



B-BBEE

COMMISSION

**PERSPECTIVE OF THE B-BBEE
COMMISSION ON THE FINANCIAL
SECTOR CODE**

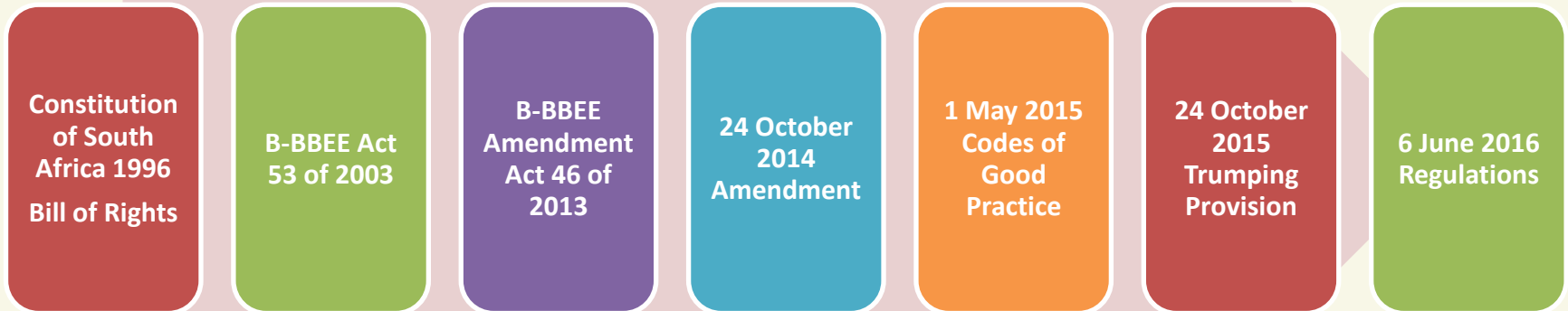
08 March 2017



Background

Fronting Practices
Misalignment
Inconsistent interpretation

B-BBEE
Commission
s13B



Redress = Equity – Equality – Inclusive Economy

Challenges experienced

- **Once Empowered, Always Empowered principle creates regression of transformation**
 - ✓ *Must not be allowed in any of the sector codes*
- **Sector Codes that are not finalised create confusion in the markets**
 - ✓ *Some entities denied benefits arising from revised generic codes*
- **Access to funding continues to be a challenge for black people creating a fertile ground for fronting**
 - ✓ *Most vendor-financed deals impact net value realisation/economic benefits*
- **Lack of implementation by Government and its entities affects pace of transformation**
- **Abuse of B-BBEE Arrangements and Concepts in the implementation**
 - ✓ *Such a definition of black person, modified flow through principle, and collective ownership schemes*
- **Lack of integrity in the verification process and conduct of professionals**
 - ✓ *Recognition process mired with flaws resulting in invalid certificates*

General concerns on sector codes

- **Deadline for finalisation of sector codes necessary**
 - *Confusion created in the market as old codes are still applicable*
- **Disconnect between the transformation challenges in the sector and the interventions in the sector codes**
 - *Lack of progress report from previous implementation and link to how revised targets in sector code will advance B-BBEE*
- **Lack of consistency in the approach and drafting of sector codes**
 - *Loopholes, regulatory nightmare and open for litigation*
- **Reasons for deviations not substantial enough to warrant a sector code**
 - *High barriers, lack of competition, no black suppliers*

General concerns on sector codes

- **Changing or introducing new principles contrary to Statement 003**
 - *Exemptions, automatic approvals to deviate, equity equivalent*
- **Application of sector codes to organs of state and public entities contrary to sections 10(2) and 9(6)**
 - *Organs of state and public entities must set high targets in relevant areas*
- **Overarching and confusing role of Sector Councils**
 - *Ultra vires powers to exempt, revise thresholds*
- **Recognition of ordinary course transactions or activities**
 - *Points awarded for ordinary business, bonus points allocated*

Financial Sector Code

■ Application and Principles

- ✓ Introduces exemptions and exclusions for multinationals
- ✓ Creates automatic approval of equity equivalent without legislative mandate
- ✓ Application to organs of state and public entities – specialised score card and sections 10 (2) and 9(6) compromised
- ✓ No timelines set for review of the targets – despite them being already very low

Financial Sector Code

■ Priority Elements (000)

- ✓ Introduces compulsory compliance with skills development for EMEs and QSEs with enhanced recognition status
- ✓ Results in verification requirements and discounting principle applicable to exempted entities
- ✓ Creates monitoring and compliance challenges for entities and the regulator
- ✓ No substantial motivation for this deviation from the exemption

Financial Sector Code

■ Ownership (100)

- ✓ Despite worrying ownership patterns in the sector, target of 25+1% set in generic code is retained
- ✓ Further diluted by introduction of equity equivalent through empowerment financing and access to financial services in lieu of ownership
- ✓ Bonus points for exceeding already low and diluted targets based on black industrialist funding and empowerment financing
- ✓ Multiple application of modified flow through, meaning 51% black owned entity can be recognised more than once

Financial Sector Code

- Management Control (200)
 - ✓ Sector avers that management control has an element of creating quotas contrary to the Solidarity vs SAPS – reference drawn to SAPS vs Solidarity obo Barnard (2014) ZACC 23 to address this
 - ✓ Targets set deviate from generic codes, but do not show how they address the existing challenges of low percentage of top and senior management within the sector
 - ✓ Grants exemptions to branches of multinationals and external companies from board representation

Financial Sector Code

- Skills Development (300)
 - ✓ Segments grouping into senior management (2%), middle management (3%), junior management (5%) and black people (non-management) (8%)
 - ✓ Targets do not align to challenges in financial sector where white people occupy 68.4% of top management, 60.6% of senior management, 46.7% of professionally qualified and 26.9% of skilled work force
 - ✓ Motivation for categorisation and deviation not convincing given the lack of transformation

Financial Sector Code

- Preferential Procurement and Supplier Development (400)
 - ✓ Deviates downwards with 75% (not 80%) all procurement spend from empowering suppliers, 14% (not 15%) from empowering suppliers that are QSEs, 8% (not 15%) from empowering suppliers that are EMEs, 20% (not 40%) from suppliers that are at least 51% black owned, and 9% (not 30%) from suppliers that are black women owned.
 - ✓ Further deviation from skills transfer and *multiplying recognisable spend* resulting in multiple dipping with rights for entities to claim over a three year period.
 - ✓ Recognition is made for attempts to empower black stockbrokers, fund managers and intermediaries.

Financial Sector Code

- Socio-economic Development (500)
 - ✓ Target is 1% NPAT but split into 0.60% SED and 0.40% for consumer education
 - ✓ Consumer education is already a requirement under the National Credit Act, Consumer Protection Act and the legislation administered by Financial Services Board
 - ✓ This is ordinary course business and entities should not be recognised for such activities.

Conclusion

- ❑ Financial sector code in its current form does not advance radical economic transformation, but rather regresses it
- ❑ Additional elements referred to are *Empowerment Finance* and *Access to Financial Services*, but not expressed provisions are outlined to highlight how these are not ordinary business activities for this sector
- ❑ Sector code appears to compromise the *incentive for financial sector players to compete* by subjecting products on which they should compete on to transformational interventions
- ❑ Financial sector *impacts a number of sectors* from the perspective of financing, and if lending is to be recognised for points, it must be at seriously preferential rates or conditions for black people
- ❑ Concerns raised *must be addressed* before the sector code can be approved for gazetting, failing which generic codes must apply

Contact Details

B-BBEE Commission
Private Bag X84
Pretoria
0001

Telephone: +27 12 394 1535

Facsimile: + 27 12 394 2535

Email: mramare@beecommission.gov.za

Website: www.bbbeeecommission.co.za