Adjusted Recognition for Gender	2	40%
Bonus points:			
	Black Independent Non-Executive Board Members	1	40%

CODE 300 : THE GENERIC EMPLOYMENT EQUITY SCORECARD

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Measurement Category & Criteria	Weighting points	Compliance targets	
		Years 0 - 5	Years 6 -10
Black Disabled Employees as a percentage of all employees	2	2%	3%
Black employees in Senior Management as a percentage of all such employees using the adjusted recognition for gender	5	43%	60%
Black employees in Middle Management as a percentage of all such employees using the adjusted recognition for gender	4	63%	75%
Black employees in Junior Management as a percentage of all such employees using the adjusted recognition for gender	4	68%	80%

CODE 400 – SKILLS DEVELOPMENT

Elements	Key Principles	Implication
Skills Development	<ul style="list-style-type: none">◆ Alignment with Skills Development Act◆ Parity principle◆ Use of Learning programme matrix	<ul style="list-style-type: none">◆ Alignment of skills development initiatives for both the SD Act and the B-BBEE Act◆ Ensure skilling of all targeted beneficiaries◆ measures both skills spend and output through clearly defined outcomes of skills development programmes

CODE 400 : THE GENERIC SKILLS DEVELOPMENT SCORECARD

Category	Skills Development Element	Weighting points	Compliance Target
Skills Development Expenditure on Learning Programmes			
	Skills Development Expenditure on Learning Programmes for black employees as a percentage of Leviable Amount	6	3%
	Adjusted Skills Development Expenditure on Learning Programmes for black employees with disabilities as a percentage of Leviable Amount.	3	0.3%
Learning Programmes			
	Adjusted number of black employees participating in Learning Programmes as a percentage of total employees	6	5%

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CODE 500 – PREFERENTIAL PROCUREMENT

Elements	Key Principles	Implication
Preferential Procurement	<p>Promotes BEE Compliance by all entities</p> <p>Specific Targets for Procurement from Micro's and QSE's</p> <p>Specific Targets for Procurement from Black Owned and Black Women Owned Enterprises</p> <p>Enhanced recognition for procurement from value adding suppliers</p> <p>Enhanced recognition for procurement from ED beneficiaries</p>	<p>◆ Encourages transformation throughout the entire economy</p> <p>◆ Specific incentive to procure from small and micro business creates new and sustainable entities</p> <p>◆ Encourage the creation of sustainable black women owned, black owned and controlled enterprises</p> <p>◆ Encourages procurement of locally produced goods and services</p> <p>◆ Encourages the sustainable income streams to new entities ensuring their sustainability</p>

CODE 500 : THE GENERIC PREFERENTIAL PROCUREMENT SCORECARD

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Criteria	Weighting points	Compliance targets	
		Years 0 - 5	Years 6 - 10
BEE Procurement Spend from all Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	12	50%	70%
BEE Procurement Spend from Qualifying Small Enterprises or Exempted Micro-Enterprises based on the applicable BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	3	10%	15%
BEE Procurement Spend from any of the following Suppliers (regardless of their BEE Procurement Recognition Level) as a percentage of Total Measured Procurement Spend: 1. Suppliers that are more than 50% black owned ; or 2. Suppliers that are more than 30% black women owned .	5	15%	20%

CODE 600 – ENTERPRISE DEVELOPOMENT

Elements	Key Principles	Implication
Enterprise Development	Measurement of: Enterprise Development Initiatives Industry Specific Contributions	<ul style="list-style-type: none">◆ Encourage entities to implement/support initiatives in:◆ Access to finance: Loans, equity, seed capital, etc.◆ Non-financial assistance: Training and mentoring; preferential credit facilities; capacity-building programmes for QSE's; Access to infrastructure at low or no cost; Business linkages (i.e. procurement opportunities)◆ Enterprises are encouraged to make either monetary or non-monetary contributions

CODE 600 : THE GENERIC ENTERPRISE DEVELOPMENT SCORECARD

Criteria	Weighting Points	Compliance Target
Average annual value of all Qualifying Contributions made by the Measured Entity measured from the commencement of this statement or the Inception Date to the date of measurement as a percentage of the target	15	3% of NPAT Or 0.375% of turnover

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CODE 700 – SOCIO-ECONOMIC DEVELOPOMENT

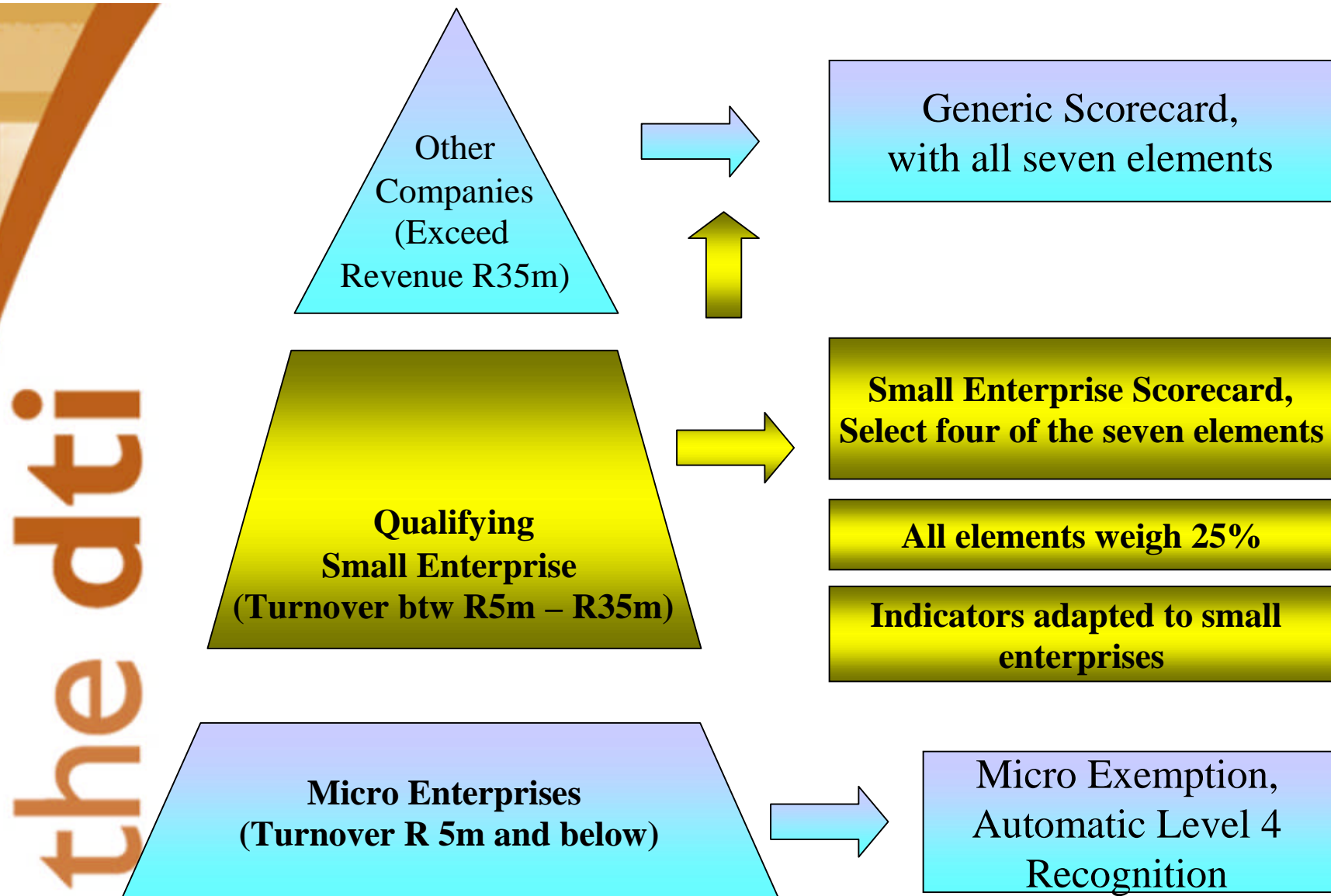
Elements	Key Principles	Implication
Socio-Economic Development (SED)	<p>Measurement of:</p> <p>Social Development Contributions</p> <p>The key principle is for these initiatives to result in the beneficiaries having sustainable access to the economy</p>	<ul style="list-style-type: none">◆ Encourage entities to implement/support initiatives in:◆ public programmes meant to facilitate further socio-economic development

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CODE 700 : THE GENERIC SOCIAL DEVELOPMENT AND SECTOR SPECIFIC SCORECARD

Criteria	Weighting Points	Compliance Target
Average annual value of all Qualifying Contributions made by the Measured Entity measured from the commencement of this statement or the Inception Date to the date of measurement as a percentage of the target	5	1% of NPAT Or 0.125% of turnover

CODE 800 : MEASUREMENT OF BEE IN SMALL ENTERPRISES



CODE 801 : THE SMALL ENTERPRISES SCORECARD

Element	Weighting	Compliance Targets
Ownership	25 points	25%+1
Management	25 points	50.1%
Employment Equity	25 points	(40% to 70%)
Skills Development	25 points	3% of payroll
Preferential Procurement	25 points	50%
Enterprise Development	25 points	2% (NPAT)
Socio- Economic Development	25 points	1% (NPAT)

Using a system of weightings and targets, small enterprises can express their BEE Contribution as a score out of 100 points

Small enterprises need only to choose 4 out of the 7 elements on the scorecard

Very small and micro enterprises are exempted from BEE requirements and receive an automatic Level 4 Recognition

CODE 801 : THE SMALL ENTERPRISES OWNERSHIP SCORECARD

Category	Ownership indicator	Weighting points	Compliance Target
•Voting rights:			
	Exercisable Voting Rights in the Enterprise in the hands of black people	6	25%+1 vote
•Economic Interest:			
	Economic Interest of black people in the Enterprise	9	25%
•Realisation points:			
	•Ownership fulfilment	1	Refer to the formula in the main codes
	•Net Value	9	Refer to the formula in the main codes
•Bonus points:			
	•Involvement in the ownership of the Enterprise by black women	2	10%
	•Involvement in the ownership of the Enterprise •by black Participants in Employee Ownership Schemes, Co-operatives or Broad-Based Ownership Schemes	1	10%

CODE 802 : THE SMALL ENTERPRISES MANAGEMENT SCORECARD

Management control criteria	Weighting points	Compliance Target
Black representation at Top-Manager level.	25	50.1% Top-Manager representation.
Bonus Points: Black women representation as Top-Managers	2	25%

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CODE 803 : THE SMALL ENTERPRISES EMPLOYMENT EQUITY SCORECARD

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Criteria	Weighting points	Compliance targets	
		Years 0 - 5	Years 6 -10
Black employees of the Measured Entity who are Management as a percentage of all Management adjusted using the Adjusted Recognition for Gender	15	40%	60%
Black employees of the Measured as a percentage of all employees adjusted using the Adjusted Recognition for Gender	10	60%	70%

CODE 804 : THE SMALL ENTERPRISES SKILLS DEVELOPMENT SCORECARD

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Skills Development Element	Weighting points	Compliance Target
Adjusted Skills Development Spend on Learning Programmes for black employees as a percentage of Leviable Amount.	25	2%

CODE 805 : THE SMALL ENTERPRISES PREFERENTIAL PROCUREMENT SCORECARD

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Criteria	Weighting points	Compliance targets	
		Years 0 - 5	Years 6 - 10
BEE Procurement Spend from all Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	25	40%	50%

CODE 806 : THE SMALL ENTERPRISES ENTERPRISE DEVELOPMENT SCORECARD

Criteria	Weighting Points	Compliance Target
Average annual value of all Qualifying Contributions made by the Measured Entity measured from the commencement of this statement or the Inception Date to the date of measurement as a percentage of the target	25	2% of NPAT Or 0.25% of Turnover

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CODE 807 : THE SMALL ENTERPRISES SOCIOECONOMIC DEVELOPMENT SCORECARD

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Criteria	Weighting Points	Compliance Target
Average annual value of all Qualifying Contributions made by the Measured Entity measured from the commencement of this statement or the Inception Date to the date of measurement as a percentage of the target	25	1% of NPAT Or 0.125% of Turnover