

AgriBEE – Working for You

2019 Citrus Summit

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For today.....

1. Introduction
2. Key milestones
3. 2012 AgriBEE Sector Code
4. B-BBEE Amendment Act of 2013 (No. 46 of 2013)
5. Generic Codes of Good Practice 2014
6. AgriBEE Sector Code of 2017 (Gazetted 8 December 2017)
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1. Introduction

- South Africa's first democratic government was elected in 1994, with a **clear mandate to redress the inequalities of the past** in every sphere: political, social and **economic**.
- Since then, **government has embarked on a comprehensive programme to provide a legislative framework for the transformation of South Africa's economy**.
- In 2003, the Broad-Based Black Economic Empowerment (B-BBEE) Strategy was published as a precursor to the **B-BBEE Act, No. 53 of 2003**.
- **The fundamental objective of the Act is to advance economic transformation and enhance the economic participation of black people in the South African economy.**

Insight Report

The Global Competitiveness Report 2017–2018

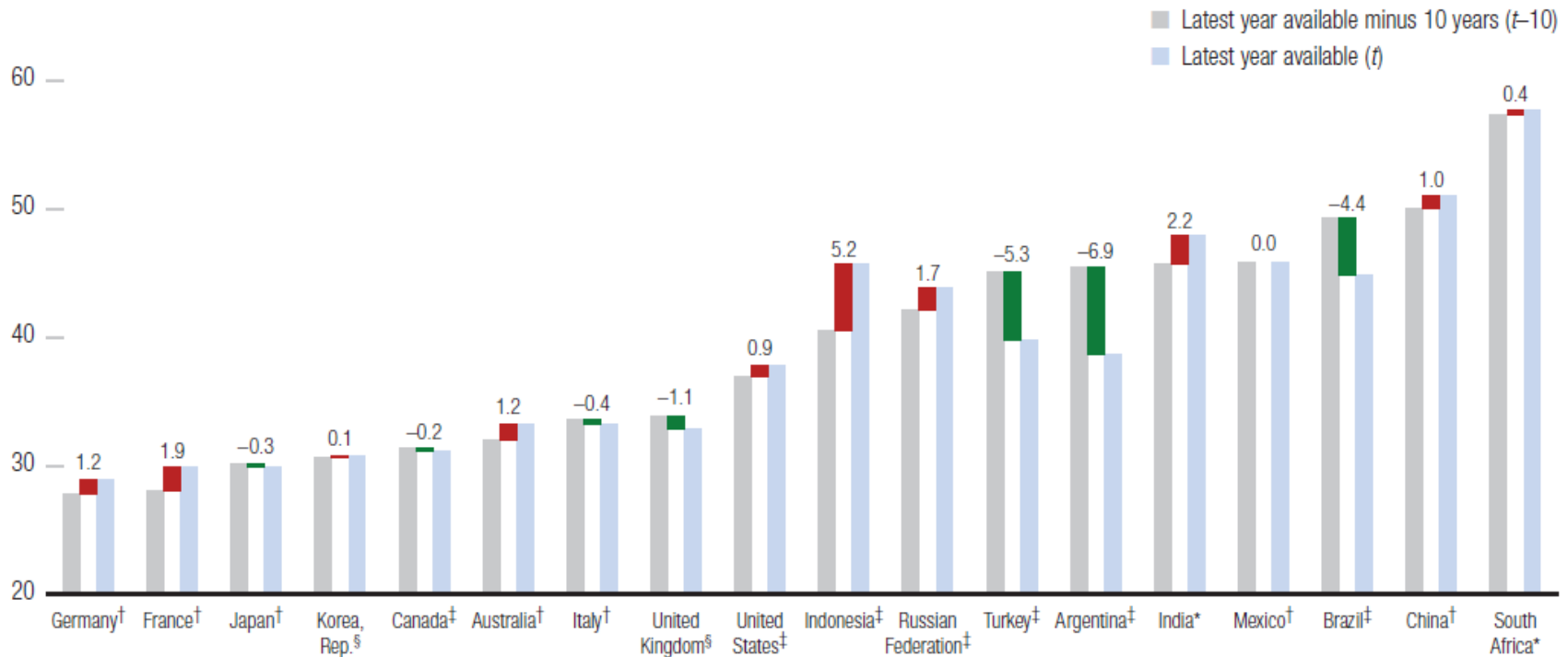
The Global Competitiveness Index 2017–2018 Rankings

Covering 137 economies, the Global Competitiveness Index 2017–2018 measures national competitiveness—defined as the set of institutions, policies and factors that determine the level of productivity.

Income inequality and change: SA problem!

Figure 2: Income inequality and its evolution over past decade in selected countries

Gini Index, Income inequality = 100



Source: SWIID (Standardized World Income Inequality Database), available at <http://fsolt.org/swiid/>.

Note: GINI coefficients are for the latest year available over the previous decade: *2002–2012; †2004–2014; ‡2005–2015, §2006–2016.

SA official unemployment: 27,1% (Q4, 2018)

SA Youth unemployment: >50% (StatsSA, 2019)

2. Key milestones

- **2003** **B-BBEE Strategy and B-BBEE Act**
- **2004** **AgriBEE Reference Group established by Min Thoko Didiza – released draft scorecard**
- 2007 Generic B-BBEE Codes of Good Practice (1st Phase)
- **2008** **AgriBEE Transformation Charter gazetted (S12 of the Act)**
- 2008 1st AgriBEE Charter Council inaugurated (4-yr term)
- 2009 B-BBEE Advisory Council established
- 2010 Accredited Verification Agencies' certificates recognized
- **2012** **AgriBEE Sector Code gazetted (S9 of the Act)**
- 2012 2nd AgriBEE Charter Council inaugurated (4-yr term)
- 2013 B-BBEE Summit – address very slow transformation progress
- **2013** **B-BBEE Amendment Act (Act No. 46 of 2013)**
- 2014 B-BBEE Generic Codes of Good Practice (2nd Phase)
- 2017 3rd AgriBEE Charter Council inaugurated (4-yr term)
- **2017** **Amended AgriBEE Sector Code gazetted (December 2017)**
- **2018** **AgriBEE Enforcement Guidelines**

3. The Content of the 2012 AgriBEE Sector Code

Differences between the Codes of Good Practice and the AgriBEE Sector Code

NO	EMPOWERMENT INDICATOR	AGRIBEE INDICATIVE SCORECARD	VARIANCE	GENERIC SCORECARD
1	Ownership (Land and Equity)	20 points	0	20 points
2	Management Control	10 points	0	10 points
3	Employment Equity	10 points	- 5	15 points
4	Skills Development	20 points	+ 5	15 points
5	Preferential Procurement	20 points	0	20 points
6	Enterprise Development	10 points	- 5	15 points
7	Rural Development, Poverty Alleviation and SED	10 points	+ 5	05 points

The scope of the 2012 AgriBEE Sector Code Cont...

1. EXEMPTED MICRO ENTERPRISE (EME).

- **Turnover:** Less than R5m Turnover
- **BEE Deemed recognition level:** Level 4.

2. QUALIFYING SMALL ENTERPRISE (QSE).

- **Turnover:** More than R5m but less than R35m.
- **Elements:** Must, at least, choose 5 elements out of 7 elements as opposed to the Codes where QSE's select ANY 4 elements out of 7. **The Reason:** The agricultural sector is dominated by QSE's and not large enterprises.

3. MEASURED ENTERPRISES: 100% compliance – All Seven Elements



4. B-BBEE Amendment Act of 2014

- To amend the Broad-Based Black Economic Empowerment Act, 2003, so as to insert certain definitions and to amend others;
- to clarify interpretation;
- to provide for the remuneration of Council members;
- to **promote compliance by organs of state and public entities** and to **strengthen the evaluation and monitoring of compliance**;
- to include the **creation of incentive schemes** to support black-owned and managed enterprises in the strategy for broad-based black economic empowerment;
- to provide for the **cancellation of a contract or authorisation**;
- to establish the Broad-Based Black Economic Empowerment Commission to deal with **compliance** of broad-based black economic empowerment;
- to provide for **offences and penalties**, and to provide for matters connected therewith (e.g. fronting).

5. Generic Codes of Good Practice 2014

Roles of Charter Councils

- **Provide guidance on sector-specific matters** affecting B-BBEE initiatives in their sectors
- To compile reports on **the status of broad based black economic empowerment within the sector**
- To **share information** with sector members and the Minister
- **Report to the Minister and to the Advisory Council** on progress made by the sector subject to the relevant Sector Charter.
- Reports should typically contain **quantitative and qualitative information** about sectorial performance, including details about all the elements of the sector's B-BBEE scorecard.

The Revised Generic Codes

The Revised Codes introduced the following **key changes**:

- The Generic scorecard adjusted in accordance with **government key priorities**
- **5 Scorecard elements, determine total points**
- **Broad-based groups** elevated into the main **Ownership** scorecard – important in agriculture
- All companies to be measured to comply with **all elements**
- **Enhanced recognition** for Black-owned Exempted Micro Enterprises (EME's) and Qualifying Small Enterprises (QSE's)

The Revised Codes cont.

- **Scorecard points & Qualification criteria** for awarding of B-BBEE status levels adjusted – more onerous.
- Employment Equity and Management Control merged into one element: **Management Control (MC)**
- Preferential Procurement and Enterprise Development merged into one element : **Enterprise and Supplier Development (ESD)**

The Revised Codes cont.

- Introduced **minimum requirements for priority elements**: Ownership, Skills Development, and Enterprise and Supplier Development (ESD).
- All measured entities to comply with **priority elements** under the following conditions:
 - QSEs to comply with **at least two** of the priority elements
 - Ownership **is** compulsory, and either
 - ESD or Skills Development;
 - Large entities to comply with all priority elements
- Entities **who do not meet the thresholds** in priority elements, the overall Score will be **discounted**.

The Revised Codes cont.

- The thresholds for Exempted Micro Enterprises and Qualifying Small Enterprises have been adjusted as follows:
 - EME: increased from **R5 million to R10 million**
 - QSE: **R5 million - R35 million to R10 million - R50 million**
 - Large entities: **R50 million and above**
- Redefined Enterprise & Supplier Development beneficiaries to only include black-owned and black women-owned QSEs and EMEs.
- Requirements for Socio Economic Development (SED)

6. Amended AgriBEE Sector Code 2017

6.1 Introduction

Its conception is linked to the joint vision as contained in the **Strategic Plan for South African Agriculture ('the Sector Plan')** of a united and prosperous agriculture Sector designed to meet the challenges of constrained global competitiveness and low profitability, **skewed participation**, low investor confidence, inadequate support and delivery systems, and poor and unsustainable management of natural resources.

This Amended AgriBEE Sector Code derives directly from the Sector's core objective to ensure increased access and equitable participation in the Sector.

6.2 Scope of Application

6.2.1 The scope of the Amended AgriBEE Sector Code shall **include any Enterprise which derives more than 50% of its turnover from:**

- (a) the primary production of agricultural products;
- (b) the provision of inputs and services to Enterprises engaged in the production of agricultural products;
- (c) the beneficiation of agricultural products whether of a primary or semi-beneficiated form; and
- (d) the storage, distribution, and/or trading and allied activities related to non-beneficiated agricultural products.

6.2.2 Where an Enterprise trades in more than one sector i.e. falls under more than one Sector Code, the Measured Enterprise must be guided by the principles embodied in the Amended Codes of Good Practice (refer to statement 003 of Amended Codes of Good Practice).

6.2 Scope of Application (Cont.)

6.2.3. Despite paragraph 2.1 and 2.2 above, **the AgriBEE Charter Council may in consultation with the measured entity, Minister of Agriculture, Forestry and Fisheries and Minister of Trade and Industry determine that the measured entity should fall under the scope of the AgriBEE Sector Code.**

6.2.4. This Amended Sector Code applies to **multinationals** whose business falls within the scope of the Code as defined in this section. Where a **specific regime for multinationals exists in the Amended Codes of Good Practice, this regime will apply.**

6.2.5. **Enterprises as defined in paragraph 6.2.1 above should measure their contributions to the elements of broad-based BEE as contained in the Amended AgriBEE Scorecard.**

6.2.6. Notwithstanding paragraph 6.2.5, Enterprises with an annual total revenue of between **R10 million and R50 million qualify for BEE compliance measurement in terms of the Amended AgriBEE QSE Scorecard (Black QSEs don't have to be measured).** However, it should be noted that the Minister may, by notice in the Gazette, adjust the thresholds following appropriate benchmarking studies, sub-sector inputs, other relevant information and consultation with the major stakeholders in the sector.

6.2 Scope of Application (Cont.)

6.2.7 Notwithstanding paragraph 6.2.5 and 6.2.6 above, Enterprises with an **annual total revenue of less than R10 million, will be classified as Exempted Micro Enterprises ('EMEs')**. EMEs will enjoy a deemed **BEE recognition Level 4** (as defined in the Amended Codes of Good Practice), and sufficient evidence of qualification as an Exempted Micro-enterprise is a sworn affidavit or Companies and Intellectual Property Commission (CIPC) issued certificate. **Black EMEs and QSEs automatically qualify for level 1 (those that 100% Black owned) and 2 (those that are at least 51% Black owned).**

6.2.8. The AgriBEE Sector Charter Council must review and **adjust the revenue thresholds for QSEs and EMEs every two (2) years in line with relevant economic indicators and in expectation of the data's revision of the Sector Code.**

6.3 Objectives

The objectives of this Amended AgriBEE Sector Code are to facilitate Broad-based Black Economic Empowerment in the Agricultural Sector by implementing initiatives to include Black South Africans at all levels of agricultural activity and Enterprises by:

- (a) **promoting equitable access and participation of Black People** in the entire agricultural value chain;
- (b) **de-racialising land and Enterprise ownership, control, skilled occupations and management of existing and new agricultural Enterprises;**
- (c) **unlocking the full entrepreneurial skills** and potential of Black People in the Sector;
- (d) **facilitating structural changes in agricultural support systems and development initiatives** to assist Black South Africans in owning, establishing, participating in and running agricultural Enterprises;
- (e) socially **uplifting and restoring the dignity of Black South Africans** within the Sector;
- (f) increasing the extent to which communities, workers, co-operatives and other collective Enterprises own and manage existing and new agricultural Enterprises, increasing their access to economic activities, infrastructure and skills training;

6.3 Objectives (Cont.)

- (g) increasing the extent to which **Black Designated Groups own and manage existing and new agricultural Enterprises**, increasing their access to economic activities, infrastructure and skills training;
- (h) **empowering rural and local communities** to have access to agricultural economic activities, land, agricultural infrastructure, ownership and skills;
- (i) the **improvement of living and working conditions** and promotion of decent living and working conditions for farm workers; and
- (j) **improving protection and standards of land rights and tenure security for labour tenants, farm workers and other vulnerable farm dwellers** and addressing the inherently paternalistic nature of relationships associated with insecure tenure by promoting more permanent forms of tenure with the emphasis being on the transfer of ownership of land.

6.4 Determination of AgriBEE Status

The BEE status of an Enterprise that falls within the scope of application of the Amended AgriBEE Sector Code will be determined by the Enterprise's score on the Amended AgriBEE Scorecard.

The Amended Scorecard consists of the following **five key elements**:

- (a) Ownership (Equity & Land Ownership);**
- (b) Management control;**
- (c) Skills development;**
- (d) Enterprise and Supplier Development; and**
- (e) Socio-Economic Development.**

6.4 Determination of AgriBEE Status (Cont.)

The Amended AgriBEE Sector Code (Scorecard) **enjoys equal status** with that of any other code, including the Amended Generic Codes of Good Practice.

Measurement Principles:

- (a) A Measured Enterprise's score for a particular indicator is calculated by dividing the enterprise's actual contribution (as described by the relevant indicator) by the corresponding target.
- (b) The result is multiplied by the corresponding indicator weighting points to obtain a score for that indicator.
- (c) Where the enterprise **attains a score in excess of the indicator weighting points, the enterprise shall only be entitled to the corresponding weighting points.**
- (d) The score for an element is the sum of indicator scores under that element.
- (e) **A Measured Enterprise's overall BEE score will determine its BEE status and BEE procurement recognition level.**

The gazetting of an Amended AgriBEE Sector Code for the Agricultural Sector, in terms of Section 9 (1) of the Act, is **evidence of the commitment by all stakeholders to promote Broad-Based Black Economic Empowerment in the Agricultural Sector.**



B-BBEE Status and Recognition Level

BEE Status	Qualification	BEE procurement recognition level
Level One Contributor	≥100 points on a broad-based BEE Scorecard	135%
Level Two Contributor	≥95 points but <100 points on a broad-based BEE Scorecard	125%
Level Three Contributor	≥90 points but <95 points on a broad-based BEE Scorecard	110%
Level Four Contributor	≥80 points but <90 points on a broad-based BEE Scorecard	100%
Level Five Contributor	≥75 points but <80 points on a broad-based BEE Scorecard	80%
Level Six Contributor	≥70 points but <75 points on a broad-based BEE Scorecard	60%
Level Seven Contributor	≥55 points but <70 points on a broad-based BEE Scorecard	50%
Level Eight Contributor	≥40 points but <55 points on a broad-based BEE Scorecard	10%
Non-Compliant Contributor	<40 points on a broad-based BEE Scorecard	0%

7. AgriBEE Enforcement Guidelines

- DAFF document and intention
- Process to address issue



SUBJECT:	AgriBEE ENFORCEMENT GUIDELINES
CLASSIFICATION:	Confidential

1. BACKGROUND

The Broad Based Black Economic Empowerment (BBBEE) Act No. 53 of 2003 (as amended Act No. 46 of 2013) and Codes of Good Practice provide the overarching legislative framework for economic transformation in South Africa. However, the Act does not provide detailed strategies and measures to promote equity and ensure transformation of the economic sectors. The AgriBEE Sector Code (8 December 2017) was developed as a strategy and enabler for economic transformation in the Agricultural Sector. Section 10 of the BBBEE Act No 53 of 2003 (as amended by Act No 46 of 2013, Section 6) states:

“Every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in:

- (a) Determining qualification criteria for the issuing of licenses, concessions or other authorizations in terms of any law;
- (b) Developing and implementing a preferential procurement policy;
- (c) Determining qualification criteria for the sale of state-owned enterprises; and
- (d) Developing criteria for entering into partnerships with the private sector.”

2. IDENTIFIED ACTS AND REGULATIONS THAT WILL BE AFFECTED BY THE AGRI-BEE ENFORCEMENT GUIDELINES:

- Agricultural Pests Act 1983 (Act No. 36 of 1983);
- Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992);
- Agricultural Product Standards Act, 1990 (Act No. 119 of 1990);
- Animal Diseases Act, 1991 (Act No. 35 of 1984);
- Animal Identification Act, 2002 (Act No. 6 of 2002);
- Animal Improvement Act 1998 (Act No. 62 of 1998);
- Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983);
- Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947);
- Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997);
- Liquor Products Act, 1989 (Act No. 60 of 1989);
- Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996);
- Meat Safety Act, 2000 (Act No. 40 of 2000);
- National Environment Management Act: Biodiversity Act, 2004 (Act No. 10 of 2004);
- Perishable Products Export Control Act, 1983 (Act No. 9 of 1983);
- Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976);
- Plant Improvement Act, 1976 (Act No. 53 of 1976);
- Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970)

3.2 Phyto-sanitary registration of approved production units, pack houses and inspection points for export of fresh fruit

The lever is an inspection service delivered by DAFF to traders (import and export) of fresh fruit. Agricultural businesses are legally obliged to comply with official requirements and phyto-sanitary measures for the import and/or export of specified plants and plant products to and from specific markets. The service is provided in terms of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976); Agricultural Pests Act, 1983 (Act No. 36 of 1983).

Proposal: Preference for measured entities that have Exempted Micro Enterprises (EME) status. For measured entities that fall under Qualifying Small Enterprises (QSE) and Large measured entities categories, the following process must be followed:

First preference to:

- Level 1, if no level 1; then
- Level 2, if no level 2; then
- Level 3, if no level 3; then
- Level 4.

If no level 4, then preference will be given to any measured entity with BBBEE status between Level 5 – 8, but there must be competition amongst applicants. No certificate/ permit to be issued to Non-Compliant entities/ contributors. All sworn Affidavits for EMEs and the BBBEE status certificates from QSE and Large Measured Entities must be submitted with applications.

2. Process to address issue

Background

1. Agbiz, Agri SA, Red Meat Industry Forum (RMIF), Potatoes SA and others met on 6 September 2018. Established the AgriBEE Enforcement Guidelines Working Group.
2. Legal opinion indicated (i) consultation and (ii) gazetting flaws. Decided to raise matter with DG of DAFF before embarking on legal route to get an interdict.
3. Meeting of 8 October 2018 with DG Mike Mlengana. Indicated procedural flaws and requested consultation process. Three weeks later DG granted consultation process.
4. Working Group met again on 20 November to discuss consultation process and matters that needed to be raised. Agreed to invite senior DAFF officials to clarify document.
5. DAFF addressed Working Group on 12 December 2018

AgriBEE Enforcement Guidelines

DIRECTORATE BBBEE CHARTERS COMPLIANCE



agriculture,
forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Background on developing AgriBEE Enforcement Guidelines

- ❑ AgriBEE Enforcement Guidelines is an internal discussion document for the Department and its SOEs.
- ❑ It was were developed in response to Section 10 of the BBEE Amendment Act:

Provide for All Organs of State and Public Entities to apply any relevant code of good practice issued in terms of above Act in:

- ✓ Determining qualification criteria for issuing of licenses, concessions or other authorizations in respect of economic activity in terms of any law.
 - ✓ Developing & implementing a preferential procurement policy.
 - ✓ Determining qualification criteria for the sale of state-owned enterprises.
 - ✓ Developing criteria for entering into partnerships with the Private Sector, and
 - ✓ Determining criteria for the awarding of incentives, grants and investment schemes in support of BBEE.
- ❑ It's objective is to assist the Department and its SOEs to comply with 13G(1) of the BBEE Amendment Act: **All spheres of government, public entities and organs of state must report on their compliance with broad-based black economic empowerment in their audited annual financial statements and annual reports required under the Public Finance Management Act, 1999(Act No. 1 of 1999).**



Status of the AgriBEE Enforcement Guidelines

- ❑ AgriBEE Enforcement Guidelines do not “instruct” but “guide” the affected regulators.
- ❑ Regulators are allowed to utilise Section 3b(2) of BBEE Amendment Act (**Trumping Clause**) to align their services in order to comply with **Section 10** of the BBEE Amendment Act so as to enable to comply with **Section 13G(1)** of the BBEE Amendment Act.
- ❑ Due to the fact that services in question are in the forms of legislation and/or regulations, **Regulators are responsible to do public consultations when undertaking the alignment processes.**



Concluding Remarks

- ☐ EXCO has approved the AgriBEE Enforcement Guidelines.
- ☐ Regulators should align their services on or before 31 March 2019.
- ☐ Implementation date for the aligned services by the regulators is effective from 1 April 2019.



Wrap up.....

- Agreement with DG of DAFF on process.
- Industry drafting matrix of role players involved with different pieces of legislation to ensure co-ordinated and structured consultation.
- Need to negotiate a reasonable AgriBEE implementation framework with respective regulators.
- Will keep you informed on AgriBEE Enforcement Guidelines.
- **NB** Be sure to be developing your own BEE strategy for implementation. Consult Agbiz.

Thank you