

Black Economic Empowerment



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SOUTH AFRICA

- Proposed revisions to the ESD Scorecard in the draft B-BBEE Code amendments

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Proposed revisions to the ESD Scorecard in the draft B-BBEE Code amendments

On 29 January 2026, the Department of Trade, Industry and Competition (DTIC) published several significant draft amendments (Draft Amendments) to the Generic Codes of Good Practice on Broad-Based Economic Empowerment (Generic Codes) in terms of section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 (Act).

The Draft Amendments are subject to public comment within 60 days of 29 January 2026, the deadline being 30 March 2026 for those interested in submitting their comments.

These Draft Amendments apply in relation to the enterprise and supplier development (ESD) element of the Generic Codes. The most significant proposed change is the recognition of contributions to the Transformation Fund (see below) for ESD as an alternative to existing recognised ESD contributions.

Transformation Fund

On 19 March 2025, the DTIC published the Draft Transformation Fund concept document for public comment. In terms of the concept document, the Transformation Fund would be administered through a special purpose vehicle (SPV) and is intended to aggregate resources from various stakeholders in support of the participation and sustainability of Black-owned enterprises in the South African economy.

The Draft Amendments propose defining the Transformation Fund as:

"[A]n aggregated mechanism to accelerate economic transformation and support Black enterprises, particularly exempted micro enterprises (EMEs) and qualifying small enterprises (QSEs). It aims to pool resources from measured entities to create a scalable impact rather than fragmented individual ESD initiatives."

As reported in the media, it is proposed that the Transformation Fund be established as an alternative mechanism to obtain ESD recognition. Currently the framework for measuring an entity's ESD score in terms of the Generic Codes is based on the entity's contributions to enterprise development,





with a target of 1% of net profit after tax (NPAT), and contributions to supplier development, with a target of 2% of NPAT. Supplier development has 10 weighting points while enterprise development confers 5 weighting points on the generic scorecard.

The proposed target for contributions to the Transformation Fund is 3% of NPAT, which is proposed to award 20 total points for the ESD element, compared to the aggregate 3% NPAT contribution to enterprise development and supplier development affording only 15 points.

Measured entities will be entitled to choose whether to make contributions to the Transformation Fund or to make ESD contributions per the existing framework. It is, however, not entirely clear if ESD contributions to both will be permitted, though this seems to be implied in the Draft Amendments.

According to the Draft Amendments, multinationals seeking recognition of equity equivalent programmes will also be able to make their equity equivalent contributions to the Transformation Fund in pursuit of ownership recognition, alongside or in place of enterprise development and supplier development initiatives.

There is no indication from the Draft Amendments what form or construction the Transformation Fund will actually take, although it was reported in the media that the Transformation Fund will be governed by a public-private partnership and would be *"ring-fenced, aggregated and managed centrally"*.

ESD and preferential procurement scorecard changes

Other significant changes to the Generic Codes in relation to the recognition and measurement of ESD contributions and preferential procurement have also been proposed. In summary these are:

- The reduction of the number of weighting points on the ESD scorecard for procurement from 51% Black-owned and 30% Black-woman-owned entities (including QSEs and EMEs).
- Allocation of new weighting points to procurement from 100% Black-owned and Black-woman-owned entities (including QSEs and EMEs) as well as suppliers that are 100% Black-owned.
- Allocation of a new compliance target for procurement from 100% Black designated groups (unemployed Black people, Black youth, Black people with disabilities, Black military veterans and Black people living in rural and underdeveloped areas).
- Requiring all measured entities to now submit a needs analysis, performance metrics (with outputs and outcomes) and an annual monitoring and evaluation report that must be verified before ESD contributions can be recognised.
- Changes to the requirements for and the increase of bonus points available under the ESD scorecard for supplier graduation and job creation.

- Revisions to the ESD benefit factor matrix including:
 - grant contributions must be performance-based payments linked to a needs analysis of the beneficiaries;
 - direct costs incurred by a measured entity in supporting an ESD beneficiary must be for equipment and tools of trade for the ESD beneficiary and exclude benefits derived for the measured entity;
 - loans (both interest free and standard loans – which must now also be unsecured) must have an acceptable standard repayment (amortization) schedule and duration; and
 - the lower of the current value or original investment amount now applies to equity and related investments in ESD beneficiaries.

Key takeaways

There are a number of areas where it is not clear what the proposed amendments are intended to achieve or how these will be implemented.

For example, it is proposed that contributions to the Transformation Fund (as ESD contributions) will also have to be informed by a needs analysis. Besides not being entirely clear what this needs analysis will comprise, the opaque description of the Transformation Fund and the lack of detail as to its structure, composition, control and activities will no doubt make it very difficult for a measured entity to comply with this requirement when making any contributions.

The needs analysis requirement (not necessarily what 'needs analysis' means) is described in more detail in the Draft Amendments as a:

"[N]eeds analysis, performance metric (with outputs and outcomes such as turnover growth, job creation increased access to local and international markets, increase in profitability, greater innovation) and an annual monitoring and evaluation report (to B-BBEE authorities, inclusive of the verification agency) to verify their contributions and impact to beneficiaries to ensure compliance with ESD objectives."

Other than grants, it is also not entirely clear from the Draft Amendments what form of contribution will qualify as an ESD contribution to the Transformation Fund. Whether loans or other types of contributions are also eligible as ESD contributions to the Transformation Fund is a key question, as the proposed drafting implies this, although it does raise the question as to whether the Transformation Fund can and should be assuming obligations to measured entities.

What does seem to be clear is that compliance with the ESD scorecard will be more challenging going forward due to the changes introduced to the ESD scorecard, especially

in relation to the additional requirement for procurement from 100% Black-owned suppliers. The total number of points on the ESD scorecard has now been increased to 62 points (from 40) although the maximum points an entity can earn is 47 points (including bonus points).

Since compliance with ESD is a priority element, measured entities are obliged to achieve at least 40% of the applicable weighting points for ESD (which means 40% of 3% of the NPAT of a measured entity) failing which the measured entity's B-BBEE rating will be downgraded by one level.

The proposed changes to the benefit factor matrix will also require all measured entities to revisit and, where necessary, change or adapt funding models, structures and contractual arrangements for ESD contributions. There is no express provision made for phasing in any of the requirements hence it should be assumed that the changes will come into effect immediately on publication of the final amendments.

As noted above, the Draft Amendments only relate to the Generic Codes (including Statement 004 Scorecards for Specialised Entities) and not to any B-BBEE sector codes published under section 9(1) of the Act and hence will not apply to any of the sector codes until those sector codes are specifically amended to ensure alignment.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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