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Basic Broad – Based Black Economic Empowerment (B-BBEE) in South Africa (General Codes)

The Broad – Based Black Economic Empowerment (B-BBEE) Act, 53 of 2003¹ and the Codes of Good Practice,² were drafted with the intention of redressing the inequalities caused by apartheid.³ Both pieces of legislation have since undergone amendments which took effect on 1 May 2015.

The B-BBEE legislation identifies different sector codes for different sectors. For example, amongst the various sector and sector codes, the IT Sector must apply the ICT Sector Code, the Property sector must apply the Property Sector Code and the Agricultural sector must comply with the AgriBEE sector Code. This article is based on the General Sector Code which would for example, cover all manufacturing businesses in South Africa such as the OEM's and the tier one (1) suppliers

¹ 53 of 2003.

² General Notice, GeN 112 of 2007, Department of Trade and Industry, Broad-Based Black Economic Empowerment Act (53/2003): Issue of Codes of Good Practice (*Government Gazette* 9 February 2007, No. 29617).

³ 53 of 2003; Crouse, Fessha, Goosen and Govindjee (eds) *Introduction to Human Rights Law* (2016) 76; Cheadle *et al South African Constitutional Law: Bill of Rights* 2005 84; Harris, "Being Chinese in South Africa: A Legal Historic Perspective" 2017 23(2) *Fundamina* 1 3; Van der Rheede "The Broad-Based Black Economic Empowerment Act 53 of 2003 and the ways in which the commission of fronting practices affects the achievement of its objective" 2020 (7)1 *African Journal of Democracy and Governance* 101 102; Chinyamurindi, Pike, Purchet "Analysing the future of Broad-Based Black Economic Empowerment through the lens of small and medium enterprises" 2018 (18) 1 *Acta Commercii* 1 1; Chinamona, Pooe, Seate "The relative importance of managerial competencies for predicting the perceived job performance of Broad-Based Black Economic Empowerment verification practitioners: original research" 2016 14(1) *South African Journal of Human Resource Management* 1 2; Marais, Coetzee "The Determination of Black Ownership in Companies for the Purpose of Black Economic Empowerment (Part 1)" 2006 *Obiter* 111 116; Du Plessis, Pretorius "Substantive Equality and the Beneficiaries of Broad-Based Black Economic Empowerment" 2017 80(3) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)* 390 395; Govenden & Chiumbu "Critiquing Print Media Transformation and Black Empowerment in South Africa: A Critical Race Theory Approach" 2020 (34)4 *Critical Arts* (21 February 2020) <https://doi.org/10.1080/02560046.2020.1722719> (accessed 03.03.2021) 32 32.

manufacturing to supply to the OEM's. **CY Projects is equipped to assist with compliance across all the B-BBEE sector codes.**

The B-BBEE Legislation seeks to contribute to the economic transformation of South African economy,⁴ by increasing the legal compliance with five elements of B-BBEE, namely: Ownership, Management Control, Skills Development, Enterprise and Supplier Development and Socio-Economic Development.⁵ The maximum points an enterprise may score in terms of the Amended Codes is 118 points as opposed to the previous Codes of 107 points.⁶

Black, as defined in the B-BBEE legislation, is a generic term which refers to: Africans, Coloureds and Indians⁷ (including Chinese)⁸:

- (i) "Who are citizens of the Republic of South Africa by birth or descent; or
- (ii) Who became citizens of the Republic of South Africa by naturalisation:
 - Before 27 April 1994; or
 - On or after 27 April 1994 and who have been entitled to acquire citizenship by naturalisation prior to that date."⁹

B-BBEE compliance in the private sector is voluntary unless the business is listed on the Johannesburg Stock Exchange (JSE) or procures (tenders) with the government.¹⁰

⁴ Grobler, Magau, Van Wyk "Transformational change leadership framework for implementing Broad-Based Black Economic Empowerment in South African organisations" 2019 *Acta Commercii* 1 2.

⁵ General Notice, GeN 1019 of 2013, Department of Trade and Industry, Broad-Based Black Economic Empowerment Act (53/2003): Issue of Codes of Good Practice (*Government Gazette* 11 October 2013, No. 36928) <https://bbbeecommission.co.za/b-bbee-codes-of-good-practice/> (accessed 2018-02-28) 11; Marais, Coetzee "The Determination of Black Ownership in Companies for the Purpose of Black Economic Empowerment (Part 1) 2006 *Obiter*.

⁶ Balshaw *et al BEE Amended Codes and Scorecard* (2014) 17, 20-21.

⁷ S1 of the Broad – Based Black Economic Empowerment Act, 53 of 2003.

⁸ *Chinese Association of South Africa v Minister of Labour* (59251/2007) [2008] ZAGPHC 174; Gaibie "Affirmative Action – Concepts and Controversies," 2014 *Industrial Law Journal* (Juta) 2672; Van der Rheede "The Broad-Based Black Economic Empowerment Act 53 of 2003 and the ways in which the commission of fronting practices affects the achievement of its objective" 2020 *African Journal of Democracy and Governance* 105.

⁹ General Notice, GeN 1019 of 2013, Department of Trade and Industry, Broad-Based Black Economic Empowerment Act (53/2003): Issue of Codes of Good Practice (*Government Gazette* 11 October 2013, No. 36928) <https://bbbeecommission.co.za/b-bbee-codes-of-good-practice/> (accessed 2018-02-28); Marais, Coetzee "The Determination of Black Ownership in Companies for the Purpose of Black Economic Empowerment (Part 1) 2006 *Obiter* 116.

¹⁰ Nicol "Bothersome BEE" 2021(79) *New Agenda: South African Journal of Social and Economic Policy* 27.

There are three (3) categories of business types in terms of the B-BBEE legislation, namely:

- (i) Exempted Micro-Enterprises (EME's): turnover that is equal to or less than R10 000 000.00 (ten million rand);¹¹
- (ii) Qualifying Small Enterprise (QSE's): turnover that is between R10 000 000.00 and R50 000 000.00 (ten million and fifty million rand);¹²
- (iii) Generic Enterprises: turnover greater than R50 000 000.00 (fifty million rand).¹³

The 1 December 2019 brought about the latest amended B-BBEE Codes of Good Practice¹⁴ which amends the Preferential Procurement and Skills Development scorecards.

The points for each element reflect as follows:¹⁵

Table 1.1: B-BBEE Codes and Points

Element	Previous B-BBEE Codes	Amended B-BBEE Codes
1. Ownership	23 points	25 points
2. Management Control	11 points	19 points
3. Employment Equity	18 points	Consolidated into the element of Management Control

¹¹ GN R3 Codes of Good Practice, GG 36928 of 2013-10-11.

¹² GN R4 Codes of Good Practice, GG 36928 of 2013-10-11.

¹³ GN R6.4 Codes of Good Practice, GG 36928 of 2013-10-11.

¹⁴ General Notice, GeN 303 of 2019, Department of Trade and Industry, Broad-Based Black Economic Empowerment Act (303/2019): Issue of Codes of Good Practice (*Government Gazette* 09 April 2019, No. 42496) <https://bbbeecommission.co.za/b-bbee-codes-of-good-practice/> (accessed 2020-01-20).

¹⁵ General Notice, GeN 303 of 2019, Department of Trade and Industry, Broad-Based Black Economic Empowerment Act (303/2019): Issue of Codes of Good Practice (*Government Gazette* 09 April 2019, No. 42496) <https://bbbeecommission.co.za/b-bbee-codes-of-good-practice/> (accessed 2020-01-20) 11; Balshaw *et al BEE Amended Codes and Scorecard* (2014) 21.

4. Skills Development	15 points	25 points
5. Enterprise and Supplier Development	No previous element	44 points
5.1. Preferential Procurement	20 points	29 points
5.2. Supplier Development	No previous sub-element	10 points
5.3. Enterprise Development	15 points	7 points
6. Socio-economic Development	5 points	5 points

B-BBEE ratings, or levels are categorised as follows, with one (1) being the best and nine (9) being the worst. Thus, the lower the B-BBEE level, the better the B-BBEE status is for the business. The text in the second column depicts the previous Codes targeted score for each contributor level:¹⁶ The consequences of the business receiving a poor B-BBEE level score impacts directly on the business's actual Preferential Procurement (the power or ability to buy or procure in the market or with the government).

The Amended Codes categorised three elements as priority elements. This means that a generic entity, for instance, must obtain a minimum of 40% for that element in order not to be discounted (or drop) a level. This could be devastating for businesses who have strict B-BBEE level compliance requirements in order to comply with grants or tenders or even customer compliance. The priority elements are:

I. Ownership;

¹⁶ General Notice, GeN 1019 of 2013, Department of Trade and Industry, Broad-Based Black Economic Empowerment Act (53/2003): Issue of Codes of Good Practice (*Government Gazette* 11 October 2013, No. 36928) <https://bbbeecommission.co.za/b-bbee-codes-of-good-practice/> (accessed 2018- 02-28) 10-11.

- II. Skills Development; and
- III. Enterprise and Supplier Development.¹⁷

Allow CY Projects to assist you with your B-BBEE and legal compliance needs. Our legal opinions are drafted with footnoted references to accredited sources in order for your business to receive the most cutting edge and relevant legal advice.

CY Projects further assists with Employment Equity legal compliance which feeds to the B-BBEE compliance. Allow us to strategise how and where to elevate your score and compliance to ensure compliance is no longer a mundane, strenuous task.

Allow CY Projects to focus on compliance today, in order for you to focus on your business tomorrow.

Kind regards
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¹⁷ GN R3.3.3 Codes of Good Practice, GG 36928 of 2013-10-11.