# Commentary on the Draft

# B-BBEE Code Amendments

Government Gazette No. 54032 | 29 January 2026

Formal Submission to the Director-General, Department of Trade, Industry and Competition

06 March 2026 | Submitted by Diversifi, a division of Alternative Prosperity Advisory and Products (Pty) Ltd

# About Diversifi

## Who We Are

Diversifi is a division of Alternative Prosperity Advisory and Products (Pty) Ltd.

**We specialise in:**

- Broad-Based Black Economic Empowerment (B-BBEE)
- Transformation Strategies
- Diversity, Equity, Inclusion & Belonging (DEI&B)

We have worked with clients across multiple sectors and hold comprehensive empirical data on South African supplier demographics.

## Our Position

**We support ambitious, sustainable transformation of the South African economy.**

✓ Accelerated SMME development
✓ Meaningful skills investment
✓ Inclusive economic growth

We do not support this gazette — not because we oppose transformation, but because these amendments will accelerate the collapse of the B-BBEE programme itself.

# "We support transformation. We do not support this gazette."

These amendments will not strengthen B-BBEE. They will cause its collapse.

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# Executive Summary — Our Four Core Arguments

## 01

### Legally Vulnerable

The gazette fails procedural validity under Section 9(5), raises constitutional concerns under Section 33, and contradicts the binding 2003 B-BBEE Strategy and National Growth Path.

## 02

### Structurally Impossible

Less than 4% by value of suppliers on our current procurement databases qualify as 100% black owned — far too few to enable any entity to meet the 40% sub-minimum threshold required to avoid level discounting. This is partly because most large suppliers are public companies or government entities who cannot by definition meet the 100% BO hurdle other than through structural anomalies.

## 03

### Self-Defeating

Businesses will abandon B-BBEE en masse when compliance becomes impossible and / or takes the form of an indirect tax. Without commercial incentive, the Transformation Fund receives no contributions and collapses.

## 04

### Structurally Flawed Fund

The Transformation Fund raises no new capital. It merely centralises existing ESD flows, disrupts effective supplier relationships, and risk destroying a substantive existing SMME support ecosystem.

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# Our Position: Principled Support for Transformation

## What We Support

- Accelerated SMME development and enterprise support
- Meaningful, outcome-based skills investment
- Inclusive economic growth that benefits all South Africans
- Broad-based transformation aligned with the 2003 B-BBEE Strategy
- A properly designed savings mobilisation approach to SMME capital
- A multi-stakeholder process to develop sustainable transformation policy

## What We Oppose (in This Gazette)

- The 100% black owned procurement construct
- Allocating 55% of the Preferential Procurement scorecard to an unachievable category
- Structural exclusion of JSE-listed companies and Government Entities from meaningfully contributing to procurement scores
- A Transformation Fund that raises no new capital and disrupts effective market mechanisms
- A Fund manager procurement process tainted by press reports prematurely naming a private sector Fund partner

# The Minister's Power Is Bounded by Law.

Section 9 of the B-BBEE Act imposes binding obligations that these amendments demonstrably violate.

# Part B — The Binding Legislative Framework

### B-BBEE Act, Section 9

The Minister must take into account the B-BBEE Strategy issued under Section 11 when issuing Codes of Good Practice. This is a binding obligation — not a discretionary consideration.

### 2003 B-BBEE Strategy (Section 11)

The operative binding instrument. Founded on four key principles: B-BBEE must be broad-based, inclusive, sustainable, and integrated. The draft amendments violate the first two principles directly and demonstrably.

### National Growth Path

Government's own policy directive on B-BBEE calls for transformation that emphasises skills, employment, enterprise development and SMME participation — not narrow ownership concentration. It expressly rejected the 100% black owned construct.

### National Development Plan

The macro framework for inclusive growth. Calls for transformation policy aligned with skills development, employment creation, and enterprise support — not winner-takes-all procurement restrictions.

# The Convergent Policy Conclusion

Every binding and advisory policy instrument that governs the Minister's conduct reaches the same conclusion:

*"B-BBEE policy must be broad-based, skills-led, employment-creating, and SMME-supporting. It must not concentrate narrow ownership or exclude the majority of the economy from meaningful participation."*

**The draft amendments contradict this conclusion in every material respect.**

- ✗ The 100% black owned construct is narrow, not broad-based
- ✗ Allocating 55% of procurement to 100% black owned businesses is exclusionary
- ✗ Destroying the cascading mechanism eliminates SMME development incentives economy-wide

# Part C — Six Principled Objections to the Draft Amendments

Legal vulnerabilities • Structural impossibilities • Economic contradictions

# Objection 1 — The Amendments Are Legally Vulnerable

§9(5)

## Procedural Validity

Several consequential provisions — including the 100% black owned procurement targets and the Transformation Fund structure — do not appear to have been adequately exposed for prior public comment as required. Material provisions introduced at final gazetting stage without prior publication are legally vulnerable.

§33

## Constitutional Validity — Section 33

The Minister's public pre-announcement of a named private sector Fund partner https://www.thedtic.gov.za/27four-and-the-dtic-unite-to-drive-economic-growth-and-transformation-through-the-transformation-fund/ before the public comment period had closed creates a reasonable apprehension that the comment process is a formality, not a genuine exercise in statutory consideration. This is procedurally irregular and constitutionally problematic.

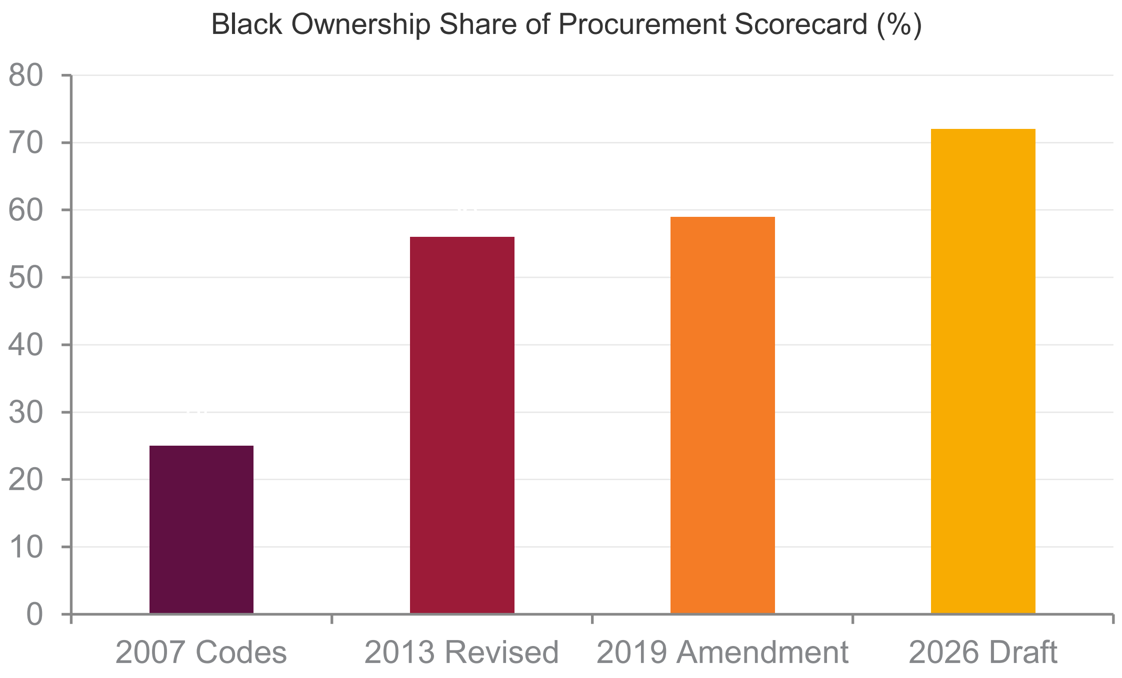
§11

## Ultra Vires — Contradicts the Binding Strategy

The draft amendments directly contradict the 2003 B-BBEE Strategy — the operative section 11 instrument which the Minister is bound to take into account. Code amendments that depart fundamentally from the section 11 Strategy are ultra vires the power they purport to exercise.

# Objection 2 — Abandoning Broad-Based in Favour of Narrow Empowerment

The drift from broad-based to narrow-based B-BBEE has been incremental. These amendments take it to its logical extreme.




**72%**

of all procurement points now tied to black ownership credentials

**55%**

reserved exclusively for 100% black owned suppliers only

# When only 4% of procurement is from businesses that are exclusively owned by 1 race (100% black owned) — can transforming and growing entities realistically comply?

The supply-side reality makes the 40% sub-minimum threshold structurally unachievable for the vast majority.

# Objection 3 — The 100% Black Owned Construct is Unworkable

### Supply-Side Reality

Comprehensive data across multiple sectors confirms less than 4% of current procurement is from 100% black owned entities — the 25% targets thus represent an immediate 6 fold increase. Please note that ownership of most suppliers is not White either, ownership is mostly "mixed race." in construct. The 40% sub-minimum threshold becomes objectively impossible for most entities.

### Public Companies Are Structurally Excluded

Public JSE-listed companies (Combined market cap in excess of 300% of SA GDP) cannot achieve 100% black ownership precisely because they are public. Public companies, (**large portions of which are owned through their retirement funds by workers who in turn are often represented by Trade Unions),** will be heavily prejudiced by these regulations. Government entities by definition are also not owned by any single race. JSE Listed + Govt entities collectively can only contribute 5/29 points (17%) to a supplier's procurement score — barely 3.8% of total B-BBEE score. The cascading mechanism that drives B-BBEE across the economy is effectively destroyed.

### The Construct Actively Harms Black Entrepreneurs

Growth-stage black-owned businesses need capital. Maintaining 100% black ownership prevents VC/PE investment, limits exit opportunities, deters foreign partnerships and technology JVs. The very businesses that should demonstrate transformation's success are penalised for growing.

### Fronting Risk Is Dramatically Amplified

The enormous commercial premium placed on 100% black ownership creates intense incentives for fronting arrangements. Enforcement capacity remains unchanged. This is a predictable and serious unintended consequence of the proposed design.

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# Objection 4 — The Cascading Mechanism Is Destroyed

## How the cascading mechanism currently works:

**Large Entity (A)**
Sets procurement requirements for suppliers

→

**Supplier (B)**
Must invest in B-BBEE to win business from A

→

**Sub-Supplier (C)**
Must invest in B-BBEE to win business from B

→

**SMME (D)**
Invests in compliance, skills, employment equity

This voluntary, commercial cascade is what drives B-BBEE investment across thousands of SMMEs economy-wide. The draft amendments effectively sever this chain.

## Why the draft amendments break it:

- Only 100% black owned businesses meaningfully contribute to the largest portion of buyers' procurement scorecards.
- JSE-listed companies and State Entities can only contribute 5/29 points — so the incentive to procure based on B-BBEE level is destroyed.
- If a B-BBEE level is commercially irrelevant, there is no incentive to invest in any element of the scorecard.
- **Mass withdrawal from B-BBEE follows. The cascading engine that drives transformation economy-wide stops.**

# "The Transformation Fund will destroy itself — and the gazette contains the proof."

When compliance becomes impossible, commercial incentives collapse. No incentive means no contributions. The Fund has no foundation.

# The Self-Defeating Logic of the Gazette

The gazette's central stated purpose — funding the Transformation Fund — is destroyed by its own procurement amendments. The chain is direct and inevitable:

1. Draft amendments allocate 55% of procurement scorecard exclusively to 100% black owned suppliers
2. It becomes objectively impossible for most businesses to achieve a meaningful B-BBEE level that influences procurement decisions
3. If B-BBEE level is commercially irrelevant, there is no incentive to invest in any element of the scorecard — including the Transformation Fund.
4. Corporate South Africa progressively withdraws from the B-BBEE programme. The mechanism ceases to function. Skills and community upliftment also suffers as a result
5. **The Transformation Fund receives some tactical contributions in the short term but very limited long term support as BEE no longer has a commercial rationale. The primary purpose of the gazette is defeated — by the gazette itself.**

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# Objection 5 — The Transformation Fund Is Structurally Flawed

### Raises No New Capital

ESD targets (3% of NPAT) are unchanged. The Fund merely redirects existing ESD flows into a single state vehicle. Total capital for SMME development does not increase by a single rand.

### Disrupts Effective Supplier Relationships

Direct relationships between measured entities and beneficiaries — built on supplier relationships, knowledge and commercial relevance — are replaced by a single state-directed vehicle with no connection to the supply chain.

### The "Choice" Is Illusory

Businesses cannot realistically choose direct ESD over the Fund because the scorecard design makes the Fund the only rational path to sub-minimum thresholds. This is compulsion dressed as choice.

### Existing Ecosystem Negatively Impacted

A large variety of service providers with a multiplicity of skills and competencies, that range from NGO’s to corporatized fund managers to corporate funders themselves, currently support thousands of BSMME’s with the use of BEE Funding. These programs, service providers and beneficiaries are now all placed at risk by a centralized initiative, with no track record.

### Pre-Announced Partner Undermines Good Faith

The Minister's public announcement of a named private sector partner before the comment period closed creates reasonable apprehension that the process was predetermined and commentary is cosmetic.

# We Call on the Minister to Withdraw This Gazette in Its Entirety.

Legally vulnerable • Policy-inconsistent • Structurally unworkable • Self-defeating

# Objection 6 — A Formal Call to Withdraw

For the reasons set out in this submission, Diversifi calls on the Minister to withdraw the gazette in its entirety.

### Legally Vulnerable

The gazette is procedurally and constitutionally defective. It is ultra vires the binding statutory framework the Minister is required to apply.

### Policy-Inconsistent

It contradicts the 2003 B-BBEE Strategy, the National Growth Path, and the National Development Plan — all of which require broad-based, inclusive transformation.

### Structurally Unworkable

The 100% black owned procurement targets cannot be met. The supply-side reality makes the sub-minimum threshold objectively impossible for the vast majority of entities.

### Self-Defeating

The amendments cause mass B-BBEE withdrawal. The Transformation Fund loses its funding base. The primary objective of the gazette is destroyed by its own logic.

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# South Africa's savings system holds R10 trillion. A better answer already exists.

Part E — An alternative approach that is voluntary, legally sound, and exponentially more powerful.

# Part E — Leveraging South Africa's Savings System

Rather than the coercive and structurally flawed approach of the gazette, Diversifi proposes a fundamentally different mechanism for accelerating SMME development.

South Africa's institutional savings stock exceeds

**R10 TRILLION**

5% reallocation = R500 billion for SMME investment | 10% = R1 trillion

### Voluntary, Not Compulsory

Any mechanism must be genuinely voluntary and market-driven. Prescribed assets are a failed policy. Capital must flow at commercial, risk-adjusted returns.

### Correct Policy Forum

National Treasury — not the DTIC — is the right policymaker. Treasury has the mandate, regulatory relationships, and credibility with the savings industry.

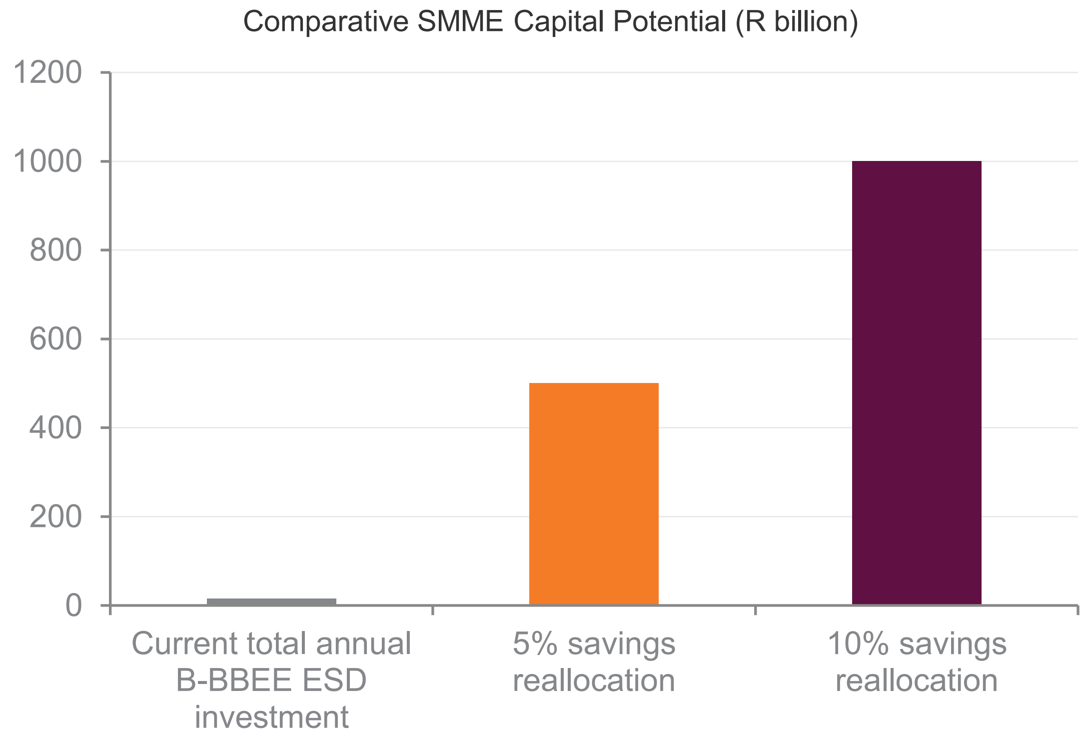
### Co-Designed with Industry

Must be developed with ASISA, SAVCA, BATSETA, IRFA, and other relevant bodies — not imposed through ministerial regulation.

### International Learning

Instructive models exist: USA (SBIC programme), UK (Enterprise Investment Scheme). South Africa should adapt proven approaches contextually.

# Part E — What the Savings System Approach Could Unlock




## The potential is transformative.

An additional 5% of savings stock deployed into SMME investment — at commercial, risk-adjusted returns — would transform the South African SMME landscape in a way no ESD scorecard mechanism could match.

- Generates job creation, skills development, and procurement linkages
- Invests at commercial returns — protecting the savings of retirement fund members
- Builds on South Africa's world-class institutional asset management industry
- Bridges the gap between R10 trillion in savings and latent entrepreneurial capacity

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"Diversifi remains genuinely committed to meaningful and sustainable transformation."

Our ask is clear: withdraw, convene a multi-stakeholder process, and co-design policy that actually works.

# Conclusion — What We Ask of the Minister

If the South African Government remains committed to B-BBEE — and we believe it should be — then this gazette should be withdrawn in its entirety. We call on the Minister to take the following steps:

1

### Withdraw the Gazette in Its Entirety

The amendments are legally vulnerable, policy-inconsistent, structurally impossible, and self-defeating in relation to their primary purpose.

2

### Convene a Properly Inclusive Stakeholder Process

Convene a multi-stakeholder process involving business, civil society, sector councils, and the development finance industry to develop revised transformation policy.

3

### Engage National Treasury on Savings Mobilisation

Explore the R10 trillion savings system opportunity under National Treasury's policy direction — voluntary, commercially sound, and exponentially more impactful than ESD reallocation.

4

### Return to Broad-Based Principles

Any revised policy must be consistent with the 2003 B-BBEE Strategy, the National Growth Path, and the NDP — and must incentivise skills, employment, and enterprise development across the full economy.

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# Part D — Conditional Technical Commentary

Without prejudice to our call for full withdrawal, and in the event the Minister proceeds, Diversifi provides the following technical observations:

| | |
|---|---|
| D1 | Effective date and transitional arrangements must be extended — 12 months is insufficient. |
| D2 | Internal contradiction: the sub-minimum threshold and Transformation Fund provisions in Stmt 000 §3.3.1 are inconsistent. |
| D3 | The definition of "100% Black Owned" must incorporate flow-through and modified flow-through principles. |
| D4 | Transformation Fund definition and scope require significant clarification and legal precision. |
| D5 | Needs analysis and monitoring provisions are underspecified — independent competent person requirements are essential. |
| D6 | ESD loan amortisation in Annexure 400B needs revision to reflect commercial lending realities. |
| D7 | Bonus points in paragraphs 2.5.1 and 2.5.2 create perverse incentives requiring recalibration. |
| D8–D14 | Additional technical concerns: minority investments, B-BBEE Authorities, rolling NPAT averaging, graduation bonus removal, sector codes, and monitoring/evaluation independence. |

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