



Media release

OWNERSHIP TAKES CENTRE STAGE UNDER UPDATED BBBEE CODES

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Companies need to assess ownership structures which can deliver a competitive edge; no more ownership window-dressing or grey areas under new codes.

Johannesburg, South Africa- Jan 29, 2015 - Ownership has become an even more important requirement in the updated Broad-Based Black Economic Empowerment Codes of Good Practice that will come into effect from May 1st, 2015, necessitating a wide range of companies to assess their structures and strategies in order to remain compliant.

Importantly, the ownership provisions within the new codes will give some companies, mainly smaller black-owned enterprises, an opportunity to position themselves favourably amongst competitors. However, the reverse also applies in that companies that do not take pro-active steps to address their ownership profile will find it difficult to improve or even maintain their current rating and could see their BBBEE levels fall sharply which would reduce their ability to effectively do business within certain sectors of the economy (specifically state-owned enterprises).

The updated codes essentially mean that the days of achieving suitable BBBEE compliance (level 4 or above) without doing some sort of ownership deal “are dead.” In addition, ownership is considered a “Priority Element” under the updated codes and non-compliance with the sub-minimum requirement stipulated by the codes will result in a company’s rating being further discounted by a full level.

This applies particularly to companies in the Generic (annual turnover in excess of R50 million) and Qualifying Small Enterprises (“QSE”) (annual turnover of R10 - R50 million) categories. Exempt Micro Enterprises (annual turnover of below R10 million) have been least affected.

Companies that have not taken active steps to address the requirements of the new codes should contact their rating agencies to obtain a rating before the end of April, as this will give them another year in which to address the new requirements. While many large companies have taken note of the requirements of the updated codes and taken steps to maintain or improve their overall BBBEE profiles, many smaller enterprises have not.

The bottom line is that for most companies, an ownership deal is now practically unavoidable if they wish to maintain a BBBEE status of Level 6 or above.

Focusing on the QSE sector, the updated codes for this sector are significantly more onerous than before, making it in many cases, easier (and potentially more cost effective) to implement a 51% ownership transaction than to comply with all the other aspects of the code.

Under the updated codes for QSEs, companies in the R10-R50 million annual turnover bracket will have to comply with all five elements of the new codes and can no longer select just four elements to comply with. However, if a company in this category is 51% black-owned it will automatically receive Level 2 status (or Level 1 if 100% black-owned), creating an additional incentive.

If a company does a 51% ownership transaction in this sector, it can potentially gain a significant competitive edge over competitors struggling with BBBEE compliance under the updated codes that could sharply increase its turnover.

In the larger Generic sector, companies have no choice but to implement and maintain properly structured BBBEE plans, but should undertake a cost/benefit analysis in respect of their requirements to meet the new codes. Significantly, skills development (another priority element) will also become an increasingly important and costly factor for these companies to address.

It should be noted that the average Level 4 contributor under the old codes which does nothing to address the updated codes is likely to drop two levels to a Level 6 contributor under the updated codes.

Even if a company in this sector scores 100% in each of the four other elements of the updated codes, it will not be able to achieve an overall Level 4 rating without an appropriate ownership transaction. The ownership target has however remained unchanged at 25% plus 1 share. This ownership requirement can be addressed in a number of ways including direct black investment by one of the many black-owned investment or private equity firms or a vendor-financed broad-based ownership structure to benefit previously disadvantaged employees or the greater community within which the company operates.

The sector which has been least affected by the updated codes is the Exempt Micro Enterprises sector where Level 4 status will automatically apply to enterprises with annual turnover below the R10 million threshold. However, 100% black-owned enterprises in this sector will be granted Level 1 status and 51% black-owned enterprises will be granted Level 2 status, potentially increasing their competitiveness.

Differences between the 2007 and updated generic scorecards are illustrated below

2007 Codes of Good Practice		Updated Codes of Good Practice			B-BBEE		Total Points Required	
Category	Weighting points	Category	Weighting points	sub-minimum %	B-BBEE Rating	Recognition Level	New codes	Old codes
Ownership	20	Ownership	25	40.0%	Level 1 contributor	135%	100+	100+
Management Control	10	Management Control	15	n/a	Level 2 contributor	125%	95 - 99	85 - 99
Employment Equity	15				Level 3 contributor	110%	90 - 94	75 - 84
Skills Development	15	Skills Development	20	40.0%	Level 4 contributor	100%	80 - 89	65 - 74
Preferential Procurement	20	Enterprise and Supplier Development	40	40.0%	Level 5 contributor	80%	75 - 79	55 - 64
Supplier development	10				Level 6 contributor	60%	70 - 74	45 - 54
Socio-economic development	5	Socio-economic development	5	n/a	Level 7 contributor	50%	55 - 69	40 - 44
Total available	95	Total available	105		Level 8 contributor	10%	40 - 54	30 - 39
Total target	100	Total target	100		Non-compliant	0%	< 40	< 30

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