



Legal Services

FINANCIAL SERVICES



ON THE SCALES 2 of 2018

How does Broad-Based Black Economic Empowerment apply to retirement funds?

From 1 December 2017, an amended Financial Services Sector Code ('Code') was issued by the Minister of Trade and Industry.

The Code is issued in terms of the Broad-Based Black Economic Empowerment Act ('B-BBEE').

The amended Code makes reference to retirement funds and service providers to retirement funds, which we will focus on in this publication.

Summary

- An amended Financial Services Sector Code ('Code') is effective 1 December 2017.
- It applies to retirement fund service providers, such as administrators, insurers, asset managers and brokers.
- It does not apply to retirement funds, except to the top 100 funds in South Africa, which may voluntarily comply with the Code.
- The Code suggests that those large funds annually complete a scorecard focusing on preferential procurement and management control.

What is the purpose of the Financial Sector Code?

The Financial Sector Code was initially released in 2012. The aims of the Code are to actively promote a transformed, vibrant and globally competitive financial sector that reflects the

demographics of South Africa, provides accessible financial services to black people and directs investment into targeted sectors of the economy.

The Code consists of various Statements. Each Statement has its own objectives and principles. Entities need to measure themselves against these Statements when completing their scorecards.

Which entities does the amended Code apply to?

It applies to long-term insurers, short-term insurers, re-insurers, retirement fund administrators, intermediaries and brokers, as well as asset managers, consultants and administrators.

It does not apply to retirement funds except the top 100 funds, including umbrella funds, in South Africa.

Voluntary dispensation for top 100 funds

The amended Code says that many aspects of B-BBEE are not relevant to funds. However, funds play a critical role in the South African economy given that they consist of R4 trillion of individual savings.

Funds also play a role in the transformation of the financial sector, in that funds can consider

- B-BBEE in appointing suppliers and service providers; and
- environmental, social and governance criteria in investment decisions.

Given the above transformation and economic imperatives, the Code suggests that funds measure themselves annually against certain aspects of the B-BBEE scorecards.

Comment – it is not clear how the top 100 funds are identified, for example is it based on asset size or membership size? Also, who will inform the top 100 funds that they fall into this category?

Proposed disclosures by large funds

The aspects that the Code says large funds can focus on are:

1. **Preferential procurement.** This aspect will score the spend by funds on empowered suppliers (including 51% black-owned and 30% black women-owned suppliers) as a percentage of the total measured procurement spend.
2. **Management control.** The management control score will measure voting rights of black board members, black female board members and, if applicable, the number of black officials and management involved in the fund.

It is suggested that funds should not be measured on the following:

- Ownership – *as trustees have little or no control over member demographics;*
- Empowerment financing, enterprise and supplier development;
- Access to financial services;
- Socio-economic development.

What other aspects should the top 100 funds be reporting on?

Funds should also report on:

1. Proportion of fund liabilities attributable to black male members and black female members. *Funds typically do not keep record of the race or gender of the members, so this will create additional administrative work and cost for funds.*
2. Accredited, SAQA-approved training spent on trustee, principal officers and other fund officials – including quantum, average spend per individual, number of individuals trained and examples of training interventions. *It is not clear if training, other than through SAQA, is acceptable.*
3. Member education initiatives, including number of members and amount spent. *This does not specify the training should be based on race or gender of members.*

Annual scorecard reporting

The reporting that funds submit should include a narrative on the B-BBEE score achieved and future plans for improving the score.

An annual report must be submitted by the funds to the Financial Sector Charter Council ('Council').

The Council may also rely on public surveys for feedback.

If funds do not make sufficient disclosure, then consideration will be given to revising this dispensation.

Comment: once we get further details on which funds are impacted and how and when the reports need to be submitted, we will be providing guidance to affected funds.

If you need more information, please contact your consultant.
