

What are the Expectations of AGRIBEE

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South Africa's agricultural sector is by far the most sophisticated and advanced on the African continent. The sector continues to play a vitally important role in the South African economy, despite the marginal contribution to GDP. It is an essential component of the national economy, with strong ties to other economic sectors.

South Africa is currently the world's leading producer of avocados, clementines and ostrich products. However, the country's position as a significant exporter is being challenged due to farming subsidies available in the European Union and the United States, which are South Africa's major export destinations.

Identified sector-specific challenges affecting SMEs include:

- > Inconsistent cash flow;
- > Adverse climatic conditions that impact production;
- > Access to arable land;
- > The high cost of agricultural inputs and machinery;
- > Difficulty accessing target markets and supply chains;
- > Shortage of technical skills and capacity;
- > Difficulty adopting new methods of production;
- > Poor quality of supporting infrastructure; and
- > Competition from Large Enterprises.

However, there is a range of opportunities that could expand the footprint of SMEs in the sector, which include:

- > Agro-processing activities to produce products such as fruit juice, essential oils, dried fruit, bio-composites, bio-fuels and medicinal products;
- > Packaging, transport, distribution and logistics services for agricultural produce;
- > Provision of warehousing and storage facilities and services; and
- > Production of organic foods.

The AgriBEE Sector Code (AgriBEE) was published in Gazette #41306 on 8th December 2017. This sector code intends to remove barriers to entry and expedite transformation in the sector. There was no transitional period allowed. Therefore, compliance with the AgriBEE for all entities falling into the scope of application is from the date of publication.

AgriBEE questions and answers guide:

1 | Why do we need a sector code specific to the Agricultural Sector?

It is imperative for the Agricultural Sector to address specific challenges facing them. The AgriBEE Council was formed with the objective of developing a sector-friendly set of codes to address the challenges of the sector at large.

In developing this Sector Code, the AgriBEE Council had to align its criteria to the 2013 Amended Codes of Good Practice (Generic Codes), to include minimum requirements in terms of criteria, targets and Weighting Points.



2 | What are the objectives of AgriBEE?

To facilitate transformation in the sector by:

- > Promoting equitable access to and participation of ‘Black’ People in the entire agricultural value chain;
- > De-racialising land and Ownership;
- > Unlocking the full entrepreneurial skills and potential of ‘Black’ People in the Sector;
- > Facilitating structural changes in agricultural support systems;
- > Increasing access to economic activities, infrastructure and skills training;
- > Empowering rural and local communities to have access to agricultural economic activities, land, agricultural infrastructure, ownership and skills;
- > Improve and promote the living and working conditions of farmworkers; and
- > Improve protection and standards of land rights and tenure security for labour tenants, farm workers and other vulnerable farm dwellers. This is in addition to addressing the inherently paternalistic nature of relationships associated with insecure tenure by promoting more permanent forms of tenure, with the emphasis being on the transfer of ownership of land.

3 | What are the qualifying thresholds?

Annual turnover determines qualifying thresholds:

- > Exempt Micro-Enterprises (EME) – revenue below R10m;
- > Qualifying Small Enterprises (QSE) – between R10m and R50m; and
- > Large Enterprises – above R50m.

A Start-up Enterprise must be measured as an EME under this statement for the first year following its formation or incorporation. This provision applies regardless of the total revenue expected. To qualify as a Start-up Enterprise, independent confirmation of this status is necessary either in the form of an Affidavit or CIPC issued certificate.

However, in terms of a Start-up Enterprise tendering for any contract, or seeking any other economic activity covered by Section 6 of the B-BBEE Amendment Act, contracts valued between R10m and R50m must be measured on the QSE Scorecard. For contracts valued at R50m or more, measurement on a Large Enterprise Scorecard is a requirement.

4 | What is the AgriBEE Scorecard criteria?

As all sector codes must align to the Generic Codes, recent gazettes published will ultimately result in amendments to the AgriBEE. The measurement criteria and Weighting Points are outlined as follows:

	Weighting Points	
	Large Enterprise	Qualifying Small Enterprise (QSE)
Ownership	25	25
Management Control	19	15
Skills Development	20	30
Enterprise & Supplier Development (ESD)	40	25
Socio-Economic Development (SED)	15	15

5 | Does the Discounting Principle apply? Does AgriBEE have identified Priority Elements and Sub-minimum requirements?

The Discounting Principle applies as a consequence for not meeting Sub-minimum requirements. Listed below are the three identified Priority Elements, as well as the Sub-minimum requirements for each.

- > **Ownership**
The Sub-minimum requirement for ‘Black’ Ownership is 40% of Net Value based on the Time Based Graduation Factor.
- > **Skills Development**
The Sub-minimum requirement is 40% of the total Weighting Points, excluding any Bonus Points for Skills Development.
- > **Enterprise and Supplier Development**
The Sub-minimum requirement is 40% for each of the three categories, excluding any Bonus Points. Included in the ESD element are Preferential Procurement, Supplier Development and Enterprise Development.

Compliance with Priority Elements applies as follows:

- 1 A Large Enterprise must comply with all three Priority Elements.
- 2 A QSE with <51% ‘Black’ Ownership must comply with Ownership, Skills Development or Enterprise and Supplier Development.

6 | Who falls into the AgriBEE scope of application?

The source of revenue determines which code an organisation must be measured on. If more than 50% of an organisation’s revenue is generated from the following activities, the AgriBEE must apply:

- > Primary agricultural production;
- > Provision of inputs and services to enterprises engaged in the production of agricultural products;
- > Beneficiation of agricultural products; in a primary or semi-beneficiated form; and
- > Storage, distribution and/or trading, as well as allied activities related to non-beneficiated agricultural products.

An organisation that trades in more than one sector and therefore theoretically falls under more than one sector code must be guided by the principles embodied in the Generic Codes.

AgriBEE applies to multinationals whose business falls within the scope.

7 | What do AgriBEE measurements take into account?

- > As per the Generic Codes, the points allocated and Status Level determine the Preferential Procurement Recognition percentage. For example, a Status Level 1 affords 135% recognition, while a Status Level 8 allows for 10%. The recognition percentage is what an organisation's client refers to for their B-BBEE recognition when calculating their scorecard.
- > The measurement date for Ownership and Management Control is at the time of verification.
- > Skills Development, ESD and SED, which all carry financial implications, are measured against the last completed fiscal period.

8 | Does Enhanced Recognition apply? How is this evidenced?

Enhanced recognition for EMEs with <51% 'Black' Ownership:

- > Automatic Status Level 4.
- > Affidavit required.

Enhanced recognition for all EMEs and QSEs with >51% 'Black' Ownership:

- > Between 51% and 99%, provides for an automatic Status Level 2.
- > Affidavit required.

Enhanced recognition for all EMEs and QSEs with 100% 'Black' Ownership:

- > Automatic level 1 status.
- > Affidavit required.

At the time of going to print, draft legislation was under review to consider removing the limit on turnover for Enhanced Recognition. If gazetted, only 'Black' Ownership will count.

9 | What is the significance of Enhanced Recognition?

Enhanced Recognition ensures that >51% 'Black'-owned or >30% 'Black' Woman-owned organisations automatically achieve a favourable Status Level and favourable Preferential Procurement Recognition.

EMEs and QSEs that are >51% 'Black'-owned qualify as Supplier Development and Enterprise Development Beneficiaries and are not obligated to comply with any other scorecard elements.

10 | How does land restitution influence the Ownership Scorecard?

Land restitution has two implications for the AgriBEE Scorecard:

- > Enterprises (farms) with gazetted land claims are exempt from the Ownership element. If only a percentage of the land is subject to a claim, the exemption is proportional.

- > The Sale of Assets vehicle may apply to land sold to 'Black' Farmers in exchange for Ownership points. An additional proviso is that a 30% target is met instead of 25% as in all other instances where Sale of Assets applies.

11 | How is Ownership measured?

Ownership as a Priority Element is subject to a 40% Sub-minimum requirement.

The three components that measure Ownership are:

- > Voting Rights; and
- > Economic Value; and
- > Net Value.

There is an allowance for the transfer of land ownership to B-BBEE Beneficiaries, with or without compensation, which can be used as the measurement criterion for Ownership points. If 30% of land ownership is transferred to 'Black' People, full recognition for Ownership is possible under certain conditions.

12 | What vehicles are available to drive Ownership?

'Black' Ownership is recognised through:

- > Direct shareholding in the hands of 'Black' People;
- > Private Equity Funds;
- > Sale of Assets through qualifying transactions;
- > Employee Ownership Schemes;
- > Share Equity Schemes; and
- > Joint Venture collaboration with 'Black' Farm Workers and other 'Black' Entrepreneurs.

Upon meeting specific criteria, a multinational may apply for an Equity Equivalent Programme.

13 | True or false – "I must give equity to 'Black' Shareholders in exchange for Ownership status and points?"

This statement is false; the word 'give' does not appear in any of the Codes. It is every organisation's prerogative to decide whether to donate or sell shares either at market value or a discounted rate.

14 | How is Management Control measured?

Management Control targets should be achieved within the ambit of the Employment Equity Act of 1998. The objective of this element is to increase the representation of 'Black' People, 'Black' Women and 'Black' Designated Groups in the sector.



A Large Enterprise must use the overall demographic representation of 'Black' People as defined in the Regulations pertaining to the Employment Equity Act and Commission on Employment Equity Report. Furthermore, a Large Enterprise that has operations in one province must use the relevant provincial demographic representation of 'Black' People. However, an enterprise that has operations in more than one province must adhere to the national demographic representation of 'Black' People.

The Management Control criteria are broken down as follows:

- > Executive Management;
- > 'Black' representation in Executive Management;
- > 'Black' Women representation in Executive Management;
- > 'Black' representation at Senior, Middle and Junior Management; and
- > 'Black' Women representation at Senior, Middle and Junior Management.

All other key principles of Statement 200 of the Generic Codes not addressed in this statement are applicable.

15 | How is Skills Development Measured?

Skills Development expenditure for either employed or unemployed 'Black' People is measured at 6% of the total payroll, with additional points allocated for persons with a disability. A total of 40% of the points available are awarded for 'Black' People entering learnerships, internships or apprenticeship agreements.

Commercial viability in agriculture demands sustained productivity, high levels of entrepreneurship, long-term commitment, resources and skills.

'Black' Designated Groups are targeted under this element. The focus must be placed on the development of core identified scarce or critical skills as determined by the SETA. Interventions that address identified skills shortages must account for 85% of the value of the actual contribution.

All other key principles of Statement 300 of the Generic Codes not addressed in this statement are applicable.

16 | How is Supplier Development and Enterprise Development measured?

The measurement for these sub-elements is based on how an organisation supports Start-up Enterprises, EMEs or QSEs in becoming sustainable. Points can be optimised through contributing 3,5% of NPAT by providing grants, loans or other resources such as facilities and/or equipment.

Preferential Procurement targets may be phased in over a four-year period, provided that an organisation is prepared to contribute 3% instead of 2% towards Supplier Development for years one through to four.

The following non-exhaustive list outlines credible Supplier Development and Enterprise Development contributions:

- > Investments in Beneficiary entities;
- > Guarantees given or securities provided on behalf of Beneficiaries;
- > Facilities made available to Beneficiary entities;
- > Grant contributions to a Beneficiary;
- > Direct costs incurred through assisting and hastening the development of a Beneficiary;

- > Overhead costs directly attributable to contributions;
- > Preferential credit terms granted to a Beneficiary ;
- > Preferential terms issued in respect of supplying goods and services to a Beneficiary;
- > Contributions made to settle service costs relating to operational or financial capacity or efficiency levels of a Beneficiary;
- > Discounts allowed for the acquisition and maintenance costs associated with a grant to a Beneficiary for franchise, license, agency, distribution or other similar business rights;
- > The creation or development of capacity and expertise for a Beneficiary required to manufacture or produce goods or services previously not manufactured, produced or provided in South Africa. However, this must have been accounted for in Government's economic growth and local Supplier Development policies and initiatives;
- > Facilitating access to credit for a Beneficiary without access to similar credit facilities through traditional means, owing to a lack of credit history or collateral;
- > Providing training or mentoring by suitably qualified individuals to Beneficiary entities, which will assist the Beneficiary entities to increase their operational or financial capacity;
- > The maintenance of an Enterprise Development and Supplier Development unit which focuses exclusively on the support of a Beneficiary or candidate Beneficiary;
- > New projects promoting beneficiation for the benefit of an Enterprise Development or Supplier Development Beneficiary;
- > The provision of preferential credit facilities to a Beneficiary may constitute a contribution. Examples include without limitation:
 - Provision of finance to a Beneficiary at lower than commercial rates of interest;
 - Relaxed security requirements or absence of security requirements for a Beneficiary unable to provide security for loans;
 - Settlement of Beneficiary accounts over a shorter period. This addresses standard payment terms and provided that the shorter period is no longer than 15 days; and
 - The training and mentoring of Beneficiary communities. Such contributions are measured by quantifying the cost of time, excluding travel, spent in carrying out such initiatives.

16 | How is Preferential Procurement measured?

The majority of this element measures procurement with 'Black'-owned and 'Black' Women-owned organisations, that are EMEs and QSEs. A phase-in period is an option provided that additional resources are allocated to Supplier Development.

The following must form part of an organisation's Total Measured Procurement Spend (TMPS):

All goods and services procured are defined as:

- > Cost of sales;
- > Operational and capital expenditure;
- > Monopolistic procurement;
- > Third-party procurement;
- > Labour brokers and independent contractors or any outsourced labour expenditure;
- > Pension and medical aid contributions payments made to any post-retirement funding scheme or a medical aid or a similar medical insurer by an organisation on behalf of an employee, excluding any portions of such payments which are a contribution to a capital investment of an employee. The scheme or insurer must issue a certificate dividing between the capital investment portion and the balance to establish the amount that is measurable in the Total Measured Procurement Spend;
- > Trade commissions;
- > Empowerment related expenditure; all goods and services procured in carrying out B-BBEE. The TMPS does not include the actual contribution portion recognised under section 2 and 3 of statement 500, but does include any expenditure incurred in facilitating those contributions;
- > Imports; and
- > Intra-group procurement goods and services procured from subsidiaries or holding entities. A B-BBEE Certificate or Affidavit must represent the organisation supplying goods and/or services.

The following are permissible exclusions from the TMPS:

- > Taxes;
- > Salaries, wages, remunerations and emoluments; and
- > Pass-through third-party procurement. All procurement from a third-party or a client that is recorded as an expense in the third-party's or client's annual financial statements, but is not recorded as such in an organisation's annual financial statements.

17 | How is Socio-Economic Development measured?

Unique to this sector code is the 15 points allocated for this element for spending 1.5% NPAT. This is the only sector code that deviates from the Generic Codes.

Beneficiaries must be involved in the decision-making process and acknowledge that the assistance provided is, in fact, necessary and required. A detailed agreement must be entered into and accepted by all parties. Proper records of all interactions and meetings must be kept.

To optimise the points on this element, priority should be given to implementing income-generating socio-economic initiatives that create a sustainable livelihood for Beneficiaries.

Tips to remove the sting from B-BBEE compliance

Essential to a favourable B-BBEE outcome are strategy, planning and providing relevant evidence. Take the following pointers into account and leave as little to chance as possible.

- > Ensure that your chosen verification agency is accredited by SANAS, the only accredited body authorised to issue B-BBEE Certificates. SANAS places a very high level of integrity on the verification analysts.
- > Have a full comprehension of the requirements applicable to your organisation.
- > Address 'low-hanging fruits' first, which are classified as :
 - Spend with organisations that are >51% 'Black'-owned; where possible allocate that spend to Enterprise Development or Supplier Development Beneficiaries.
 - Ensure supplier B-BBEE Certificates are presented in the correct format.
 - Optimise the 15 points available for SED.
 - Analyse the Skills Development spend. Ensure that people with disabilities are included.
 - Ensure proper due diligence on complex transactions entered into, especially in terms of Ownership. Gain a second opinion for peace of mind. Issues such as an Ownership transaction must be adequately planned, and professional advice must be obtained to ensure that a smooth transition takes place.

Source of reference

<https://bizconnect.standardbank.co.za/sector-news/agriculturearticles/reference-documents/the-agricultural-sector-in-south-africa-%E2%80%93-what-to-know-when-starting-out.aspx>