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Significant Changes Made To The Codes Of Good Practice On Broad-based Black Economic Empowerment

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On 31 May 2019, the Minister of Trade and Industry replaced the existing Codes of Good Practice relating to enterprise and supplier development, skills development, the definitions used in the Codes and the general principles and generic score card in the Codes. The amendments will take effect on 31 November 2019. Key changes include:

- the deemed level 1 and level 2 BBBEE ratings available to 100% and 51% black owned firms with a total annual revenue under R50 million will now only apply if such 100% or 51% shareholdings exists using the "flow through" principle, i.e. based on actual direct or indirect shareholdings of black people. The "modified flow through" principle (which deems a 51% or more black shareholding to be 100%) can no longer be used for the purposes of these deeming provisions;
- more detailed guidance has been provided on measuring the BBBEE status of joint ventures and "start-up" enterprises;
- the 6% target for skills development expenditure on learning programmes for black people has been reduced to 3.5% and a new sub element for skills development expenditure on bursaries for black students has been introduced with a target of 2.5% for a maximum six points. Recognition of skills development expenditure for informal or work place learning programmes has been increased from 15% to 25% of the total value of skills development expenditure;
- in calculating compliance by a firm with the 40% minimum score required for skills development and enterprise/supplier development (failure to comply with the minimum results is an automatic downgrade of a firm's BBBEE rating by one level), bonus points will not be taken into account. This is important given the potentially dire consequences of an automatic downgrade in BBBEE rating;
- the restriction that beneficiaries of enterprise/supplier development must be 51% black owned firms with less than R50 million annual revenue has been removed. Larger entities are now included provided that when they first received assistance, their annual revenue was under R50 million. This resolves a key conundrum in that, where a firm scored BBBEE points by assisting small black firms and this increased the black firms' annual revenue above R50 million, such points could no longer be scored and other small black firms had to be found to replace the initial beneficiaries. Other amendments to the enterprise and supplier development codes incentivise the use and support of suppliers and firms, which are 51% black owned.

Changes to existing laws and regulations inevitably causes uncertainty and requires firms to review and adjust their policies and practices. The 80 pages of new codes need to be carefully considered. Firms should review and, where appropriate, adjust their BBBEE strategies before the amendments come into effect on 31 November 2019. Given the importance of BBBEE for business in South Africa, this exercise needs to be started and completed as soon as possible.



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