

# The Amended Property Sector Code

The Amended Property Sector Code (Property Sector Code) was gazetted on 9<sup>th</sup> June 2017. This Sector Code applies to all privately owned and listed organisations operating within the property sector. It further binds all Organs-of-State, organised labour and communities with a vested interest in the sector.



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In 2016 Property Sector Charter Council revealed that the value of the South African property sector was R5.8 trillion. Therefore, driving Transformation successfully through this sector is fundamental in the 'grand scheme of things' due to the sheer magnitude of it.

In a statement released, Minister Rob Davies said "... capital needs to be made available in the sector to enable 'Black'-owned organisations to develop and acquire properties. The amended sector code has set a target for established organisations to financially support those that are at least 51% 'Black'-owned."

The scope of the Property Sector Code is applicable, however, not limited to, all commercial activities in the following property sub-sectors:

Residential Property Industry	Commercial Property Industry	Other Property Value Chain Areas
Housing	Office Property Industry	Property Development
Community Schemes	Industrial Property Industry	Property Ownership
Land zoned for development	Leisure Property Industry	Property Services <ul style="list-style-type: none"><li>› Property Management</li><li>› Facility Management</li><li>› Broking</li><li>› Estate Agents</li></ul>
	Retail Property Industry	Professionals: <ul style="list-style-type: none"><li>› Property Valuers</li></ul>
	Land zoned for development	Regulators (in Property Sector) Organs of State

An Exempt Micro Enterprise (EME) and a >51% 'Black'-owned Qualifying Small Enterprise (QSE) are only required to issue an affidavit as proof of their B-BBEE credentials. All other organisations must be verified by a SANAS accredited verification agency. The scorecard criteria, Weighted and Bonus Points are broken down as follows:

	Qualifying Small Enterprise		Large Enterprise	
	Weighted Points	Bonus Points	Weighted Points	Bonus Points
Ownership	27	-	30	3
Management Control	9	-	9	2
Employment Equity	11	2	13	3
Skills Development	17	3	19	3
Enterprise and Supplier Development	35		39	4
Socio-Economic Development	2	-	2	-
Economic Development	4	-	5	-
<b>Total</b>	<b>105</b>	<b>5</b>	<b>117</b>	<b>15</b>

*"In 2016, the Property Sector was valued at R5.8 trillion."*

A unique feature in the Property Sector Code is that there is no blanket or generic scorecard. Each sub-sector has their own specific scorecard, which in some cases provides exemptions to certain elements:

	APUTS Property Unit Trust/REITs <small>(External management)</small>	PLSA Property Loans Stock <small>(External management)</small>	Asset Management	Property Owner/ REITs <small>(External management)</small>	Property Managers Services	Internal Management with PLSA/ REITs	Unlisted Public Mandated Collective Investment Scheme	Estate Agents	Specialised Entities <small>incl. State Organs</small>
Ownership	✓	✓	✓	✓	✓	✓	✓	✓	✗
Management Control	✓	✓	✓	✓	✓	✓	✓	✓	✗
Employment Equity	✗	✗	✓	✗	✓	✓	✓	✓	✓
Skills Development	✗	✗	✓	✗	✓	✓	✓	✓	✓
Enterprise & Supplier Development	✓	✓	✓	✓	✓	✓	✓	✓	✓
Socio-Economic Development	✗	✓	✓	✓	✓	✓	✓	✓	✗
Economic Development	✓	✓	✗	✓	✗	✓	✓	✗	✗

✓ = Element is applicable; ✗ = Exempted from element

The rationale behind this unique structure is that some organisations falling within this sector will not be able to meet specific sub-minimum requirements. For example, an organisation with no employees would be unable to meet the sub-minimum requirements of Skills Development. Therefore, due to each sub-sector having its individual criteria, the following formula calculates B-BBEE recognition:

$A = B/C \times D$ , where –

A = Points for B-BBEE level qualification

B = Maximum points under the code

C = Maximum points available to organisation per segment

Example – Asset Management – Large Enterprise

127 - Full points available

85 points are scored by organisation

The calculation –  $132/127 \times 85 = 88.35 = \text{Level 4}$

B-BBEE Status Level 4 has 100% recognition

The thresholds for the EME, QSE and Large Enterprise Scorecard are specified per sub-sector:

		Asset Based	Service Based	Estate Agencies/ Broking/ Valuation Companies
Exempted Micro Enterprises	Net Assets	Less than R80 million		
	Turnover		Less than R10 million	Less than R2.5 million
Qualifying Small Enterprises	Net Assets	Less than R400 million		
	Turnover		Less than R50 million	Less than R35 million
Large Enterprises	Net Assets	More than R400 million		
	Turnover		More than R50 million	More than R35 million

## Priority Elements

Like in the Amended Codes, Priority Elements have been identified. The consequence of an organisation not meeting the sub-minimum requirements is discounting of one B-BBEE Status Level. Identified Priority Elements applicable are sub-sector specific.

	Sub-minimum Requirement excluding Bonus Points	Applicable
Ownership	40% of Net Value	All that fall within the Sector Code except for the Specialised Scorecard.
Management Control	40% of total Weighted Points	Only Estate Agents.
Skills Development		All that fall within the Sector Code except for Property Unit Trusts, Real Estate Investment Trusts (REITs) and Property Owners.
Enterprise & Supplier Development		All falling within the Sector Code except Estate Agents.
Economic Development		Only Property Unit Trusts, REITs and Property Owners.





The various differentiating factors between the Property Sector Code and the Amended Codes are outlined as follows:

## Ownership

The Ownership scorecard differentiates between ‘Property-Owning Organisations’ and ‘Other Property Sector Organisations’.

	Property-Owning	Other Property Sector Companies
Property-Owning Organisations have a 27% target for Economic Interest (27% +1 for Voting Rights).	Year 1 = 3% Year 2 = 7% Year 3 = 10% Year 4 = 15%	Year 1 = 10% Year 2 = 20% Year 3 = 40% Year 5 = 60%
Other Property Sector Organisations have a 25% target for Economic Interest (25% +1 for Voting Rights).	Year 5 = 19% Year 6 = 24% Year 7 = 30%	Year 7 = 80% Year 9 = 100%
The Net Value graduation factors differ for ‘Property-Owning Organisations ‘and’ Other Property Sector Organisations’ respectively.	Year 8 = 36% Year 9 = 43% Year 10 = 50%	

Four points are allocated to Financial Support to ‘Black’-owned and controlled organisations with at least 51% ‘Black’ Ownership that has a B-BBEE Status Level ranging between level 1 and 3. Financial Support is measured as a percentage of development or re-development spend on properties not currently owned by an organisation. The target is set at 1% between years one and three, then 2% between years four and five. An additional three Bonus Points are allocated for the disposal of assets to ‘Black’-owned and controlled organisations with at least 51% ‘Black’ Ownership that has a B-BBEE Status Level ranging between 1 and 3. The set target is 35% of the total disposal of assets with a 7% sub-minimum (20% X 35%).

The Property Sector Code contains special consent for organisations listed on the Johannesburg Stock Exchange (JSE), namely Property Unit Trusts or REITs to exclude mandated investments to a maximum of 50% as opposed to 40% in the Amended Codes. This provides an organisation can present consistent evidence of 50% or more mandated investments from the date of being listed or three years before being verified, whichever is the longer of the two periods. A ‘normalisation formula’ was introduced to address excessive dilution of B-BBEE shareholding in organisations listed on the JSE.

Three Bonus Points are available for Large Enterprises for the disposal of assets to ‘Black’-owned and controlled organisations with at least 51% ‘Black’ Ownership with a B-BBEE Status Level ranging between 1 and 3. The target is set as 35% of the value of total asset disposals.

## Management Control

### Employment Equity

The Economic Active Population (EAP) profile targets and the race and gender category measurement method apply to Employment Equity. Three Bonus Points are available for senior and middle management targets. Section 17 of the Property Sector Code provides specific definitions for senior, middle and junior management, which are linked to set salary bands as follows:

- › Management (estate agencies only) R360,000
- › Senior Management R450,000
- › Middle management R225,000 – R450,000
- › Junior Management R150,000 – R225,000

### Management Control

Management Control and Employment Equity remain two separate elements in the Amended Property Sector Code. The targets and Weighted Points for Management Control are in line with the Amended Codes, apart from two Bonus Points available for executive director composition.

The Property Sector Code acknowledges that residential estate agents, brokers and evaluators have no differentiation at board-level. Therefore, a separate Management Control scorecard has been specified that does not measure executive director composition.



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## Skills Development

The target for Skills Development expenditure benefitting 'Black' People is set at 5% of the leviable amount, as opposed to the 6% target specified in the Amended Codes. Mandatory training is excluded under the Amended Codes, but an allowance was made in the Property Sector Code for Estate Agents and Property Practitioners. Training defined and required by the Estate Agency Affairs Board may be counted. This further applies to the SACPVP qualification for Valuers.

In line with the Amended Codes, Skills Development for 'Black' People applies to both employees and non-employees.

The Amended Codes specify that only spend on employees with disabilities may be recognised. The Property Sector Code explicitly states that spend on 'Black' People with disabilities that are employees and non-employees, may be recognised. EAP targets are not applicable to Learners with disabilities.

Three Bonus Points are available for the absorption of Learners, compared to the five available within the Amended Codes. Where an unemployed Learner has completed at least six months of a learnership, apprenticeship or internship, and has obtained employment for longer than 12 months, such Learners can be counted under absorption, whereas the Amended Codes states that they can only be included once the learnership is completed.

## Economic Development

Organisations engaging in property development have set targets to invest in property development and transformational infrastructure projects. These projects must support development, the empowerment of SMEs and contribute towards equitable access to economic resources in under-resourced areas.

If an organisation solely contributes towards Economic Development Investment in under-resourced areas, then the target is 10% of total annual investment for five Weighted Points.

## Enterprise and Supplier Development

### Preferential Procurement:

The procurement scorecard introduces an additional sub-measurement which allocates six points for spend with 'Black'-owned Property Service organisations with a B-BBEE Status Level ranging between 1 and 3. This is measured against a target of 40% of the total property services spend.

### Supplier Development and Enterprise Development:

The scorecards and key measurement principles for Supplier Development and Enterprise Development remain aligned to the Amended Codes.

## Socio-Economic Development

There are two Weighted Points allocated for Socio-Economic Development, in contrast to the five available in the Amended Codes. However, the target remains set at 1% of Net Profit after Tax.

Due to the high biodiversity risks in development, environmental projects are recognised.

If an organisation solely contributes towards an Economic Development Programme that stimulates development, for example, infrastructure bulk services, the target is 5% of total annual investment activities for five Weighted Points.

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An organisation contributing towards both of the sub-elements mentioned above, the target and Weighted Points are as follows:

- › Economic Development Investment – Target 5% of total annual investment for three Weighted Points.
- › Economic Development Programme – Target 2.5% of total annual investment for two Weighted Points.

The scorecard calculation has a five-year cumulative average methodology. Economic Development Investments and contributions are recognised based on the Municipal Index factors contained in the Financial Sector Code.



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