



Further proposed changes to the generic B-BBEE Codes

by Leigh Lambrechts

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The South African Broad-Based Black Economic Empowerment Act, 2003 (the “**B-BBEE Act**”) is the current framework regulating broad-based black economic empowerment (“**B-BBEE**”). The Revised B-BBEE Codes, published in October 2013, detail how B-BBEE scores are to be measured for purposes of the B-BBEE Act, taking into account:

- ownership of entities;
- board participation, management control and employment equity;
- skills development of employees and unemployed people;
- enterprise and supplier development, including preferential procurement aimed at ensuring that black people benefit from South African procurement of goods and services; and
- socio-economic development contributions.

On 29 May 2018, the South African Department of Trade and Industry (“**DTI**”) published, for public comment, further proposed amendments to the Revised B-BBEE Codes, specifically statement 000 to Code series 000 (General Principles) and statement 400, which deals with enterprise and supplier development, namely:

- proposed amendments to section 9(5), Schedule 1 Part 2 (Definitions) of the Revised B-BBEE Codes (the “**interpretation amendment**”); and
- proposed amendments to Statement 400, Code Series 400 of the Revised B-BBEE Codes (the “**skills amendment**”).

The proposed revisions are open for public comment for a period of sixty days, commencing on 29 May 2018. Among other things, the interpretation amendment proposes the following:

1. the insertion of new definitions aimed at fleshing out the employment objectives of the Revised B-BBEE Codes; and
2. “enhancements” to the definition of “qualifying enterprise and supplier development contributions” which reflect proposals to alter recipients of these contributions from at least 30% to at least 51% black women owned enterprises and black youth in rural and under-developed areas.
3. there are a number of other amendments that seek to clarify various definitions as previously defined under the Revised B-BBEE Codes.

The key amendments proposed in the skills amendment relate to, among other things:

1. the introduction of a “multiplier factor” of two for at least 51% black owned or at least 51% black women owned entities under the preferential procurement element of the B-BBEE scorecard;
2. the combination and reallocation of points and targets for spend with exempt micro enterprises and qualifying small enterprises under the preferential procurement element of the B-BBEE scorecard;
3. the recognition of enterprise development or supplier development initiatives, irrespective of turnover growth for the beneficiary; and
4. the alteration of weighting points allocated (for the compliance targets) and the actual compliance targets for B-BBEE procurement spend from three to five points and 15% to 50%, respectively.

The impacts of these proposed changes, if implemented in their current form, are significant, especially when considered holistically with the other proposed changes that were published for public comment at the end of March 2018. The proposed changes appear to strengthen government’s further drive to achieve “radical economic transformation” by favouring more black ownership and control in South African business and seeking to improve the plight of the unemployed. These approaches, arguably create a “structured leniency” towards black owned and controlled enterprises, in a continued effort to promote start-ups and new black businesses in South Africa.

While the proposed amendments appear to improve historic errors in the Revised B-BBEE Codes (such as in respect of certain definitions), there remain certain glaring errors which remain unremedied, such as the definition of “NPAT” which definition references “GAAP” (which principle and concept no longer exists from a South African perspective). As others have also opined, the impact of the proposed changes may create a number of unintended consequences which have not been fully considered, including the commercial and legal uncertainty resulting from Mining Charter II and the Mining Charter III, reflecting the results of these unintended consequences.

Please contact our B-BBEE practice group if you require any assistance with your B-BBEE requirements or compliance, or if you wish to submit any comments to the proposed amendments to the Revised B-BBEE Codes.

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