

Revised Broad Based Black Economic Empowerment Codes launched

As you may be aware Department of Trade and Industry launched the revised Broad Based Black Economic Empowerment (BBBEE) Act and Codes of Good Practice on 4 October 2013. Both these pieces of legislation will dramatically change the BBBEE landscape.

The original legislation envisaged a review after 5 years of operation and these amendments serve this purpose.

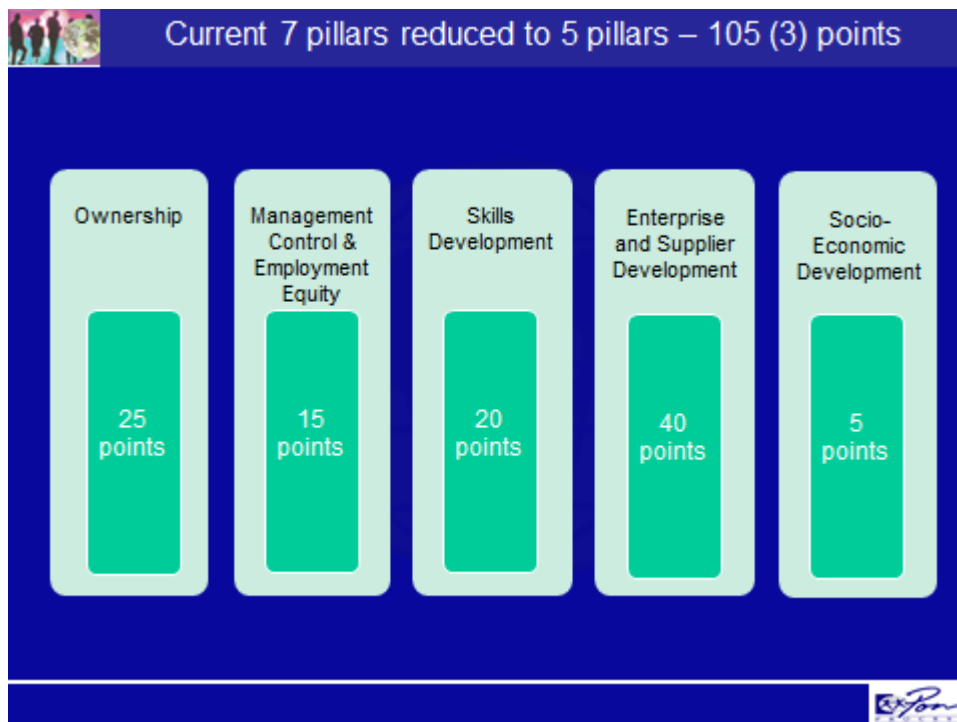
The new DTI Code of Good Practice follows a review of behaviour against the first five-year round of the process as well as taking global “best practice” into account. Consideration has been given to the Malaysian experiences in the 80’s. At the launch, President Zuma acknowledged the progress made by South African business in implementing BBBEE. He cited the investment of over R 600bn in BEE deals and the development of a Black middle class, as signals of the success of the process to date. The President clarified that BEE would continue to be an important ANC policy into the future but also acknowledged that whilst BEE was currently an important requirement for South Africa it should not last forever. It was a measure designed to level the playing fields and once this was achieved the process should terminate.

Key elements of change to the BBBEE Act and Codes

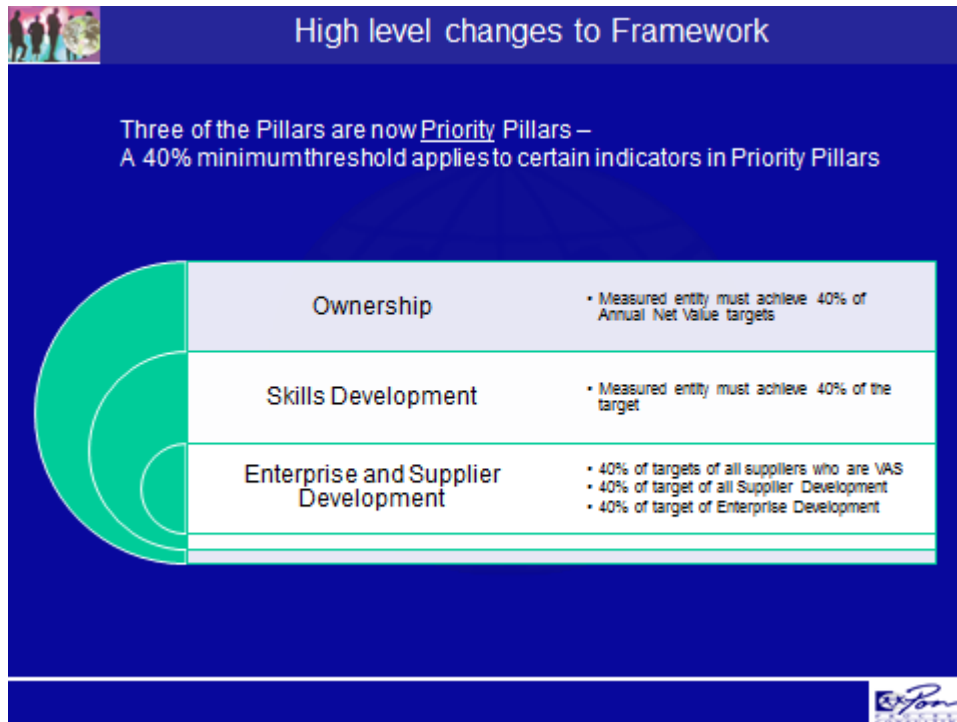
The Act is now significantly tougher on fronting, particularly as it relates to ownership deals.

The changes to the Codes of Good Practice will make it more difficult for business to retain present BBBEE ratings. A few of the key changes include:

- Realigning the scorecard from 7 scorecard elements to 5 as identified in the Model.



- Measures to assess Ownership have also been tightened to minimise fronting and create rules for use of specific approaches such as Employee Share Ownership Schemes and Trusts which proved problematic in terms of Net Value being realised.
- Imposing a discount of 1 level on a Company's final verification score, should identified minimum scores on key elements of the scorecard not be met (identified at 40% of the targeted measure). These key scorecard elements include:



- Requirements for Qualifying Small Enterprises (QSE) have also become more stringent requiring them to be measured on all 5 elements of the scorecard. In addition, the level at which an organisation is defined as a QSE and / or Exempt Micro Enterprise have been amended as below.
- The legislators are seeking to reward Black ownership in EME's and QSE's. Furthermore the turnover levels to qualify in as an EME or QSE have increased, as indicated below:



High level – focus on black owned QSEs / EMEs

Qualification limits have been increased

EMEs (Exempt Micro Enterprises) – businesses with annual turnover of less than R 10 million (previously R 5 million)

- EMEs with more than 50% Black Ownership are automatically Level 2
- EMEs with 100% Black Ownership are automatically Level 1

QSEs (Qualifying Small Enterprises) – businesses with annual turnover of more than R 10 million but less than R 50 million (previously R 5 million and R 35 million)



- Another significant change is in the BBBEE recognition levels with higher targets to achieve the various recognition levels. For example, in the previous Codes a Level 4 required a score greater than 65 but less than 75 points. On the new Codes a score greater than 80 but less than 90 qualifies at Level 4.
- **Important note:** There is a transitional period of 1 year from 11 October 2013 to 11 October 2014. During this period a Measured Entity can elect to use the old Codes or apply the newly gazetted Codes.

Conclusion

The legislators suggest that the amendments lend focus to South Africa's macro socio-economic needs, including poverty alleviation, education priorities, social development, youth development and unemployment. What is encouraging is that the new Codes build on principles established in the previous Codes and comments by the President and DTI suggest significant progress in the implementation of the BBBEE process.

Business needs to examine the impact of and review current approaches to BBBEE in line with the abovementioned amendments. Whilst the changes may seem considerable there will be a transitional period before the amendments apply. Business would be wise to use this period to firm up their scorecard and plan for future verification processes.

We have always advocated that business consider a strategic approach to addressing BBBEE. These amendments to the Codes further reinforce the need to take such a view. A piecemeal or opportunistic approach to BBBEE will not be sustainable. Business will need in an environment where we have a worsening state of inequality, it is vital for the country to revise its efforts and focus wholeheartedly on promoting social inclusivity, in an attempt to deal effectively with varying expectations in South Africa.

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