

## UNPACKING THE SIGNIFICANT PROPOSED CHANGES TO THE "GENERIC" CODES OF GOOD PRACTICE ("CODES") ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")

Author : Pieter Steyn, Director at Werksmans and Chairperson of LEX Africa

Contact: [psteyn@werksmans.com](mailto:psteyn@werksmans.com)

The Codes set out the methodology for calculating a firm's BBBEE rating. Significant changes have been proposed to cater for the proposed new Transformation Fund and changes to the BBBEE procurement scorecard. While not yet binding and still open for public comment, the proposed changes indicate Government policy and have important potential implications for business in South Africa.

On 29 January 2026, proposed changes to the Codes were published for public comment by the Minister of Trade, Industry and Competition in the Government Gazette. A minimum 60 day period is required for public comment in terms of the Broad-Based Black Economic Empowerment Act.

The proposed Transformation Fund was first announced by the Minister in January 2025 and a draft Concept Document was issued for public comment in March 2025. The Fund's purpose is to support firms owned and controlled by "Black People" as defined in the Act. Details however remain unclear but a website (<http://sa-transformationfund.co.za>) is operational and indicates that the Fund will be managed by a separate Special Purpose Vehicle (SPV) whose board will be appointed by the Minister. An "Oversight Committee" will consist of representatives from both the public and private sectors. The Fund represents an important policy shift by Government away from incentivising private sector driven initiatives towards a State driven process.

The proposed changes to the Codes introduce contributions to the Fund as an alternative to Enterprise Development ("ED") and Supplier Development ("SD"). A firm will currently score 5 points if it spends 1% of its annual Net Profit After Tax ("NPAT") on ED and 10 points if it spends 2% of its NPAT on SD. The proposed changes provide that a firm will score 20 points if it contributes 3% of its NPAT to the Fund. Points will be prorated to the extent that the NPAT targets are not met and a firm which does not score a minimum 40% of the total points for ED/SD or Fund contributions will have its BBBEE rating discounted by one level.

It is important to note that a firm must choose between ED/SD or contributing to the Fund. It cannot do both. This means that a firm's existing ED/SD initiatives will likely be terminated if it decides to contribute to the Fund. The proposed changes to the Codes do not contemplate a phasing out period for existing ED/SD initiatives by firms who choose to contribute to the Fund. The termination of existing ED/SD initiatives will negatively affect existing ED/SD beneficiaries and have potential legal and other commercial consequences for both the firm and beneficiaries. These consequences will have to be assessed by each firm.

Only 5 additional points will be scored if a firm meets the 3% NPAT target for Fund contributions. A key consideration for a firm in deciding whether or not to contribute to the Fund will be whether the additional points scored will materially enhance its BBBEE rating.

The Fund's website states that contributions to the Fund will be "mostly tax-exempt under section 56(1)(h) of the Income Tax Act" and that donors may claim a deduction under section 18A of the Income Tax Act. Tax benefits may be an incentive for firms to contribute to the Fund but each firm will need to assess this and more clarity is required on any such tax benefits.

The website also states that firms will be required to sign a "Participation Agreement" with the Fund. A template of such agreement is not yet provided and it is not clear if it will simply record the payment of the contribution or impose other obligations. This will be a material factor and needs to be clarified.

The proposed changes to the Codes also involve significant changes to procurement and supplier targets. The existing available 27 points for preferential procurement have been reallocated by introducing the following new categories -

100% black owned Qualifying Small Enterprises ("**QSEs**") with a 15% procurement target for 2 points

100% black owned Exempted Micro-Enterprises ("**EMEs**") with a 15% procurement target for 2 points

100% black owned suppliers with a 25% procurement target for 7 points

100% black women owned suppliers with a 12% procurement target for 3 points.

The existing 2 bonus points will only be scored if a firm meets a 100% procurement target from suppliers 100% owned by Designated Groups (defined as certain unemployed Black people, Black youth, disabled Black people, Black people living in rural/undeveloped areas and Black military veterans). Currently the 2 bonus points are scored if a firm meets a 2% procurement target from suppliers at least 51% owned by Designated Groups.

These changes represent a significant challenge for firms to score procurement points especially as a failure to score the minimum 40% target will result in an automatic downgrade of a firm's BBBEE rating. The 100% threshold requirement seems too high (for example procurement from a 99.99% Black owned firm would not qualify). Furthermore the thresholds for defining EMEs and QSE's remain at 2013 levels (R10 million and R50 million annual revenue respectively) and are long overdue for an increase.

Amendments have also been proposed to the Codes dealing with QSEs and Equity Equivalent programs to provide for the option of making contributions to the Fund and changing the procurement and supplier targets for QSEs.

It is important to note that the current proposed changes only relate to the so called "Generic" Codes. Codes of Good Practice for specific sectors of the economy (including the Agriculture, Chartered Accountancy, Construction, Financial, Information and Communication Technology (ICT), Forestry, Property, Tourism and Transport sectors) are not affected and remain in place for firms operating in those sectors. This means that firms covered by Sector Codes will not score points from contributions to the Fund and their procurement scores will not be affected by the proposed changes unless and until the Sector Codes are updated to accord with the changes.

The proposed changes are not final or binding and the public commentary period has not yet expired. The final Codes may differ from the changes proposed on 29 January 2026. Given the important implications of the proposed changes, business and the public should consider submitting comments to the Minister and any final changes to the Codes must be carefully assessed.