

**The B-BBEE Policy Unit  
The Department of Trade and Industry**

**Attention: Jacques Manus**

**By e-mail: [JManus@thedti.gov.za](mailto:JManus@thedti.gov.za)**

29 May 2018

Dear Mr Manus

**WRITTEN SUBMISSIONS ON PROPOSED AMENDMENTS TO GENERIC B-BBEE CODES**

**1 INTRODUCTION**

- 1.1 BUSA welcomes the opportunity to submit written comments to the draft amendments to the Codes of Good Practice on Broad Based Black Economic Empowerment ("Generic Codes") published by the Minister of Trade and Industry in terms of section 9(5) of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 ("the B-BBEE Act") on 29 March 2018.
- 1.2 BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents a cross spectrum of South African business, large and small across the economy on macro-economic and cross-cutting policies and issues that affect business at national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive. As the principal representative of business in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory.
- 1.3 We note that the key amendments which are proposed to be introduced by way of the draft amendments include the following:
- 1.3.1 the B-BBEE recognition for achieving the Youth Employment Service ("Y.E.S.") targets;
  - 1.3.2 Skills development expenditure recognition for Black students at public and private Higher Education Institutions;
  - 1.3.3 enhanced B-BBEE recognition level for generic enterprises.
- 1.4 BUSA supports the recognition proposed to be provided by the draft amendments to the already considerable investment by the private sector in youth employment.

However, we submit that the effectiveness of this recognition including the implementation of the draft amendments would be dependent on clarifying certain issues and ensuring that the provisions are workable and do not have unintended consequences, particularly in relation to the transformation imperative. In 2017, BUSA members engaged and adopted the Business Approach to Black Economic Transformation for Inclusive Growth ("The Transformation Approach"). The Transformation Approach recognised that the pace and depth of transformation in business has been insufficient, and that concerted steps should be taken to accelerate the pace of transformation within business. Business identified four key drivers of transformation being: inculcating diversity within business; promoting education and skills; lifting employment, particularly among the youth; and enabling many more small and emerging black businesses to participate in the economy. It is in this light that BUSA is concerned that some of the provisions may inadvertently undermine, rather than support transformation.

1.5 Our comments are set out below.

## **2 APPLICATION OF DRAFT AMENDMENTS**

2.1 We note that the draft amendments are applicable only to the Generic B-BBEE Codes.

2.2 This means that entities that are measured in terms of B-BBEE sector codes are not impacted by the draft amendments and could not, for example, take advantage of the possible benefits arising from those entities having achieved Y.E.S targets until their specific sector codes are also amended to allow for this.

2.3 BUSA submits that the DTI should seek to ensure that the proposed amendments are incorporated into all currently applicable B-BBEE Sector Codes to ensure legal and policy certainty across all sectors of the economy, and to promote the objectives of the proposed policy changes.

## **3 SUBMISSIONS REGARDING THE Y.E.S INITIATIVE**

BUSA welcomes the endeavour to provide recognition to youth employment promotion. As a general point of departure, limiting Youth Employment initiatives to one single scheme is a very narrow and restrictive approach given the multitude of schemes that perform valuable work in this regard. A mechanism for the B-BBEE Commission to accredit any legitimate schemes that activate and enable youth employment should be considered.

### **3.1 Registration for the Y.E.S initiative**

3.1.1 Paragraph 11.2 of Draft Statement 000, Code Series 000 refers to the "Qualification for Registration for the Y.E.S INITIATIVE". Paragraphs 11.2.1.1 to 11.2.1.5 then specifies the qualification criteria for registration.

3.1.2 Absent from the proposed amendments, however, are the details concerning "registration". BUSA urges the DTI to clarify the following in this regard:

- 3.1.2.1 With whom are measured entities required to "register" in order to qualify as a "Y.E.S Eligible Measured Entity"?
- 3.1.2.2 Will the registration have to occur with accredited verification agencies or any other entity?
- 3.1.2.3 If another entity, will that entity be a public entity or a private entity?
- 3.1.2.4 If a private entity, how will that entity be regulated, particularly if that entity is seeking "registration fees" from measured entities?
- 3.1.2.5 Will measured entities be required to pay registration fees?
- 3.1.2.6 If measured entities will be required to pay registration fees, how will the funds received as registration fees be utilised?

### **3.2 Clarification regarding the Y.E.S targets**

- 3.2.1 Clause 11.3.5 of Draft Statement 000, Code Series 000 states that the targets which measured entities are required to achieve are in respect of "new jobs" which "must be created in addition to existing headcount." It goes on to say that "Entities may not replace existing positions with new positions".
- 3.2.2 The "new jobs" concept is not defined, and should in our view be clarified to confirm, amongst other things, that:
  - 3.2.2.1 internships, which could be annual internships, could fall within the "new jobs category; and
  - 3.2.2.2 the "new jobs" in each year does not become part of the "existing headcount" in the following year. In other words, if the new 12-month jobs in year 1 do not convert into indefinite or extended contracts in year 2, they should not become part of the existing headcount to which "new jobs" should be added in year 2. This could encourage an ongoing supply of internships, providing valuable work integrated learning.
  - 3.2.2.3 it is unclear how the headcount will be measured and over or at what point in time.

### **3.3 Sponsorship of new jobs**

- 3.3.1 Paragraph 11.3.6 of Draft Statement 000, Code Series 000, states that where entities are unable to create a sufficient number of new jobs within the entity the entity may "sponsor" new jobs to be placed in EMEs or QSEs. The sponsored positions will contribute to meeting the Y.E.S entity's target.
- 3.3.2 BUSA submits that the beneficiary entities of sponsored positions should not include QSEs in the same manner that EME support is enabled. The focus should be on supporting EME's and also include non-profit organisations – both of whose beneficiary base are predominantly Black People. This will serve to support the growth of small black businesses.
- 3.3.3 Clarity is also required on how the sponsorship of new jobs will work. In particular:
  - 3.3.3.1 Who will be required to conclude the employment contract with the employee, the Sponsor or the EME concerned?
  - 3.3.3.2 Will the Sponsor's role be limited to providing the monetary contribution for the payment of salaries to the employee?
  - 3.3.3.3 Who will be expected to monitor whether the EME is adhering to the basic conditions of employment and other requirements, including occupational health and safety for the Y.E.S targets to apply?

- 3.3.3.4 It is unclear how the sponsorship payments will be made so as to ensure good governance and transparency.
  - 3.3.3.5 Will an employer be able to replace a Y.E.S beneficiary in the event that the young person drops out for any reason beyond the control of the employer or sponsoring business.
  - 3.3.4 It is recommended that there be a limitation of 75% of spend that can be sponsored relative to direct work experiences created by the sponsoring entity.
- 3.4 "Fulltime" work experience**
- 3.4.1 Paragraph 11.6.2 of Draft Statement 000, Code Series 000, states that Y.E.S Entities are required to sign fixed term or temporary employment contracts filling new positions which have a "12-month fulltime work experience paid for by the Entity".
  - 3.4.2 BUSA does not support the full time job requirement. The International Labour Organisation and South African labour law recognises part time work as legitimate. This requirement, if implemented, could exclude from the purview of recognition for job creation work in the 4th industrial revolution space. This will considerably dampen the number of opportunities available. Accordingly, BUSA submits that the Y.E.S contracts of employment should be for 12 months, providing for at least 100 hours a month. This will provide all the intended benefits of Y.E.S without compromising the potential number of work experiences for youth.
- 3.5 "Quality work experience"**
- 3.5.1 Paragraph 11.6.3 of Draft Statement 000, Code Series 000, states that Y.E.S Entities must commit to ensuring that "quality work experience" is provided to the eligible employee insofar as the entity is able to provide it.
  - 3.5.2 The "quality work experience" concept is undefined and unclear. Furthermore, the DTI should clarify who will be responsible for assessing whether or not "quality work experience" has in fact been provided to the eligible employees? It would be preferable to use terminology that is generally understood in terms of South African policy and other Labour legislation. It is suggested that the provision should rather require that the work experience complies with all South African labour laws as that is clear and enforceable. It is also aligned to the conditions of the related Employment Tax Incentive.
- 3.6 BEE recognition and the Y.E.S Targets**
- 3.6.1 Paragraph 11.5 of Draft Statement 000, Code Series 000, stipulates the B-BBEE recognition levels which would be achieved if certain Y.E.S targets are achieved. Each Y.E.S target sets an "Absorption" rate of either 2.5% or 5%.
  - 3.6.2 "Absorption" should be further clarified and defined.
  - 3.6.3 Furthermore, it is unclear how the measurement of the absorption rate will be given effect to in the first year after the amendment takes effect given that absorption will not immediately be capable of being demonstrated or proved. BUSA submits that the DTI should consider a transitional provision of at least one year to enable the measurement of absorption to occur in the first year.
  - 3.6.4 BUSA is concerned that the suggested absorption rate of 2.5% or 5% does not sufficiently incentivise sustainable youth employment. We believe that greater

recognition should apply if higher absorption rates are achieved in order to encourage the principle of sustainable employment.

- 3.6.5 In addition, we submit that youth who are on more extended programmes, such as artisan programmes which are 3 years long, should be deemed to be 'absorbed' if they remain on with the entity after year 1. This will enable entities to include artisans in their Y.E.S targets for B-BBEE recognition.
- 3.6.6 BUSA does not support an all or nothing approach in relation to B-BBEE recognition for the achievement of Y.E.S targets. In other words, as currently proposed, a Y.E.S eligible entity must achieve the entire Y.E.S target in order to claim the appropriate B-BBEE recognition level. BUSA is concerned that this may disincentivise entities from participating in the Y.E.S initiative and suggests rather that there should be some form of recognition, which could, for example, be in the form of points for partial attainment of the Y.E.S targets.
- 3.6.7 It is also unclear whether the Y.E.S target will also form part of the current learnership/apprenticeship/internship targets under 2.1.2 for skills development or is the intention for measured entities to contribute towards separate targets for the Y.E.S initiative.

### **3.7 Informal Skills development spend**

- 3.7.1 Paragraph 11.5 of Draft Statement 000, Code Series 000 states that entities will be able to claim up to 50% of their skills development spend on Y.E.S employees as informal training against their skills development scorecard.
- 3.7.2 BUSA submits that this recognition should apply to all youth employment related work readiness training and should not be confined to Y.E.S employees. This would address the dire need for workplace learning which many unemployed youth strive to obtain. For the sake of clarity, this provision should be moved into Amended Code Series 300, Statement 300 (the General Principles for measuring Skills Development).

## **4 SUBMISSIONS REGARDING THE PROPOSED AMENDMENTS TO THE SKILLS DEVELOPMENT SCORECARD**

- 4.1 BUSA notes and welcomes the amendment to the skills development scorecard which effectively decreases the 6% Leviable Amount target for skills development expenditure to 3.5% and introduces a 2.5% of Leviable Amount target for expenditure on Bursaries for Black students at public and private Higher education institutions. BUSA cautions, however, that the employer's focus on skills spending should as far as possible be related to those in employment and be spent towards enabling employability. It would therefore be preferable to apply a 1.5% Leviable Amount target for expenditure on Bursaries.
- 4.2 However, BUSA submits that the Bursaries should also cover Technical and Vocational Education and Training ("TVET") colleges. BUSA accordingly submits that the target for bursaries should be broadened to include any 'post school education' including public and private TVET colleges.

4.3 BUSA is strongly of the view that Bursaries should apply for occupationally demanded qualifications linked to critical skills so as to ensure that post school education is relevant and will support the prospects of employment or further education.

## **5 ENHANCED RECOGNITION FOR GENERIC ENTERPRISES**

5.1 BUSA notes the proposed amendments contained in paragraph 6.3 of Draft Statement 000, Code Series 000 enabling enhanced B-BBEE recognition for 100% Black Owned entities (measured using the flow-through principle) and 51% Black Owned Entities (measured using the flow-through principle).

5.2 Whereas we understand the need to promote 51% and 100% Black-owned entities we are extremely concerned that this proposed amendment could undermine the broad-based nature of Black economic empowerment, particularly as it relates the other key and priority elements of the generic scorecard, such as skills development and enterprise and supplier development.

5.3 A further and significant disadvantage of this approach is the negative impact that it will have on smaller businesses that struggle to access the market even under the current conditions.

5.4 Regretfully, this proposed change may open the opportunity for fronting that will undermine the objectives of the Codes and the need to transform. It is a fundamental and in our view, misconceived departure from the principle of broad based economic empowerment.

## **6 CONCLUSION**

6.1 BUSA would welcome any opportunity to engage with the DTI in relation to our submissions.



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**CHIEF EXECUTIVE**