



NATIONAL ASSOCIATION
OF MANAGING AGENTS
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Managing Agents and BEE Compliance



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Black economic empowerment is a murky topic. There is little clarity from the organizations that are supposed to be effecting transformation in any sector, and even less clarity from the Department of Trade and Industry. The result is that interpretation is left to a variety of people, ranging from legal experts to noisy politicians right through to BEE consultants like myself.

The first point to consider is the legal applicability of any BEE code of good practice, specifically the Amended Property Sector Code (gazette number 40910 of June 2017). These codes of good practice have never been binding on any privately owned entity (company, person or any other juristic entity) operating in that industry. The Property Code says the following

This amended sector code (including the scorecard incorporated herein) applies to all privately owned and public enterprises within the property sector. In addition, it is binding to (sic) all organs of state and public entities organized labour and communities involved with or interested in the Property Sector.

The underlined paragraph shows what entities are required by law to apply it. The term “applies” in the first sentence just means that if you chose to comply then that’s the code you would need to consider in terms of transformation measurement.

Whilst legally the private sector is not obliged to adhere to the code, the underlined entities are required to measure their own BEE performance on the complete list of elements, one of which is procurement. In theory, their procurement score is dependent on those entities’ BEE scores. The rule of thumb is that if you have more than 51% black ownership and a high BEE score then you are more attractive to those entities.

The next point to consider is what compliance is. The BEE codes are quite clear that if your level is lower than a level 8 then you are non-compliant. However, I have many clients who are happy to have a completely non-compliant BEE certificate (all zeroes) because they are ticking a box that their clients want to be ticked. I would suggest that compliance only appears when a certain BEE level is requested for a state or private tender. These requirements tend to be bid-specific. It’s not common to find a state policy that sets a certain level in stone. In the absence of these specific requirements, I would suggest that if you have attempted to get a single point on a BEE scorecard then you are on the road to compliance.

Then there are the thresholds. Companies are categorized by their turnover; this determines which type of scorecard needs to be used. I have classified Managing Agents as being service-based services providers. The table below shows the thresholds and a brief overview of each category.

Description	Annual Turnover Threshold	Description
Exempt Micro Enterprise (EME)	Less than R10m	Affidavit for all companies in this threshold. Less than 51% black ownership is a level 4, 51%+ black ownership is a level 2. 100% black ownership is a level one
Qualifying Small Enterprise (QSE)	Between R10m and R50m	Less than 51% black owned need a SANAS accredited BEE scorecard. 51% and higher need an affidavit. Elevated levels (level 2 and 1) are the same as EMEs
Large Enterprises	Turnover in excess of R50m	All need to go through a full BEE verification

Compliance in terms of the Property Practitioners Act, 2019.

The Act is very clear that all entities of state must consider BEE compliance when procuring property-related goods and services in section 20 (2). This section is very common, it appears in section 10 of the BEE Act. The Act, however, does not prescribe levels of compliance but appears to provide the Property Practitioners Regulatory Authority with the ability to prescribe certain levels in section 20(3 which is about as close to prescribing BEE levels as one can get where it talks about *(the Authority) creating such mechanisms for the continuous monitoring and evaluation of the sector performance on the transformation imperatives and granting of incentives as may be prescribed.* Unfortunately, the term “incentives” is not described, nor is it mentioned again in the Act. If there is a correlation between the term “incentive” and the granting of licenses or Fidelity Fund Certificates to operate, it’s not clear.

What about the future.

This is difficult to predict. What is clear is that BEE is going nowhere. In fact, as the dominant political party starts losing its electorate it is possible that they will attempt to make the requirements more draconian (and they are already very draconian). But there are always solutions. I have worked in this industry long enough to know that solutions exist, and they become more innovative and cost-effective as the rules change.

If you are concerned about BEE compliance and Fidelity Fund Certificate, then I would approach your nearest verification agency or consultant and speak to them about the early stages of compliance. As I mentioned earlier, a completely non-compliant BEE certificate does not specifically mean that you are non-compliant. It’s possible that the Authority might look at your non-compliant BEE score, tick a box and move onto the next application. Don’t forget that if your turnover (as determined by GAAP, not IFRS) is less than R10m in the previous year then all you need is an affidavit that you can freely download from the DTI’s website.

They will change the rules, I think they change the rules when they discover that companies are finding it easier to comply and thereby threatening the sustainability of black-owned businesses. It’s my job to keep you informed as to how to remain compliant with the minimal disruption to your business activities.

Paul Janisch is a Johannesburg based BEE compliance expert. He is well known in the industry as a solutions provider and a thorn in the side of the policymakers and policy enforcers. He can be contacted on 083 227 1375 or paul@caird.co.za

