137 Tenth Street, Parkmore
Sandton, 2196
Tel: (011) 666 0928
Fax: (011) 666 0933

info@caird.co.za

"Creating BUSINESS sense out of BEE"

Gazetted Broad-based Codes of Good Practice

Introduction

The Minister of Trade and Industry, Mandisi Mpahlwa, gazetted the Department of Trade and Industry's Broad-based Black Economic Empowerment Codes of Good Practice under section 9 of the Broad-based Black Economic Empowerment Act (2003) on the 9th of February, 2006. These codes are now binding on the state and numerous state-owned entities (these are covered in schedules 2 and 3 of the Public Finance Management Act).

This document is an analysis of the codes. The focus is on the problematic areas.

Code 000

Section 4 Eligibility as an Exempted Micro-Enterprise

Paragraph 4.3 is problematic. *"Exempted Micro-Enterprise qualifies for a promotion to a B-BBEE Status of "Level Three Contributor" having a B-BBEE procurement recognition of 110% under paragraph 6.3 if it is - more than 50% owned by black people or by black women."*

There are two issues that need to be considered.

1) 50% black-owned and black women-owned

   This implies that the percentage of black women-owned businesses has to be 50%. There is an inconsistency issue here. The adjusted recognition for gender (ARFG) does not require the percentage of women to be as high as that of black people, therefore the black-women ownership should be less than 50%. Perhaps it should be in keeping with the preferential procurement element (statement 500) which requires companies to spend with 30% black women-owned businesses.

2) Proving 50% black-owned

   The burden of proof for black-owned EMEs in proving that they are in fact black-owned is onerous. Companies alleging this status must furnish an ownership certificate as well showing black people hold more than 50% of the exercisable voting; black people hold more than 50% of the economic; and they have earned all the points for net value. All other EMEs just have to produce an affidavit alleging their turnover.

Section 6 – start-up enterprises

Paragraph 6.4. *Start-up Enterprises must submit a QSE Scorecard when tendering for any contract or seeking any other business covered by section 10 of the Act with a value higher than R 5 million but less than R35 million. For contracts above R35 million they should submit the generic scorecard. The preparation of such scorecards must use annualised data.*

This requirement is not reasonable, the information would need to be based on anything real and companies would not be in a position to provide anything vaguely accurate.

The government should insist on a scorecard after the anniversary of the contract with penalties for not complying.

Statement 004, specialised enterprises

The biggest problem facing these entities is the measurement of enterprise development and SED. These entities do not realise a profit, neither are they permitted to spend money based on turnover that is not budgeted for.

Code 100

Statement 102: the recognition of equity equivalents for multinationals

Paragraph 3.1 The Minister may, approve certain Equity Equivalent Programmes after the Multinational has *consulted* with the sectoral line ministry etc.

The word consulted is inconsistent with the definitions page and its definition of an equity equivalent programme - a public programme or scheme of any government department, provincial or local government in the republic of South Africa or any other programme *approved* by the minister as an equity-equivalent programme;

Code 200

Adjusted recognition for gender (ARFG)

This calculation should be removed altogether. It does not simplify BEE in any shape or form. A separate requirement should be set for black women.

Code 300

Paragraph 3.1.1

No Measured Entity shall receive any points under the Employment Equity Scorecard *unless they have achieved a sub-minimum of 40% of each of the targets* set out on the Employment Equity Scorecard in respect of the both five year periods

A sub-minimum will either lead to very poor scores or fronting. It should be removed.

Paragraph 3 4

Provides an additional calculation if other management levels exist within the organisation. The total points amount to 16 points – not 15 points for the section (excluding bonus points).

EAP

The definitions suggest Stats SA will publish these figure. If they have published them they are very well concealed. These figures must be easily accessible.

Code 400

Paragraph 6 - The learning programme matrix

It is not advised to discount on-the-job training to 15% of the total spend. A lot of very valuable training is gained whilst on the job. Most employees gain most of their experience in this manner. It should be allowed to be recognised at 100%.

Annexe 400(B) - calculating the adjusted recognition for gender

This formula does not calculate the SPEND on training, only the number of people. Therefore the actual calculation will have no bearing on the target.

Code 600

Enterprise development should not be limited to only black-owned companies. If South Africa is to meet its ASGISA targets then any company that employees people must be supported. All start-ups or EMEs should be allowed to be included as beneficiaries. Perhaps it should be on a proportional basis.

Paragraph 5 – the benefit matrix

This is too complicated. It appears as though companies will score best through unencumbered handouts. This is not an economically sound principle, beneficiaries must learn to stand on their own two feet in the shortest space of time. If they receive handouts they stand less of a chance of success.

Code 700

The differences between code 600 and 700 are very subtle. The divisions must be made clearer. In addition the code has been cut and pasted from code 600 and is full of typos and references that don't exist.

Schedule 1 – definitions

Black new entrants

The definition is missing a decimal point and as such new entrants must cross a threshold of R2billion. Most established black businessmen are a long way off of this target.

"Creating BUSINESS sense out of BEE"

the Caird Group

To operate in today's business environment requires a sharp eye. Business trends and legislation change so dramatically, that often companies may be left behind in coming to terms with these changes. The Caird Group is a consultancy that finds the positive benefits in all these trends and translates them into business opportunities for its clients.

Broad-based BEE (BBBEE) is one example. The Caird Group firmly believes in its responsibility to ensure that its clients have a firm understanding of the concept and that they are able to isolate and implement the business opportunities and efficiencies that reside within BBBEE.

Our BEE solutions combine well established methodologies with best practices that maximise the BBBEE implementation.

Contact the Caird Group

Please feel free to discuss this document with us at any time.

	Paul Janisch	Rienzo Colpo
Tel:	(011) 666-0911	(011) 666-0928
Email:	paul@caird.co.za	rienzo@caird.co.za
Cell:	083 227-1375	082 389-5110