



# Amendments to the B-BBEE Codes of Good Practice create unfairness

By [Gideon Gerber](#), issued by [Starbright](#)

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The Department of Trade and Industry (DTI) published amendments to the Codes of Good Practice on 31 May 2019 with a six-month transitional period to be effective from 1 December 2019. [The amendments](#) can be accessed in *Government Gazette* No. 42496 dated 31 May 2019.

The Sector Councils have until 30 May 2020 to bring their respective Sector Codes in line with the new amended provisions of the Generic Codes, and entities within industries to whom these Sector Codes apply shall, after aligning their Sector Codes, be compelled to be measured under those amended Sector Code provisions.

Undoubtedly, various entities are caught unawares by these amendments. Although the amendments were published on 31 May 2019 with a transitional period of six months, the ostensible "implementation date" (1 December 2019) may apply in theory but is misleading in practice. The mechanism and dynamics of B-BBEE require an entity to be measured in terms of a consecutive 12-month period, which is normally the registered financial year of the measured entity. By way of illustration: if an entity's financial year is end of February 2019, which is also the measurement period of the entity, and a verification is done after 1 December 2019, then the new provisions of the Codes would be applied retrospectively, despite the fact that the amendments were only published after completion of the measurement period. Once a financial period is concluded, entities cannot go back and adjust or add any initiatives.

Those entities with financial year-ends after publication of the amendments (31 May 2019) are in a far more favourable position to implement or amend B-BBEE initiatives to be aligned with these amendments. As competitiveness is central to the B-BBEE programme and the apex of business, the B-BBEE process should always be hallmarked by fairness.

Given the retrospective effect brought about by the practical realities of the verification process, the transitional period of six months allowed for the implementation of the new amendments is too short, has an arbitrary effect and creates unfairness. This is unfortunate, especially in the present economic environment where businesses in general and specifically abroad, have cited regulatory uncertainty as one of the main obstacles to investing in the South African economy.

The only alternative for those entities profoundly affected by the unfair retrospective effect of the implementation of the amended provisions, is to officially amend their financial year-ends, which in itself has certain legal requirements and is not always viable.

Business entities to be measured after 1 December 2019 are advised to timeously determine the effect that the new amendments may have on their compliance levels, while those who under the auspices of Sector Codes due to be aligned in May 2020, must ensure that their initiatives are evaluated and adjusted within their financial and measurement periods for recognition.

## ABOUT THE AUTHOR

[\[https://www.linkedin.com/in/gideon-gerber-476b56157/\]](https://www.linkedin.com/in/gideon-gerber-476b56157/) Gideon Gerber is a director of SEER Synergy (Pty) Ltd, an admitted High Court attorney with the qualifications B.Juris (Unisa), B.Proc (Unisa) and LL.M (Pret.) with a Master's dissertation titled: An Appraisal of the Offence of "BEE fronting" in the context of Broad-Based Black Economic Empowerment (B-BBEE) in South Africa. He has more than 30 years' experience in Business Structuring & Compliance, Training, Skills Development and Business Compliance in South Africa, the UK and Namibia. He is a regular speaker at various B-BBEE seminars and also writes articles for the Business Day and Landbouweekblad that concerns BEE Matters. He also published an article titled [\[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3327051\]](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3327051) 'Criminal liability requirements of the new Broad-Based Black Economic Empowerment (B-BBEE) statutory offence' in the *Journal of Contemporary Roman-Dutch Law* (THRR) August 2018.

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