

New BEE ball game plays on a field of options and opportunities

THE revised black economic empowerment (BEE) codes implemented in May have firmly positioned the goalposts for businesses to become BEE-compliant.

Some business owners were proactive about it, as the revised codes were published in 2013, with a transitional arrangement.

The aim of the transition was to offer businesses an opportunity to implement appropriate measures to maintain levels of compliance. Most adopted a sit-back-and-wait attitude in the hope that the revised codes would not be implemented or would be abandoned.

In addition to the revised BEE codes, sector codes are to be implemented on November 1, bringing all industries in SA onto the same page as far as BEE-compliance is concerned. It should be clear there is no turning back.

The way in which points are to be allocated and the points format in terms of the new measurement dispensation will, on average, move entities three levels lower than their current status.

Expectations are that entities at level six or lower will not be compliant with the revised codes.

The effect on smaller entities could be even more devastating. In the past, the so-called qualifying small enterprises could easily achieve level one to three on the BEE scorecard simply by selecting the four elements out of seven that suited them best. Most entities tended to avoid the ownership, management and control elements.

Donations in terms of socioeconomic-development and enterprise-development, with 25 points awarded for each, meant that an entity could score 50 points with relative ease. With workforce composition and some training — the elements under employment equity and skills development — a qualifying small enterprise could easily score 75 points without much effort and fuss — a comfortable level three under the old codes.

THE situation has changed dramatically and qualifying small enterprises no longer have the luxury of selecting the elements that suit them best.

The ownership element, which qualifying small enterprises avoided in the past, has now become a priority, with either skills development or supplier- and enterprise-development (now combined with procurement). Not only is this element to be addressed, but a subminimum of 40% has to be achieved on the real net value sub-element to avoid dropping one level on their total scorecard.

Although the annual turnover



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threshold has been raised from R35m to R50m, this is the qualifying small enterprises category, where the biggest drop in levels is expected once measured in terms of the revised codes. Many qualifying small enterprises will fall off the BEE cliff and drop from qualifying small enterprises level one to noncompliant.

For exempted micro-enterprises, the threshold has also been raised from R5m to R10m per year. All these entities qualify for a level four certificate. Those with 51% or 100% black ownership qualify for enhanced level two and one exemption certificate.

However, compliance is not as easy as initially anticipated for many businesses. Exempted micro enterprises with level four certificates now suddenly find the required level for government, parastatals and other big corporates being adjusted to level two and above, pushing them into the arena where a scorecard must attend to all elements including ownership.

The other major changes in the revised codes relate to skills development, supplier development/procurement and legal compliance, the so-called empowering supplier requirement.

The skills-development element is strengthened, with the annual expenditure increasing from 3% to 6% of annual payroll for generic entities — those with an annual turnover of more than R50m. Those with a turnover of less than R50m a year must spend 3% of their annual payroll on skills development.

The actual expenditure can be calculated by multiplying the annual skills development level by three or six. The term “leviable amount” is used in the codes, but the general payroll reference is more descriptive and understandable.

For enterprises to score points under skills development, accredited training programmes are required, with the emphasis on training for the disabled and unemployed black people, especially learnership programmes for generic enterprises.

An additional criterion for generic

enterprises in training people is the so-called demographic and gender spread. To score BEE points, training-related expenditure must be incurred according to the employment equity targets using the economically active people breakdown for the region in which the enterprises are located.

Should the enterprise be located in more than one area, the national economically active people target should be applied.

Training must, therefore, be provided as per the demographic and gender spread (Africans, Indians and coloureds, as well as male and females across all groups).

This tightening of the screws on BEE compliance at a point when the business environment already faces many challenges is daunting for most businesses.

Governments all over the world are not known for good timing.

The secret to making BEE work for each business lies in the two O's — options and opportunities. There are various options with regard to ownership and training, for instance.

WHILE the BEE codes make provision for eight main categories of indirect ownership, analysis and research conducted in respect of these structures indicate there are more than 50 different types of ownership instruments among these main categories. Each structure has its own unique characteristics.

This variety creates the opportunity to select the right structure to serve the unique requirements of each business, with sufficient protection mechanisms built in, such as buy-back options. If businesses use the correct structure, the full value of the equity could be tax-deductible over a period.

Some learning programmes have an almost 100% tax-recoupment benefit. A business that has to spend R2m a year on skills development could recoup the full amount if they spend it correctly.

Not only is value to be found in recovering expenses, but entrepreneurs have used the correct BEE strategy to retain staff and promote productivity, making their businesses grow and increasing profits. There are enough opportunities for each enterprise to grow or avoid losing business.

The opportunities lie in the options and in ensuring businesses are not excluded or limited because of a lack of knowledge. Successful entrepreneurs see opportunities where others see threats.

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