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BLACK ECONOMIC EMPOWERMENT ALERT

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Amendments to the B-BBEE Codes

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Amendments to the B-BBEE Codes

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After nearly a year since the DTI proposed changes to certain aspects of the B-BBEE Codes, the final changes were published in the Government Gazette on 31 May 2019. These changes must be implemented within six (6) months from the date of publication. The changes are largely similar to those that had been proposed but also contain some positive differences.

Sub-minimums

The sub-minimum requirements for compliance with the priority elements of skills development and enterprise and supplier development remain 40% of the applicable weighting points, but now explicitly exclude the bonus points. The sub-minimum requirements for Enterprise and Supplier Development are now clearly stated as 40% of the total weighting points for each of the three categories within the Enterprise and Supplier Development element.

EMEs and QSEs

As the Department of Trade and Industry (DTI) had proposed in the draft amendments, the B-BBEE Codes now confirm that in order for Exempted Small Enterprises (EMEs) and Qualifying Small Enterprises (QSEs) to have the benefit of automatic Level 1 or Level 2 recognition, they must be measured as 100% or at least 51% Black-owned, respectively, on the basis of the flow-through principle, and not the modified flow through principle. The prior practice of applying the modified flow through principle to take advantage of such enhanced recognition was not reflective of the spirit of the legislation and the change brings a welcome clarity.

The draft amendments to the B-BBEE Codes had proposed an amendment that would have given similar enhanced recognition to large enterprises that are 100% or at least 51% Black-owned. This has not been included in the final changes, but certain enhanced benefits arising from dealing with a 51% or 100% Black-owned large enterprise have been incorporated under the Enterprise and Supplier Development element.

Skills Development

The target for the sub-element in 2.1.1.1 relating to Skills Development expenditure on learning programmes for black people has been reduced from 6% to 3.5% (for a total of 6 points) and, as proposed in the drafts, a new element of Skills Development expenditure on bursaries for black students at higher education institutions has been introduced as 2.1.1.2. The target is 2.5% of the Leviable Amount for 4 points. The sub-element for the number of black unemployed people participating in learnerships, apprenticeships and internships has been deleted in its entirety. The B-BBEE Codes state that the 3.5% target for sub-element 2.1.1.1 includes external training expenditure for unemployed black people. The target for the sub-element in 2.1.2.1 for the number of black people participating in learnerships, apprenticeships and internships has been increased from 2.5% to 5% with an increase in total points from 4 to 6.

The limitation on the recognition for Skills Development expenditure in respect of informal and workplace learning programmes has been increased from 15% to 25% of the total value of Skills Development expenditure.

Amendments to the B-BBEE Codes

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A measured entity may also recognise procurement from large enterprises that are 51% Black-owned as measured in terms of the flow through principle under the sub-elements for procurement from EMEs or QSEs, provided that the supplier had been a QSE or EME on the date that the measured entity first procured the goods or services from it, and such recognition will be limited to a total of five years from such date of first procurement.

Additionally, the limitation on the ability to claim costs relating to training, such as accommodation, catering and travelling as Skills Development expenditure will not apply in relation to compliance with the new sub-element 2.1.1.2 relating to bursaries.

Enterprise and Supplier Development

The draft amendments to Code 400 had proposed a consolidation of the sub-elements for procurement from EMEs and QSEs and an adjustment in the target from 15% to 25%. This change has not been made so the separate sub-elements continue to apply. The target and weighting for procurement from 51% Black-owned suppliers have been increased to 50% and 11 points respectively, as had been proposed in the draft amendments. In addition, if a company procures from a QSE, EME or large enterprise that is 51% Black-owned as measured in terms of the flow through principle (and not the modified flow through principle), such company will be entitled to apply a multiple of 1.2 when calculating its B-BBEE procurement spend from such supplier (and not a multiple of 2 as proposed in the draft amendments).

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A large enterprise that is 51% Black-owned as measured in terms of the flow through principle may also be treated as an Enterprise and Supplier Development beneficiary:

- (i) if it had been an Enterprise or Supplier Development beneficiary of the particular measured entity prior to becoming a large enterprise; and
- (ii) the measured entity will only be able to recognise it as an enterprise or supplier development beneficiary for a maximum of five years from the date on which the measured entity first provided such assistance to the beneficiary.

50% of the amount of any guarantee provided to an Enterprise or Supplier Development beneficiary can be recognised as enterprise or supplier development spend.

Verushca Pillay

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

OUR TEAM

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