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Dear Jacob Maputha and Molokadi Leshiba

RE: Agbiz official comments on the Draft AgriBEE Sector Codes for public comment.

Introduction

The Agricultural Business Chamber (Agbiz) is a voluntary association of agribusinesses operating in Southern Africa. One of Agbiz' 5 core strategic objectives is to support B-BBEE, transformation and development of emerging agribusinesses and other role players in the agro-food value chain. As appointed by the Minister, Agbiz also pursue active participation within the AgriBEE Charter Council. An enabling business environment is inevitable towards realising inclusive growth and transformation in its various forms. Accordingly, Agbiz strives to find the balance between enabling the agribusinesses' economic potential and achieving their social objectives through providing constructive inputs and comments to the Draft Amended AgriBEE Sector Codes.

Therefore, please accept this submission of Agbiz' inputs and comments on the Draft Amended AgriBEE Sector Codes for public comment in terms of section 9 (5) of the Broad-Based Black Economic Empowerment Amendment Act 2003, (Act No. 53 of 2003) as amended by Act 46 of 2013, as requested in the Government Gazette, No. 39429.

General comments and recommendations

1. The Agbiz, also as an active member of the AgriBEE Charter Council, in general supports and endorses the AgriBEE Sector Codes. However, we want to raise the concern that it will be very difficult to apply to all the different segments of the agricultural value chain. The application by an agribusiness is vastly different from the application by a primary producer. It is proposed that primary producers be accommodated differently.
2. Different sector charters/codes make different reference to agricultural related matters, especially regarding the scope of application. For example, the Financial Sector Code (under which the banks are measured) has a narrower definition of agriculture than AgriBEE. It is recommended that alignment of definitions amongst the various sector codes be done by *the dti* to avoid confusion.
3. Throughout the document, various government undertakings are stipulated. However, no official means of accountability is provided for. It is recommended that government undertakings be measured by means of a Monitoring and Evaluation format. Non-Compliance from government on certain critical matters directly influences the ability of the industry to implement their AgriBEE Strategies. The AgriBEE Charter Council should be enabled to consider revisions in the sector codes' scoring, to compromise for either compliance, or non-compliance to government's undertakings.
4. It is currently suggested that the EME, QSE and Large Enterprises thresholds be amended periodically. The Agbiz is concerned about this provision, as this could create a huge amount of uncertainty and, accordingly, lack of interest to implement. A fixed and structured approach is required to avoid uncertainty. Allowing for expert technical input to guide the revision is essential. In the old codes, it stated that revision be done "Along with economic indicators"< it is recommended to add that phrase again.
5. Compliance to these codes requires innovative plans, especially as the economy is currently very much under strain. Enterprises cannot always afford the immediate cost requirements, nor have access to black people with the necessary skills, funds, etc. This indicates that immediate compliance would be unrealistic. As is done in the Public Finance Management Act, provision is made to allow certain flexibility, by recognising strategic plans to achieve compliance over a set period of time. It is recommended that the AgriBEE Sector Codes also make provision for such flexibility in recognising future plans.
6. Government is responsible for constructing the enforcement measures, such as access to licensing, grants, determining certain quotas, etc. However, this process is not finalised as yet, meaning that the "rules of the game" is not set, which creates uncertainty. It is requested that

clear deadlines be provided and measures for government accountability be concluded to ensure this undertaking establishes the necessary certainty thereon.

7. The enforcement measures are expected to influence the actual business environment, which is currently under severe strain and continuously changing for various reasons. It is suggested that provision be made for periodic review or revision of the codes in terms of recognising the fluctuating business environment and to realistically enable compliance in accordance with the enforcement measures.
8. Currently the AgriBEE Sector Codes provide no incentives to comply or improve levels of B-BBEE compliance. The forestry sector provides for specific strategic advantage, through a percentage discount for goods purchased from Government owned enterprises, linked to the level of compliance. It is suggested that the AgriBEE Sector Codes provide for the AgriBEE Charter Council to initiate incentive structures, similar to what is done to construct enforcement measures.
9. Under 2.6, the codes state that “EME’s are encouraged to contribute to transformation in agriculture, particularly in the areas of skills development and socio-economic development, and are therefore **incentivised** to increase their BEE status by adopting this Sector Code.” No clear indication is provided on the incentives provided for in this regard.
10. The agricultural sector is largely based in the rural areas. There are no incentives for 100% black owned and 51% black women owned QSE’s to participate in any other elements of the scorecard, like Skills Development, Enterprise and Supplier Development and, especially Socio-Economic Development. It is suggested that these enterprises do not obtain an automatic level 1 and 2 compliance, as provided for in the codes, but rather a level 3 or 4, to provide for incentives to also contribute in the other spheres of broad-based transformation.
11. The reference to industry norms, for the application of “Net Profit After Tax” (NPAT) proves problematic. The NPAT varies significantly across different industries within the sector, as well as from one season to another within one industry. It is recommended that 3 or 4 divisions within the sector be identified, for who industry norms can be proposed.

Comments and recommendations on the five Elements

1. Ownership (priority element)

- 1.1. Under the Agri-industry undertakings it is specified that compliance should not result in unnecessary job losses. The term of “unnecessary job losses” should be defined clearly to enable verification agents to rule thereon.

- 1.2. Under the current (old) AgriBEE Sector Codes, measured entities can be scored on sale of equity or performing qualifying transactions and/or sale of land, the Draft Amended AgriBEE Sector Codes do not adequately address issues pertaining to transactions with land. It did provide for clarity in application, and accordingly it is recommended that it be put back as it was.
- 1.3. Certain ownership models, especially in the case of family farms and cooperatives, find it very difficult to actively comply with the ownership criteria. It is suggested that some thought be put into solutions to the matter, together with experts, to provide for variation in the standard recognition structure, such as what's done for multinationals with equity equivalents. The viability and sustainability of farming operations is of vital importance and an equity equivalent option would make it possible to establish new farming operations which are black-owned and which are assured of benefitting the participants over the long term.
- 1.4. Due to the recent announcements by *the dti*, and the current work of a Ministerial-level technical task team on Broad-based ownership schemes (BBOS), especially through employee share ownership programmes (ESOP), are creating uncertainty on the recognition thereof. Under specific criteria, especially ESOP's proved a very good ownership transformation model in the agricultural and agribusiness environment, especially to empower farm and other workers, which is not necessarily likely to ever become an equity partner. One should also be realistic that not all workers have the ability or desire to run their own enterprises. It is therefore important that the AgriBEE codes specifically endorse BBOS, especially ESOPs, to ensure means of empowering workers. Criteria for ESOPs in Agriculture can be suggested, like through limiting number of employees benefitting from the scheme through years of employment, salary level, etc. The BBOS, in general, should be endorsed in the sector codes.
- 1.5. It is very difficult to achieve the ownership targets related to Black women owned enterprises. It is suggested that the weight placed on participation by black women, be revised, considering what is practical. A possible recommendation would be to collapse the target for black women ownership under the total black owned enterprises. Whereas Black women shareholding and, involvement could result in either bonus points or a multiplier.

2. Management

- 2.1. The set targets are very difficult to achieve, especially the increased focus on senior management. This is problematic and if not revised to be more practical, will not result in much or any strategic focus when it comes to implementation.
- 2.2. The following statement is made:
"Agri-industry undertakes to: -
f). All other key principles of Statement 200 of the Amended Generic Codes not addresses in this statement are applicable"

This implies that, without any specific reference thereto, the application of the national Demographics, as per Statement 200, applies. This is very problematic for, especially farming enterprises, which are largely regionally based. It is recommended that the national demographics (e.g. male/female Africans, Indians, Coloureds, etc.) application does not apply to the AgriBEE sector Codes.

3. Skills development (priority)

- 3.1. The increase to 6% of the payroll, from the Codes of Good Practice, is noted. However, when other gazetted Codes are consulted, a 5, or 4% contribution is suggested. Under current economic and production conditions, the agricultural sector is under severe strain, forcing enterprises to reduce costs. Making the Skills Development target contribution unreasonably high, will cause unintended consequences. In this case, enterprises will not have a choice but to reduce cost on labour, and accordingly cut on its payroll, to also reduce the Skills Development contribution. It is suggested to reduce the contribution target to 4%, in line with what is suggested for some other codes and can be much more realistic for the sector.
- 3.2. As the initial cost to comply will be extremely high, it is suggested that a phase-in structure be proposed to make it realistic.
- 3.3. Under 6.3.2; “Black designated groups are targeted under the **skills development**. In addition, a focus on the development of **core skills** as identified by relevant SETA must be ensured. In this respect, skills development spend on proposed learning interventions which address these skills shortages **must account for 85% of the value of the actual contribution**. Enterprises should engage with the relevant SETA for information on such learning interventions. (All sub-elements for Generic and QSE Skills Development)” The core skills are not sufficiently defined. It is recommended that the Sector Education and Training Authority (SETA) publish these official list of core skills before the finalisation of the AgriBEE Sector Codes.
- 3.4. Under point f, it is stated that “The relevant SETAs undertake to: Ensure the transformation of agricultural training institutions to accelerate **preferential recruitment and admission of black trainees**”. This is not clearly defined.
- 3.5. The following statement is made:
“6.3.3. All other key principles of Statement 300 of the Amended Generic Codes not addresses in this statement are applicable”
This implies that, without any specific reference thereto, the application of the national Demographics, as pre Statement 300, applies. This is very problematic for, especially farming enterprises, which are largely regionally based. It is suggested that it either refers to provincial demographics, or stipulate that the demographic application does not apply to the AgriBEE Sector Codes.

4. Enterprise and Supplier Development (priority)

- 4.1. The provision made, by means of a phase in period, is very constructive to achieving, not only participation but eventually attempt to achieve the target. The initiative in the AgriBEE Sector Codes is welcomed.
- 4.2. It is, however, still very ambitious to expect such large percentage of procurement from, especially black women owned enterprises. It is suggested that the increased contribution in Supplier Development (2.1) and the Enterprise Development (3.1) sections, can be justified, by not only providing for the possibility of the phase in compliance on procurement spend from 51% Black owned (1.4.), or 30% Black women owned (1.5.) enterprises, respectively, but also to reduce on the total procurement spend target (1.1.).
- 4.3. **BLACK OWNERSHIP / BLACK WOMEN OWNERSHIP:**
9 points are awarded for using black-owned suppliers, and 4 points are awarded for using black women-owned suppliers. The agricultural sector has a smaller number of black women-owned businesses than in other sectors. This makes the requirement harder (and even considered impossible) to achieve, and may result in the required number of points not being obtained for any business in the agricultural sector.
- 4.3.1. **Recommendation:** An analysis be conducted on the percentage of women-owned suppliers in the agricultural sector. Once this has been analysed, the points required for the minimum threshold of black women-owned suppliers can be determined based on the number of white women-owned suppliers in the sector, or on the targeted number of black women-owned suppliers in the sector.
- 4.3.2. **Alternative recommendation:** Upon meeting the minimum threshold, 11 points are to be awarded for having black-owned suppliers in the supply chain and 2 points awarded for having black women-owned suppliers in the supply chain. Bonus points will then be awarded for having a higher percentage of black women-owned suppliers.
- 4.3.3. **Alternative recommendation:** It is recommended that the points for black-owned and black women-owned suppliers are combined, and that 13 points are awarded irrespective of whether the business is black-owned or black women-owned. 1 or 2 bonus points will then be awarded for having a certain percentage of black women-owned suppliers in the supply chain.
- 4.4. Even with phasing in on Preferential Procurement, enterprises will still really struggle to even obtain the subminimum points. Purchases from large corporates like SASOL, MONDI, TOTAL, several feed companies, other large fertilizer, fencing and seed suppliers are so large in comparison with purchases from EME's/QSE's and there is not really a way to change this. The same will be applicable for farmer and agribusinesses, as all primary inputs are made from large corporates. It is recommended that:

- 4.4.1.**Recommendation 1:** If one scores full points on the other 2 sub-elements, you will not be penalized on the Preferential Procurement sub-elements; this shows commitment to develop these suppliers; or
- 4.4.2.**Recommendation 2:** If one scores 20 points (out of 40 or 50%) in total on the whole element you will not be penalised on any one sub-element.
- 4.5. The scope of the proposal structured under Note 2, providing for the establishment of an Enterprise and Supplier Development Fund, should be broader to enable more options to such privately or public administered funds. Specific operational criteria could be developed for approval of such funds. A well-managed ESD Fund represents a leveraged way for contributing corporates and large businesses to comply with their ESD requirements and at the same time actively undertake ED and SD, establish and grow BO / BWO companies and strengthen their integration into their own supply chain and the main-stream economy.
- 4.5.1.**Recommendation:** The Agri-BEE Sector Code acknowledges Agri Industry ESD Funds as an ESD beneficiary under the condition that the Fund fulfils the relevant criteria.
- 4.5.2.**Additional Recommendation:** As funding for BEE initiatives is generally limited, and existing funds, like the DAFF AgriBEE Fund, do not seem to provide for the need, it is recommended that Government undertake the establishment of matching fund structures. For example, the structures of the Jobs Fund, the Manufacturing Competitiveness Enhancement Programme (MCEP) and the currently implemented Agbiz/BASA Commercial financing of Land Reform provide good models.
- 4.6. Under 6.4.2.3 (e), it is suggested that 85% of labour costs be paid to South African employees. This is considered unrealistic and should be revised according to the Generic Amended Codes of good Practice which requires 75%.
- 4.7. Under the stipulations for preferential procurement, the numbering should be aligned according to the Codes of Good Practice, to ensure clarity on the exemption of labour brokers. The actual spend on and through labour brokers should not be excluded (Refer to point 5 – ESD element of Generic Amended Codes).
- 4.8. As per the recommendation above (4.7), it is also recommended that spending by means of rental of land from black people, or communities, be recognised under Preferential Procurement. Rent income on the land is a very important income stream for especially some communities, as they perhaps do not have the intentions of farming themselves, and perceive the renting the land as a good form of income. The measured entity should be incentivised to rent from black people and communities through recognition under Preferential Procurement.
- 4.9. Enhanced recognition, with a multiplier of 1.5 of the contribution, is given for land reform beneficiaries. This should be clearly defined, as there are a number of land reform programmes, with various types of beneficiaries. It is recommended that it is stated that the multiplier applies to beneficiaries of all land reform programmes, and initiatives.

4.10. A multiplier of 1.5 is provided for initiatives which directly contributed to new jobs created. The term “new jobs created” is not defined and should be clearly stipulated.

4.11. The success of various initiatives by government, such as the development of black industrialists, various land reform programmes, the agri-parks developments, etc., rely heavily on private sector participation. It is suggested to allow for a multiplier of 1.5 on the value spend on supporting and enhancing such government-driven programmes, as what is suggested in 1.5 for land reform beneficiaries. The Agri-park initiative in particular can provide substantial opportunities for Enterprise Development, Skills Development and Socio-Economic Development in the rural areas of the country and by linking the Agri BEE Codes to the Agri-Park initiative through an incentive, more effective value-adding improvement should materialise.

4.12. **POINTS AWARDED FOR ED & SD CONTRIBUTIONS TO EME’S & QSE’S: Situation:** The revised codes award points to corporates that invest in EMEs and QSEs. However, much like other industries, e.g. Mining, the quantum of spend per supplier in the Agricultural sector is generally large. This means that in most instances a corporate would move a supplier from EME to QSE or QSE to large generic through the awarding of a single contract. We believe that this will disincentivise the corporates from prioritising the ED & SD pillar as the initiatives would require substantial investment on their part yet, they only receive points recognition for a single year. Furthermore, this also impacts negatively on either the EME & QSE spend buckets wherein a corporate will not be able to claim for QSE spend points if they award a large contract to a QSE, resulting in them becoming a large generic. Consequently, the cost -benefit ratio is not favourable for corporates in terms of the ED, SD & PP pillars.

Recommendation: Corporates should be allowed recognition of ED, SD & PP* points for a maximum of three years under the following circumstances:

1. In the event whereby corporates award contracts to either an EME or QSE, subsequently changing their entity size to either QSE from EME or, large generics from QSE &;
2. the aforementioned entities are part of a formal business development & support programme for a minimum period of a year – preferably for the period of the contract.

* PP points referred to are in reference to either the EME or QSE spend bucket.

(Point 4.11 has been outlined in the revised Financial Service Charter (FSC) by the FSC Council which has dti representation.)

4.12.1. **POINTS AWARDED FOR EME & QSE SPEND: Situation:** Much like other industries i.e. Mining, the quantum of spend per supplier in the Agricultural sector is generally large. Consequently, we assume that the current number of QSEs in the Agri sector would be substantially higher than EMEs. However, the points allocated for spend with QSEs & EMEs in the revised codes does not reflect this. Rather, it awards 4 points to EMEs and 3 points to QSEs.

Recommendation: Conduct an Agri specific research on the total number of businesses that are QSEs & EMEs in the sector & adjust the allocation of the 7 points between the QSE & EME spend buckets in accordance to this.

Alternate Recommendation: Should the aforementioned research not be feasible, we would recommend that the points allocated to QSE and EME spend be revised as follows:

QSE spend points = Option 1: 5 or Option 2: 4

EME spend points = Option 1: 2 or Option 2: 3

- 4.13. **ACKNOWLEDGEMENT OF <51% BO BUSINESSES AS ESD BENEFICIARIES: Situation:** For the transformation of the agricultural sector the creation of larger BO / BWO agricultural businesses and the role of established, large and mostly white-owned agri-/farming businesses therein is crucial.

The past few years have shown that very often large agri-businesses' effort to establish such large BO / BWO agricultural businesses is heavily dependent on a strong relationship and guidance through the "mother company" due to the complexity of operational and technical management skills which requires some time to be built up in the BO / BWO management team. Therefore, in most cases the initial ownership level of such newly established BO / BWO businesses is less than 51% BO, with the view to become truly BO / BWO with at least 51% BO after some years; i.e., when the point is reached where the necessary expertise has been acquired by the BO / BWO management team.

Under the CoGP this means that due to the less than 51% BO none of the contributions made by the established, white-owned mother company into the new agri-business (land acquisition, infrastructure purchases, loans, grants, business development support, technical assistance and mentoring) as well as none of the procurements between mother company and new agri-business can be counted as ED, SD or PP. This obviously will act as a dis-incentive to the large, white-owned agri-businesses to engage into such projects.

Recommendation: If under the framework of ED and SD the contributing entity requires a majority stake of not more than 51% in the newly established (49% BO) agri-business in order to ensure operational success and appropriate skills transfer to the BO management team for the first 3 years of operation, then the related ED and SD contribution as well as PP should be prorated for these first 3 years (Year 1: 20%, year 2: 10%, year 3: 5%).

At the same time the contributing entity (mother company) needs to have a clear transition plan in place which outlines the up-skilling of the BO management team and the transition to a 51% BO / BWO entity. If after these first 3 years the new agri-business is still not at least 51% BO / BWO no points can be generated under ESD anymore, while if the transition into a 51% BO / BWO company was successful full ESD points can be earned retrospectively as well as for future contributions.

- 4.14. **EARNING OWNERSHIP POINTS FOR OVERSPEND ON ED AND SD CONTRIBUTION: Situation:**

Among all pillars ESD has the strongest potential to transform the agricultural sector and generate large BO / BWO agricultural businesses through its integrated eco-system approach to build and grow new agricultural entities and integrate them into the main-stream economy. ESD supports the "growing of the pie" in contrast to "splitting the existing pie" which is also strongly aligned with the NDP. The dti has therefore declared ESD as a priority pillar. In order to achieve maximum impact through ESD other charters, like e.g. the Financial Sector Charter (FSC), have put an additional incentive for contributing entities in place:

If under the FSC a contributing entity overspends on ED and SD, this entity gains extra-points (up to a certain threshold) on the ownership pillar. (This concept had been approved in the past FSC, mainly around empowerment financing. In the revised codes it is being recommended by the FSC Council which has dti representation.)

Recommendation: Adopt the same approach as under the FSC: In the case that a contributing entity overspends on its maximum ED and SD contribution, this entity will benefit from x points under the Ownership pillar. (The extent of ED and SD overspend, an appropriate threshold on how much extra Ownership points to be gained and a related formula needs to be agreed.)

- 4.15. Recently, revised guidelines were implemented by the National Agricultural Marketing Council regarding the use of levy funds allocated towards transformation. Under these guidelines, industry bodies, funded through statutory levies as provided for in terms of the Marketing of Agricultural Products Act, are required to spend 20% of their statutory funds on Transformation. This implies that any enterprise obliged to pay a statutory levy is thereby contributing 20% thereof to a collective fund, administered by an industry body with the obligation to spend it on Enterprise and Skills Development. The AgriBEE Codes should recognise that 20 % of the paid levy as contribution to an industry enterprise development programme and gain points there for.

5. Socio-Economic Development

- 5.1. The increased compliance target, accompanied with the higher weighting points provide a very good incentive for agricultural enterprises, especially in the rural areas where social development is greatly required, to focus their spending on Socio-Economic Development.
- 5.2. Under 6.5.1., it is stipulated that “In this regard a Measured Entity must **consult and provide proof that it consulted with the beneficiaries** to establish their needs.” This statement is unclear. It is recommended that a criteria should be established on the provisions and implications of consulting the beneficiaries.

Closing comments

The inputs and comments by Agbiz were constructed under the principle of enabling practical implementation of the B-BBEE legislation. It is however important to convey the message that the Codes of Good Practice, as well as the AgriBEE Sector Codes still impose a huge cost to business. Agbiz and its members recognise that initiatives towards providing for Black Economic Empowerment and inclusive growth are vitally important, but will be at a cost, and also recognise that the injustices of the past incurred huge “costs” on black people. However, Agbiz would like to emphasise that the codes should not place industry enterprises under financial strain. The current economic and climatic conditions already are putting large parts of the sector under dire pressure. It should be recognised that if an enterprise of any kind does not achieve financial success in a sustainable manner, it is unlikely to survive at all and then will not be contributing through any form of employment and transformation of any kind, never mind be BEE compliant.

The agricultural sector provides for the very basic need of society – food. A poor society is very vulnerable and extremely exposed to the effects of food inflation. The realisation is that any cost imposed at any stage of the food value chain results in higher consumer prices. The cost of compliance to AgriBEE is significant and will result in higher food prices. Agbiz attempted in its analysis of the AgriBEE codes, to find the balance between spending to enable transformation and not resulting in increased food prices. This principle is resembled right through the above set recommendations; for example the recommendation to soften the current requirement proposed under Preferential

Procurement and reduce the percentage of payroll spending on skills development, as well as provide for measurement of government undertakings, which could reduce the industry cost implications.

Finally Agbiz strongly proposes that an exit clause to the obligation of compliance to BEE be developed. A specific criteria for compliance and contribution resulting in sustainable transformation over a specific timeframe, both at individual entity level, as well as industry, or national level can be developed to reward the industry by releasing it from the obligation. This would enhance much needed immediate action and uptake of drastic initiatives boosting Black Economic Empowerment.

Agbiz once again appreciates the opportunity to make comments and inputs to such a determining and crucial legislation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lindie Stroebe', with a vertical line to its right.

Lindie Stroebe

Agbiz: Manager Agribusiness intelligence and Member of the AgriBEE Charter Council

and

A handwritten signature in black ink, appearing to read 'John Purchase', with a vertical line to its right.

John Purchase

Agbiz: CEO and Secundus member of the AgriBEE Charter Council

On behalf of the Agbiz constituency of 75 Agribusinesses, responsible for turnover and exposure in the agricultural sector, with the value of over R300 billion.