

Who is the B-BBEE Commission?

The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is a regulatory entity established within the administration of the Department of Trade, Industry and Competition (“the dtic”) by the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended by Act 46 of 2013 (“the B-BBEE Act”).

Our mandate includes to oversee, supervise and promote adherence with the B-BBEE Act in the interest of the public, investigate fronting practices and other non-compliant initiatives and to receive and analyse mandatory annual compliance reports from both public and private sector entities.

What is a Specialised Scorecard?

The B-BBEE Act through the Codes of Good Practice (the Codes) requires private and public sector entities to comply with the elements outlined in the B-BBEE scorecard. The Codes measure 1) ownership, 2) management control, 3) skills development, 4) enterprise & supplier development and 5) socio-economic development and provide a scorecard for these elements.

However, for those entities that are either state-owned or have no shareholding or equity structure that is capable of being measured against the requirements of the ownership element, the Codes have provided the specialised scorecard in Statement 004 to guide their B-BBEE measurement.

Therefore, a specialised scorecard, is a B-BBEE scorecard that excludes black ownership from the measurement of determining compliance with the B-BBEE Act.

Which entities must apply the Specialised Scorecard?

The type of entities that must apply the Specialised Scorecard are those that are either state owned or by nature do not have ownership that is capable of meeting the requirements for measurement of black ownership, such as public benefit organisations. Therefore, organs of state, public entities and enterprises

owned by organs of state, companies limited by guarantee, not for profit companies (formerly section 21 companies), public higher education institutions and not for profit organisations (NPOs) would fall under Statement 004 as specialised entities that are measured on the Specialised Scorecard.

A specialised entity that houses a broad based ownership scheme or employee share ownership programme may be measured using the ordinary scorecard that includes ownership provided it meets the ownership test of exercisable voting rights, economic interest and net value realisation and in addition complies with the rules for broad-based ownership schemes or employee share ownership programme in the Codes. The founding documents of the scheme must be clear to distinguish the broad-based ownership scheme or employee share ownership programme from the specialised entity that is not capable of having ownership.

What are the B-BBEE requirements for a Specialised Entity?

Specialised entities are classified into three categories, that is exempted micro-enterprise (EME), qualifying small enterprise (QSE) and generic enterprise, based on the total annual revenue (where applicable) or allocated budget or gross receipts or discretionary spend.

An EME (R10 million and less) qualifies for automatic level 4 B-BBEE Status. However, where it has 51% of black people as its beneficiaries, it will be enhanced to level 2 B-BBEE status. If it has 75% of black people as beneficiaries, the entity will be enhanced to level 1 B-BBEE Status. Specialised EMEs are only required to obtain a B-BBEE sworn affidavit for specialised entities.

A QSE (between R10 million and R50 Million) has to be verified by an accredited verification agency or professional (<http://www.sanas.co.za>) to obtain a B-BBEE certificate. But if it has 51% of black people as beneficiaries, it will automatically be enhanced to level 2 B-BBEE status, and where it has 75% of black people as beneficiaries, it will automatically receive level 1 B-BBEE status. Specialised QSEs with automatic levels 1 and 2 B-BBEE status are only required to obtain a sworn affidavit for specialised QSEs.

A Generic Enterprise (R50 million and above) is required to be verified by an accredited verification agency or professional (<http://www.sanas.co.za>) to obtain a B-BBEE certificate.

The applicable scorecard for Specialised Entities

A specialised entity that is subject to a B-BBEE verification process by a SANAS accredited verification agency or professional will be verified using the following scorecards:

Specialised QSE Scorecard:

B-BBEE Element	Weighting	Code Series Reference
Management control	25 points	602
Skills development	30 points	603
Enterprise and Supplier Development	30 points	604
Socio-Economic Development	15 points	605

Specialised Large Enterprise Scorecard:

B-BBEE Element	Weighting	Code Series Reference
Management control	20 points	200
Skills development	25 points	300
Enterprise and Supplier Development	50 points	400
Socio-Economic Development	5 points	500

Where a specialised entity operates in a sector that is governed by a B-BBEE sector code, the B-BBEE measurement for that specialised entity must be in line with the scorecard provisioned by the specific sector code, except if the sector code applies the specialised scorecard under the generic Codes as a default position.

What are the important things to note as a measured entity?

The specialised entity bears the obligation to provide evidence for each claim made on the scorecard during verification processes, thus it must ensure that such evidence is kept in case it is required by the B-BBEE Commission in an investigation or compliance processes under the B-BBEE Act.

The specialised entity must ensure that proof that the percentage of beneficiaries reflected to be black people are indeed black people within the meaning of the definition of black people in the B-BBEE Act. This means evidence, such as, identity documents so that it can be confirmed that such beneficiaries are not foreign nationals or other non-black persons that are not entitled to benefit under the B-BBEE Act.

A specialised entity that passes itself as a black owned entity for any reason will be acting contrary to the objectives of the B-BBEE Act, which may amount to a fronting practice in addition to being pure fraudulent conduct that attracts criminal sanctions. Hence, a Not for Profit Company (NPC) cannot be claimed as black owned and as such cannot contribute towards black ownership of any other measured entity.

A specialised entity can also not be regarded as a beneficiary for enterprise and supplier development (ESD), because ESD beneficiaries can only be EMEs and QSEs that are at least 51% black owned. Therefore, where a specialised entity is claimed as an ESD beneficiary that would be violation of the B-BBEE Act. The only time a specialised entity can be considered as an ESD beneficiary, is if it houses a broad-based ownership scheme or employee share ownership programme will full compliance to the ownership element.

However, a measured entity can procure the services of a specialised entity that conducts itself as a third party or intermediary with the focus of facilitating B-BBEE initiatives such as skills development, enterprise and supplier development as well as socio-economic development on behalf of the measured entity.

The specialised entity that misrepresents the information or provides false information during the verification process or any other process requiring B-BBEE compliance will be guilty of misrepresentation of B-BBEE status which is an offence under the B-BBEE Act.

How to reach us?

We are available to assist specialised entities to adhere to the B-BBEE Act at no costs. We can be reached via email at MRamare@beecommission.gov.za or by telephone on 012 394 1535 or 082 903 6398.

Our offices are located at **the dtic** Campus, Block F, 2nd Floor, 77 Meintjies Street, Sunnyside, Pretoria 0001. You can also visit our website www.bbbeeecommission.co.za for further information on the specialised scorecard.