



S A P O A

THE VOICE OF COMMERCIAL PROPERTY

www.sapoa.org.za

5 December 2012

X Zondo
The dti Campus
Private Bag x84
Pretoria
0002
c/0 BEE Unit

Dear Sir/Madam,

RE: COMMENTS ON THE DRAFT REVISED BROAD BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE

The South African Property Owners Association (SAPOA) is a non-profit organisation registered in terms of applicable company laws. SAPOA represent approximately 90% of the property owners, managers, developers and professionals within the commercial, retail and industrial property sectors.

SAPOA understands the necessity for government to address, through the adoption of various policies and the passing of legislation, the country's historical imbalances. SAPOA thus supports the policy ideals and legislative imperatives that form the basis of the draft Revised Broad Based Black Economic Empowerment Codes of Good Practice. Our assessment of the draft codes has taken cognisance of the essential need for government to bring transformation within the country through economic empowerment by consideration of the reasonable interests of society but by also considering the reasonable interests of commercial, retail and industrial property owners, managers, developers and professionals.

SAPOA takes cognisance of the rationale for the revision of the Codes as was presented before Cabinet in its meeting held on 8 August 2012 which was stated as being the following:

- a. The generic scorecard has been reduced to five elements with Employment Equity and Management Control being consolidated, and Preferential Procurement and Enterprise Development merged to form the Enterprise and Supplier Development Element.
- b. The points for Ownership have been broadened to include designated groups in the main points;
- c. Thresholds for Exempted Micro Enterprises and Qualifying Small Enterprises (QSE) have been adjusted.
- d. All companies, except Exempted Micro Enterprises, will be required to comply with the five elements of the B-BBEE scorecard;

SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION REG NO 1966/008959/08
36 Wierda Road West Wierda Valley Sandton PO Box 78544 Sandton 2146
Tel +27 (011) 883 0679/83 Fax +27 (011) 883 0684 E-mail hq@sapoa.org.za Website www.sapoa.org.za

National Council: SG Moseneke E Basha K Browne EK de Klerk P Engelbrecht V Fourie NA Gopal DJ Green I Ho-Yee G Kirchner L Kisten M Madisa D Nafte J Nel MM Ngcobo H Ntene D Reid KM Roman G Shepperson G Wheatley M Bakker S Uys B Azizollahoff (Elected) I Mkhari (Elected) Mashilo Pitjeng (Elected) BF Kirchmann (Honorary Life Member) AJ van Riet (Honorary Life Member)
Directors: SG Moseneke (President) KM Roman (Immediate Past President) EK de Klerk (President Elect) NA Gopal (Chief Executive Officer) B Azizollahoff A Beattie M Deighton P Levett I Mkhari M Muller MM Ngcobo
Incorporated Association not for gain

Western Cape
5th Floor H Block
Mutual Park Pinelands
Tel: 021 530 5943
Fax: 086 519 7536
melissa@sapoa.org.za

KwaZulu Natal
P O Box 407
Durban 4000
Cell: 082 873 0090
Fax: 086 231 2068
sapoa.kzn@sapoa.org.za

Port Elizabeth
P O Box 6364
Greenacres 6057
Tel/Fax: 041 583 6806
sapoa.pe@sapoa.org.za

East London
10 Beacon Park
21 Pell Street
Beacon Bay 5241 East London
Tel: 043 748 1156
Fax: 043 748 2839
sapoa.el@sapoa.org.za

Polokwane
Postnet suite 88
Private Bag X9676
Polokwane 0700
Tel: 015 291 1678
Fax: 015 295 5069
sapoa.limpopo@sapoa.org.za



SAPOA

- e. Revised qualification points for awarding of B-BBEE recognition levels status;
- f. The introduction of priority elements: Ownership, Skills Development and Enterprise and Supplier Development, and large enterprises to comply with all three priority elements. The priority scores of entities that do not comply with sub-minimum requirements in each priority will be discounted;
- g. Entities that are 100% black-owned will qualify as Level 1;
- h. Entities that are more than 50% black-owned will qualify as Level 2;
- i. Updated framework for the accreditation of B-BBEE Verification Agencies to include the Independent Regulatory Body of Auditors.
- j. Alignment of the B-BBEE Employment Equity elements with the Employment Equity Act;
- k. Skills Development element has been aligned to the New Skills Development Strategy and to be outward focused; and
- l. Qualifying Small Enterprise's must comply with all 5 elements on the scorecard.

FORMAL COMMENTS ON THE DRAFT REVISED CODES

SAPOA is a member of Business Unity South Africa (BUSA) and supports all comments that are submitted by it on behalf of the industry and it is not our intention to repeat all their comments. Notwithstanding, SAPOA hereby, with due regard of the gazetted Property Sector Codes that were published on 1 June 2012 under Government Gazette Notice Number 450 of 2012, submits the following additional comments on the draft revised B-BBEE Codes of Good Practice.

A. REVISED SCORECARD

- i) SAPOA supports the revised scorecard. We note that the great emphasis that has been put on Enterprise and Supplier Development in terms of the current draft. We are however of the view that the same level of emphasis should be placed on Skills Development, at the expense of Ownership. Providing people with the relevant skills and giving the opportunity to start their own business as intended under the Enterprise and Supplier Development will provide real empowerment and make people active participants in the economy. Placing more emphasis on Skills Development will complement the Government's National Plan for 2030 which highlights that the key to national development, sustainable employment and economic growth in South Africa is through education and skills development.
- ii) The BEE policy and legislation must be implemented in support and complimentary of other national policies. South Africa will not be in a position of reducing poverty levels and ensuring that its citizenry is economically empowered if it fails to ensure the standard of education, the access to education, the development of skills, be it in the form of informal and formal skills training, are prioritized. While the revised draft BBEE Codes provide much weighting on the enterprise and supplier development, such policy intention becomes self defeating if the historically disadvantaged individuals who are part of the economic cycle through their business enterprises lack



adequate skills to ensure that their business are financially sustainable and profitable.

- iii) Under the current proposal, a 100% black owned company automatically achieves a Level 1 score, thereby taking away such companies' requirement to focus on the other elements. The past few years have seen the emergence of BEE companies (some of which are 100% black owned) that have grown to be large enterprises in their own right. SAPOA is of the view that such companies should equally contribute to the development of their own employees (both through employee participation as envisaged under the Ownership and Skills Development elements) and the greater citizenry as envisaged under the Enterprise and Supplier Development and Social Economic Development elements.
- iv) Furthermore, it is our view that automatically awarding Level 1 or 2 statuses will encourage fronting in a scenario where the shareholders are black, but where the whole organisation is not transformed and then the scourge of economic imbalances will not be eradicated. It is our considered view that where a company is majority black owned, this achievement will be sufficiently reflected in that company scoring highly under the Ownership element without a need to exempt the entity from being measured under the remaining four (4) elements.

B. CODE SERIES 100: MEASUREMENT OF OWNERSHIP – ELEMENT OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT

- i) Draft Amendment: *"A measured Entity must achieve a minimum of 40% of the annual Net Value as per Annexure 100 (C) paragraph 4 of this statement in order to avoid discounting of its overall scorecard"* to be added after paragraph 3.1.
- ii) SAPOA supports the insertion of the cap to be at 40%. However SAPOA would like to keep mandated investments cap at 70% as was approved in the by the Department of Trade and Industry (Dti) and as encapsulated in the Property Sector Charter Codes.
- iii) Similarly, the Dti approved the use of the Property Sector Charter specific net equity value table. It is our submission that this be kept in the new Property Sector Code.

C. CODE SERIES 200: MEASUREMENT OF EMPLOYMENT EQUITY - ELEMENT OF THE BROAD-BASED BALCK ECONOMIC EMPOWERMENT

- i) SAPOA supports the revised draft provisions relating to the indicators and method of calculating a score for Management Control under statement 2.1.



SAPOA

- ii) SAPOA further recognises the targets sets under the Property Charter Codes published in terms of Statement 003 which provides weighting points and compliance target years for property brokers and estate agents and further allocates bonus points for them.
- iii) The revised codes fail to recognise the Junior Management level. SAPOA recommends that the level be re-introduced as this is an early indicator of what companies are doing to address BEE skills shortage at medium, senior and executive levels. Retaining the Junior Management level will also encourage companies to focus on employing and up skilling recently qualified graduates.

D. CODE SERIES 400: MEASUREMENT OF ENTERPRISE & SUPPLIER DEVELOPMENT – ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

- i) SAPOA supports the creation and growth of small business enterprises. However contributions to the Enterprise and Supplier Development should take into account the size of a company that is being measured. The current contribution of 3% may be a bit too high for smaller companies.

E. REVISED B-BBEE RECOGNITION LEVELS

- i) The revised levels are too punitive. For example, a company that achieved a score of 85 under the old scale was regarded as Level 2 contributor. In the proposed scorecard, the same score, will result in the company being rated as Level 4 contributor. This demotion in the level of achievement is purely as a result of the change in the rating table before taking into account the new higher targets as proposed as well as the further potential demotion that will result if a company fails to meet the minimum thresholds under the three priority areas.
- ii) Given the increase of the total scorecard score from 100 to 105 points, one way to address the anomaly, is to increase the old rating scale by 5 (five) points. For example, under the old rating system, Level 3 was from 75 to 85, this would be changed from 80 to 90. This is not any less onerous, since the compliance targets have been revised upwards and that the companies will be downgraded two (2) notches if they do not meet the minimum criteria under the priority elements.

We hope that our comments will be considered when finally adopting changes and finalising the draft Codes for implementation.

Yours faithfully

Advocate Portia Matsane
Manager: Legal Services Department