

Key updates to the B-BBEE Codes

PwC South Africa

4 December 2015

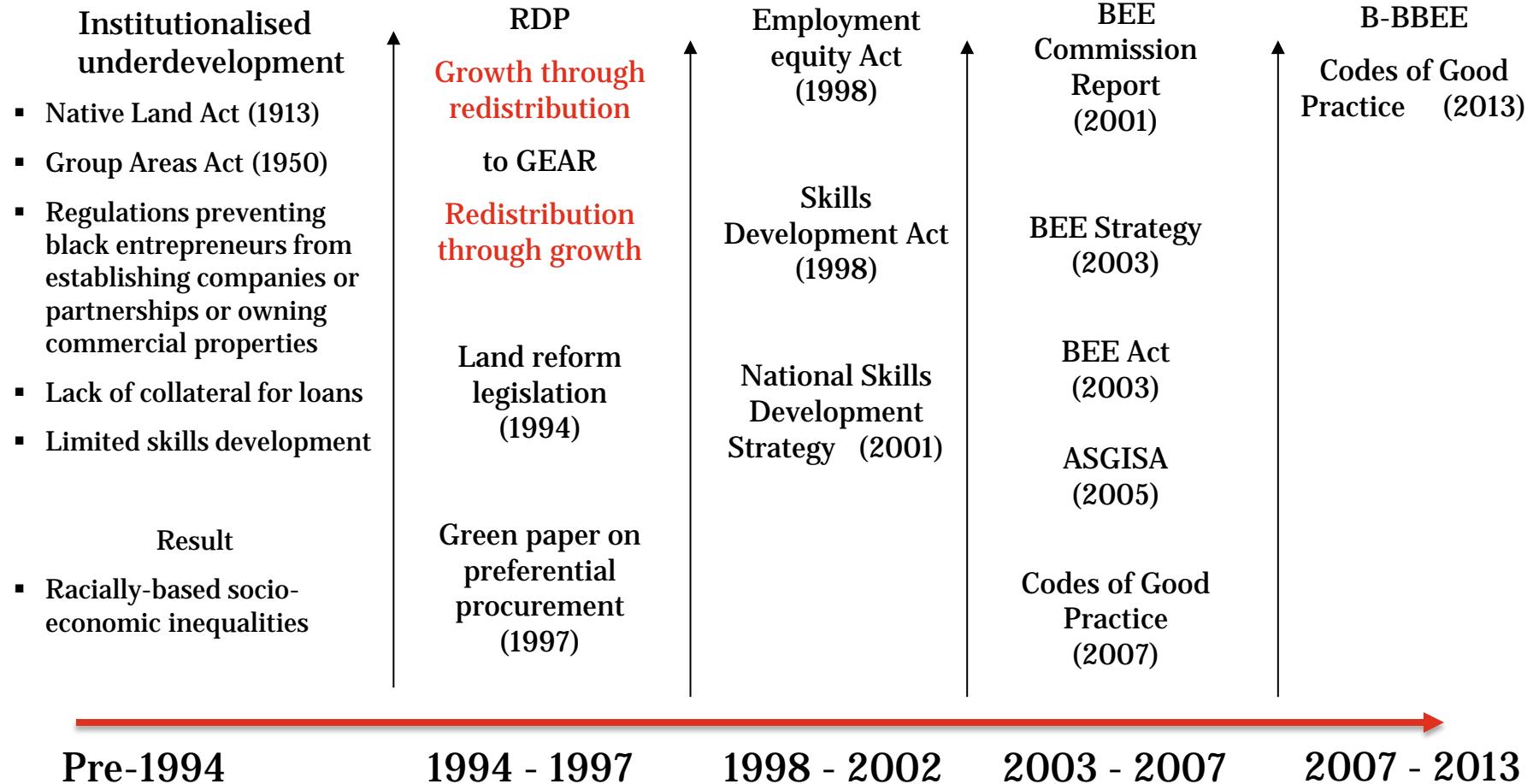


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The Codes



B-BBEE Legislation Overview



BEE Act and Codes

The BEE Act was gazetted in 2003

4 years to finalise the Codes of Good Practice which contain practical guidelines on implementation and measurement

- Final version of Codes Gazetted on 9 February 2007
- Second version of Codes Gazetted on 11 October 2013
- Clarification notices gazetted during May 2015

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Targeted entities

Size	Required BEE compliance		Turnover	
	Previous	Revised	Previous	Revised
Exempted micro-enterprises	None	None	< R5 million	< R10 million
Qualifying small enterprises	Partial (4 of 7 elements)	Partial (5 of 5 elements)	R5 million – R35 million	R10 million – R50 million
Generic enterprises	Complete	Complete	> R35 million	> R50 million

Source: Dept of Trade & Industry



EME and QSE

Exempted Micro-Enterprises (EME)

Sworn affidavit confirming annual turnover (<R10m), and level of black ownership required on an annual basis;

- 100% black ownership qualifies for Level 1 BEE recognition.
- >51% black ownership qualifies for Level 2 BEE recognition.

Qualifying Small Enterprises (QSE)

- 100% black-owned qualifies for a level 1 BEE recognition;
- >51% black-owned qualifies for a level 2 recognition.

Black-owned QSE's required to submit sworn affidavit as for EME's above.

Other QSE's require verification based on all 5 Elements of the scorecard



Generic entities

Element		Target		Weighting	
Previous	Revised	Previous	Revised	Previous	Revised
Ownership	Ownership	25%+1	25%+1	20	25
Control	Management Control	50%	Various : Level dependent	10	19
Employment equity		60% - 80% Only management levels		15	
Skills development	Skills development	3% total salary costs 5% employees (learnerships)	6% total salary costs 2.5% employees (learnerships)	15	20+5
Preferential procurement	Enterprise and Supplier Development	Total procurement: 50% to 70% EME/QSE: 10% to 15% Black owned entities: 15%to 20%	Total procurement: 80% Supplier Development: 2% NPAT Black owned entities: 40%	20	25+2
Business development		3% NPAT	Enterprise Development: 1% NPAT	15	15+2
Socio-economic development	Socio-economic development	1% NPAT	1% NPAT	5	5
			Total	100	109+9

Source: Dept of Trade & Industry



QSE entities

Element		Target		Weighting	
Previous	Revised	Previous	Revised	Previous *	Revised **
Ownership	Ownership	25%+1	25%+1	25	25
Control	Management Control	50%	Various : Level dependent	25	15
Employment equity		40% - 60% (all employees)		25	
Skills development	Skills development	2% of salaries/wages	3% total salary costs	25	25+5
Preferential procurement	Enterprise and Supplier Development	All procurement: 40%	Total procurement: 60% black owned entities: 15% Supplier Development: 1% NPAT	25	20+1
Business development		2% NPAT	Enterprise Development: 1% NPAT	25	10+2
Socio-economic development	Socio-economic development	1% NPAT	1% NPAT	25	5
			Total	175	100+8

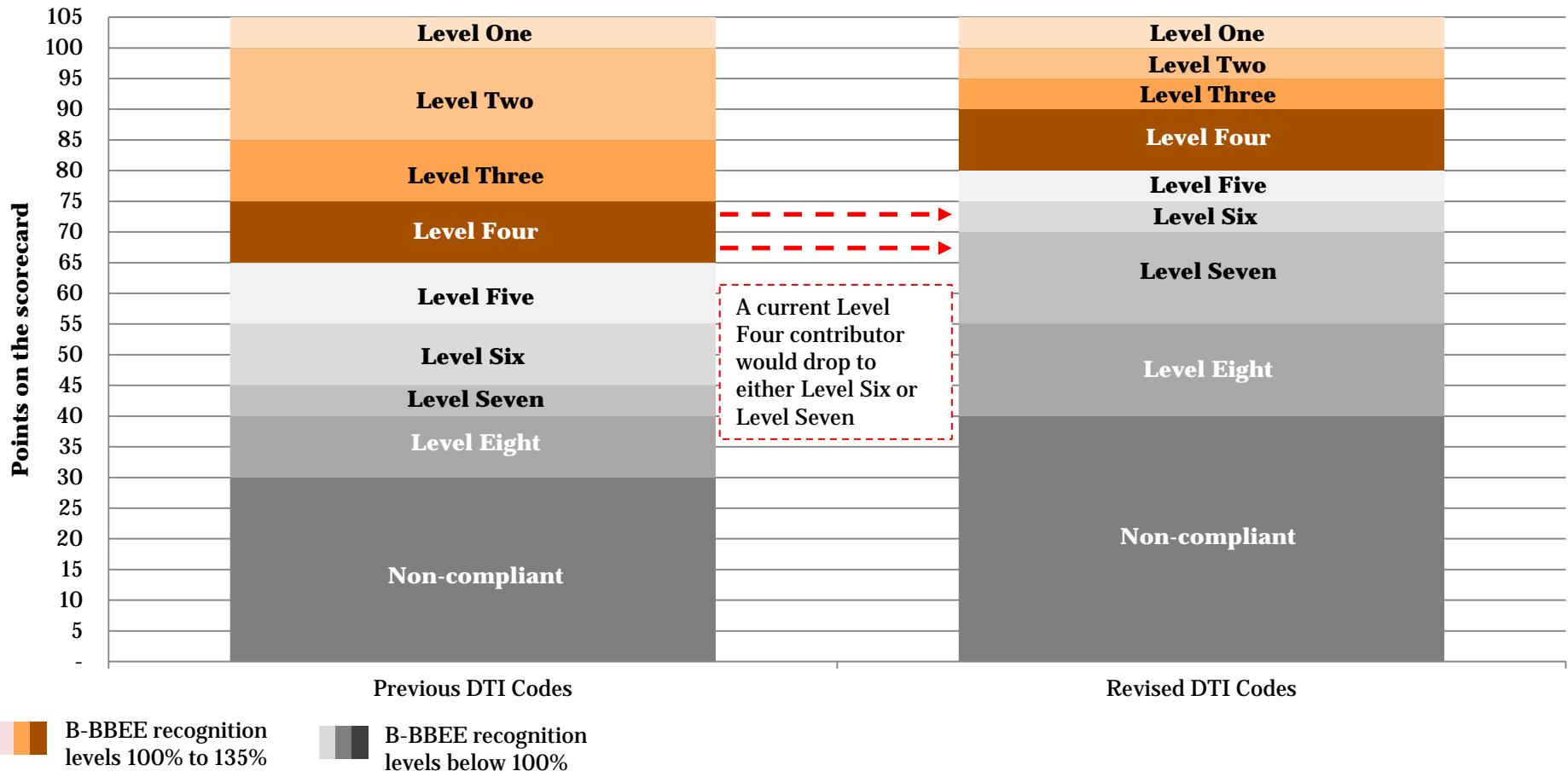
* Previously one could select four elements to comply with

** Must be scored on all elements, no longer chose top four elements

Source: Dept of Trade & Industry

BEE recognition levels

Comparison of B-BBEE status



Source: Dept of Trade & Industry



Empowering Supplier

- The Revised Codes stipulate that **only procurement spend with an Empowering Supplier can count** toward a company's preferential procurement points in the Enterprise and supplier development element.
- Consequently, companies must ensure that they meet the criteria of being an Empowering Supplier in order to produce a BEE certificate which their clients can use for their own preferential procurement points.
- The Revised Codes indicate that **QSEs** must meet **one** out of the following criteria while **large enterprises** must meet **three** out of the following **criteria** as follows:

Criteria	Requirement
Local supply	At least 25% of cost of sales excluding labour and depreciation must be procured from local producers/local suppliers (in the service industry, labour costs is included but capped to 15%)
Job creation	50% of new jobs created in the year were held by black people, provided that the number of black employees for the year is not less than the previous year
Transformation of materials	Operations must include at least 25% transformation of raw materials/beneficiation which includes local manufacturing, production and/or assembly, and/or packaging.
Skills transfer	At least 12 days per annum of productivity must be used in assisting black owned EMEs or QSEs, to assist these entities to increase their operations or financial capacity
Labour costs (service industry)	At least 85% of labour costs should be paid to South African employees

- EMEs and start ups are automatically Empowering Suppliers.



New Priority Element

In addition to the increased number of points allocated to Ownership, Skills development and Enterprise and supplier development, the Revised Codes have classified these three elements as priority elements and stipulated sub minimum targets for these priority elements as follows:

Priority element	Sub-minimum requirement	Which ones must be met by:	
		Large enterprise	QSE
Ownership	40% of Net value * (i.e. 40% of 8 points)	✓	✓
Skills development	40% of total points	✓	
Enterprise and supplier development	40% for each category: preferential procurement, supplier development and enterprise development	✓	One of these two

* Net value reflects the value of the equity held by black participants in the entity after deducting debt incurred by the black participants to fund their equity investment. **Net value points are awarded when the equity value held by black participants exceeds their acquisition debt** i.e. the BBBEE ownership transaction is “in-the-money”.

If an entity does not comply with the sub-minimum requirements as set out above, the B-BBEE status level will be discounted by **one** level down



Clarification Notice

Government Gazette 38799, 15 May 2015

- Amended Codes of Good Practice comes into effect 1 May 2015.
- Verifications on the old codes can be done, provided financial period ends on or before 30 April 2015.
- Transition period for sector code alignment extended to 31 October 2015.
- BEE Certificates issued under previous Codes remain valid. Seen as empowering suppliers.



Ownership

Category	Indicator	Previous weighting	Previous target	Revised weighting	Revised target
Voting rights	Exercisable Voting Rights in the hands of black people	3	25%+1 Vote	4	25%+1 Vote
	Exercisable Voting Rights in the hands of black women	2	10%	2	10%
Economic interest	Economic interest of black people in the Enterprise	4	25%	4	25%
	Economic Interest of black women in the Enterprise	2	10%	2	10%
	Economic Interest of the following black natural people in the Enterprise: • Black designated groups • Black participants in Employee Ownership Schemes • Black beneficiaries of Broad based Ownership Schemes • Black Participants in Co-operatives	1	2.5%	3	3%
Realisation points	Ownership fulfilment	1	No restrictions	-	-
	Net Equity Value Yr1: 10% → Yr 2: 20% → Yr 3,4: 40% → Yr 5,6: 60% → Yr 7,8: 80% → Yr 9,10:100%	7	% of target	8	% of target
Bonus points	Involvement in the ownership by black new entrants	+2	10%	2	2%
	Involvement in the ownership by black participants: • In the employee Ownership Schemes, of Broad-based Ownership Schemes and Co-operatives	+1	10%	No longer bonus points but included as part of the economic rights points	
	Total	20+3		25	



Comments

Net Value

- New sub-minimum requirement – 40% on net value points
- Net value points become critical because ownership is a priority element
- Businesses must score at least 40% of the relevant target (8 points) to avoid discounting
- The net value calculation provides that a certain percentage of growth in the value of equity interests held by black people net of acquisition debt should be achieved between years 1 to 10 after the acquisition.



Example

Example: Ownership target for black people = 25%

The minimum growth in net value needed to avoid discounting are:

- 10% of 25% for year 1 = $2.5\% \times 40\% = 1\%$ (growth in net value)
- 20% of 25% for year 2 = $5\% \times 40\% = 2\%$
- 40% of 25% for years 3 to 4 = $10\% \times 40\% = 4\%$
- 60% of 25% for years 5 to 6 = $15\% \times 40\% = 6\%$
- 80% of 25% for years 7 to 8 = $20\% \times 40\% = 8\%$
- 100% of 25% for years 9 to 10 = $25\% \times 40\% = 10\%$

Entity must score at least 40% of the targets over the 10 year period to meet the sub-minimum requirement and avoid discounting



Equity Equivalent Program

An EE program is an alternative to a vanilla sale of equity. Truthfully EE programs are very rare due to how onerous and expensive they can be. A few examples of successful EE programs are Hewlett Packard and Microsoft.

Step 1 - Prove that the company policy is not to sell equity in any territory globally - no exceptions.

Step 2 - Obtain DTI approval for a scheme - not easy to get and very time consuming.

Step 3 - Implement the scheme. From memory it's a one off contribution of 25% of the value of the entity to the approved scheme or alternatively 4% of turnover - clearly won't work on a low margin business.

Fronting Practice

Any scheme that negatively affects the voting rights or right to economic benefit of the BEE party.



Management Control

Category	Indicator	Previous weighting	Previous target	Revised weighting	Revised target
Board participation	Voting rights of Black board members	3	50%	2	50%
	Voting rights of black female board	n/a	n/a	1	25%
	Black executive directors as a percentage of all executive directors	2	50%	2	50%
	Black female executive directors	n/a	n/a	1	25%
Other Executive Management	Black Executive Management	3	40%	2	60%
	Black female Executive Management	2	40%	1	30%
Senior Management	Black employees in Senior Management as	5	60%	2	60%
	Black female employees in Senior Management	n/a	n/a	1	30%
Middle Management	Black employees in Middle Management as	4	75%	2	75%
	Black female employees in Middle Management	n/a	n/a	1	38%



Management Control

Category	Indicator	Previous weighting	Previous target	Revised weighting	Revised target
Junior Management	Black employees in Junior Management as a percentage of all junior management	4	80%	1	88%
	Black female employees in Junior Management as a percentage of all junior management	n/a	n/a	1	44%
Employees with disabilities	Black disabled employees as a percentage of all employees	2	3%	2	2%
	Total	25		19	



Comments

- Compliance targets for management levels have increased
- Companies will be required to align their EE strategies to meet the compliance targets for black females under each management level
- The compliance targets for senior, middle and junior management levels are based on overall demographic representation of black people
- Demographic profiling will pose significant challenges for businesses to fill key management posts given the lack of demographic representation in certain provinces
- Could result in loss of points on this element for businesses that do not meet the demographic profiling criteria



Skills development

Category	Indicator	Previous weighting	Previous target	Revised weighting	Revised target
Skills Development Expenditure on any program	Learning Programs specified in the Learning Program Matrix for Black people as a percentage of Leviable Amount	6	3%	8	6%
	Learning Programs specified in the Learning Program Matrix for Black employees with disabilities as a percentage of Leviable Amount	3	0.3%	4	0.3%
Learnerships, Apprenticeships and Internships	Number of Black people participating in Learner ships, Apprenticeships and Internships as a percentage of employees	6	5%	4	2.5%
	Number of Black unemployed people participating in training specified in the learning program matrix as a percentage of employees	n/a	n/a	4	2.5%
	Bonus point - Number of Black people absorbed by the Measured and Industry Entity at the end of the Learner ship program	n/a	n/a	+5	100%
	Total	15		20+5	



Comments

- Skills Development is a priority element – not meeting the sub-minimum target of 40% of the overall score will result in a drop of a BEE level
- Expenditure will need to double (from a 3% target to a 6% target) for training spend on black employees and unemployed individuals – budgets will have to double to meet new targets
- As with management control, separate targets are set for each category of black person, broken down by race and gender (African men, African women, Indian men, Indian women, Coloured men, Coloured women)
- Expenditure on informal learning program (internal training) cannot represent more than 15% of the total value of Skills Development expenditure.



Comments

- New bonus points for absorbing learners at the end of a learnership programs
- Learnerships now account for **black unemployed** people participating in training programs
- Points can only be earned if there is a SETA approved workplace skills plan, an annual training report, and pivotal report and programs that are targeted at developing priority skills
- Mandatory sector specific training cannot qualify as a skills development contribution (e.g. Health and Safety, in the construction/mining sectors, or FIAS in Financial Services)
- Given the current tough economic conditions, for many companies this could be difficult to achieve



Enterprise & Supplier Development

Category	Indicator	Previous weighting	Previous target	Revised weighting	Revised target
Preferential Procurement	B-BBEE Procurement Spend from all Empowering Suppliers	12	70%	5	80%
	B-BBEE Procurement Spend from all Empowering Suppliers that are Qualifying Small Enterprises	3	10%	3	15%
	B-BBEE Procurement Spend from all Exempted Micro Enterprises			4	15%
	B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% black	3	9%	9	40%
	B-BBEE Procurement Spend from Empowering suppliers that are at least 30% black women owned based	2	6%	4	12%
	Bonus point - B-BBEE Procurement Spend from Designated Group Suppliers that are at least 51% black owned	n/a	n/a	+2	2%
Supplier Development	Annual value of all Supplier Development Contributions	n/a	n/a	10	2% of NPAT
Enterprise Development	Annual value of Enterprise Development Contributions and Sector Specific	15	3% of NPAT	5	1% of NPAT
	Bonus point - Graduation of one or more ED beneficiaries to graduate to the Supplier Development level	n/a	n/a	+1	
	Bonus point - Creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives	n/a	n/a	+1	
	Total	35		40+4	



Comments

Preferential Procurement

- Compliance targets have increased from 70% to 80% for BEE procurement spend; for EME/QSE to 15%; for black-owned to 40%; and for black women owned to 12%
- Provision is made for enhanced recognition for procurement from black owned QSE's and EME's, and black first time suppliers to the measured entity (new entrants) who have a minimum 3 year contract in place
- New requirement that all suppliers are required to be “**Empowering Suppliers**” in order to be awarded points on the scorecard
- Companies will need to ensure that their suppliers are in fact “empowering” and meet the requirements as set out – this will involve far more preparation from a verification point of view



Socio-economic development

Category	Indicator	Previous weighting	Previous target	Revised weighting	Revised target
-	Annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target	5	1% of NPAT	5	1% of NPAT
	Total	5		5	



FAQ

Q1. How about current status/progress of specific industry code e.g. Mining charter code ?

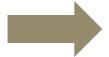
Only the Tourism Sector released an Amended Tourism Sector Code on 20 November. No other codes have been released.

Q2. Criteria of Empowering Supplier is very difficult to comply, is there any available mitigation measures (issue by DTI or other governmental organization OR actual evacuation practice) ?

Considering current practice and interpretation of new code, the empowering supplier criteria will be strictly applied. It seems that there are no mitigating measures.

Q3. Is there any remarkable update or future update regarding new BEE code /practice ?

No other updates.



Our services - Assurance

Our Governance and Sustainability division within Advisory has developed a suite of services to support our clients in their goal toward compliance with the requirements of the transformation legislation and related industry regulation in South Africa.

Service providers must ensure independence (self review threat) and should choose between:

- **Empowerment Advisory**; or
- **Scorecard Assurance** (verification).

PwC is an accredited verification agent and can therefore issue any BEE verification certificates.

We can support companies with their transformation processes by offering services which include:

- Designing an appropriate and strategic **BEE ownership structure** which enhances a company's operations;
- **Assessment of existing compliance** with the requirements of the Codes and the applicable Industry Scorecard;
- **Presentation of a gap-analysis**, highlighting findings of the assessment process;
- **Facilitating a workshop** with key personnel responsible for the transformation agenda, to highlight practices that can improve the findings of the gap analysis;
- **Support with the development** of internal, non-financial **reporting systems** and processes as relates to BEE;
- **Development of policies** to support transformation goals, such as preferential procurement and corporate social investment policies

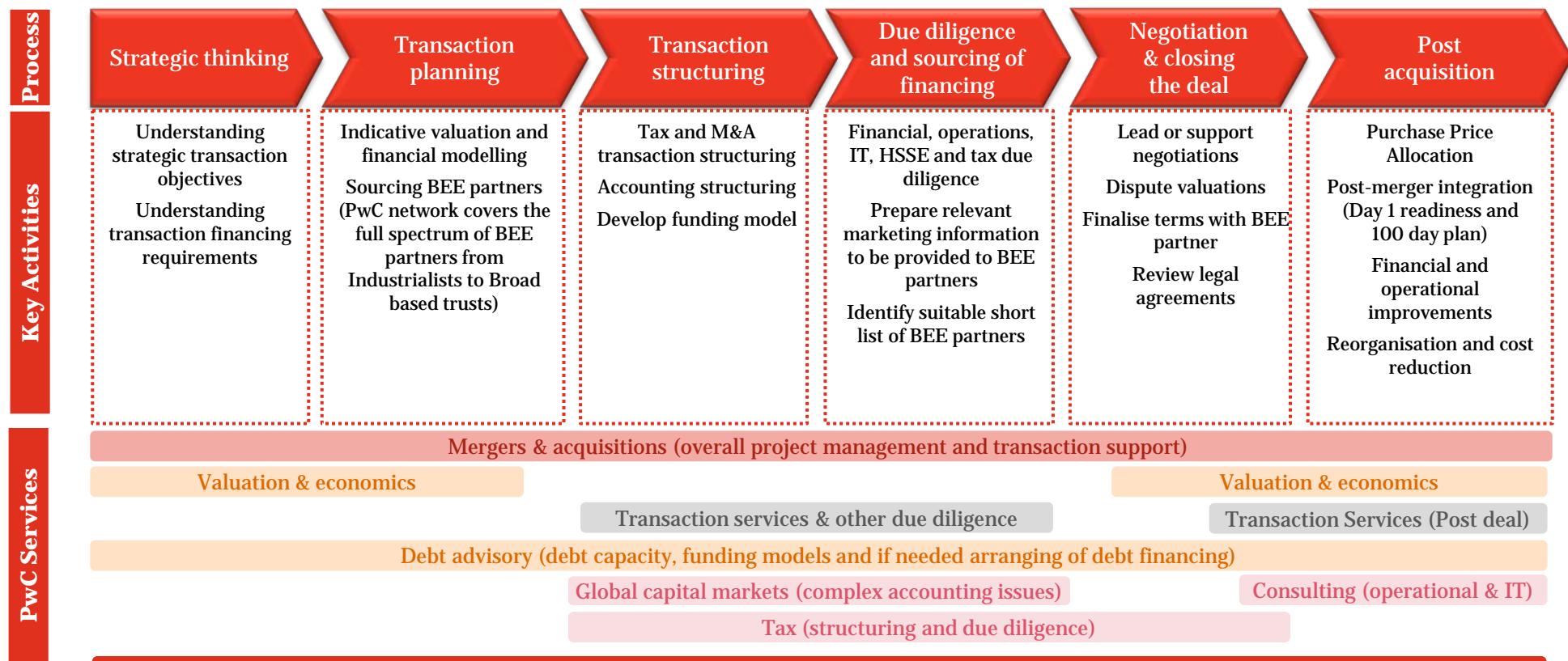


Our services – Deals

We have one cross line of service deals team that can deliver our BEE ownership services seamlessly

Our integrated approach:

- **minimises time spent on implementation by management** • **provides a central understanding and coordination of all deal issues**
- **increases chance for success and maximises efficiency** • **accelerates timetable** • **reduces costs, delays and misunderstandings**



Our BEE credentials - Revised Codes

Currently advising a **BEE Group** on the acquisition of assets in the oil and gas industry



Currently advising a **JSE listed entity** in the industrial sector, with a market capitalisation of R3bn, on its BEE ownership transaction



Advisor to **Kagiso Tiso Holdings Proprietary Limited** on the acquisition of a 51% interest in Servest (Pty) Ltd from RMB Corvest.



Advised **Grindrod Limited** on the introduction of a 51% BEE partner, RBT Resources (Pty) Limited, in its coal terminal operations.



Advised **Van de Wetering Industrieë (Pty) Ltd** (the holding company of the Afrit Group) on the disposal of a majority interest to a BEE led private equity consortium



Advisor to **Sandvik Group**, a global mining equipment supplier, on empowering its South African operations.



PwC performed independent valuations in respect of the transaction whereby its BEE shareholders disposed of their interest in the underlying group subsidiaries for shares in **Grindrod Limited**.



Advisor to **Thebe Investment Corporation (Pty) Limited**, on the merger of its underlying investments in its Shell downstream assets, achieving a fully unencumbered structure.



Our BEE credentials - Others

Advisor to Sandvik , a mining equipment supplier, on the BEE transaction involving its South African operations	Advisor to Grindrod South Africa on its BEE transaction with Calulo Investments and Adopt a School Foundation	Advisor to Phodiso Holdings to participate as a BEE shareholder in MediClinic Ltd	Advisor to Compass South Africa and Compass Plc on its BEE transaction with Thebe Investments	Advised Eyesizwe as the leading BEE partner to the Transaction Framework Agreement entered into between Anglo America & Kumba Resources	Advisor to Securicor on its BEE strategy for SecuricorGray South Africa
					
Advisor to Certain Japanese Company's JV on its BEE transaction with an investment Consortium	Advisor to Howden SA and Charter Plc on its BEE strategy	Valuation & advisory services to BP SA , subsidiary of BP plc on its empowerment strategy that led to the formation of black owned Masana Petroleum Solutions	Advisor to Stoncor Africa , the local subsidiary of the international Stoncor Group on its BEE strategy	Advisor to Total South Africa on its empowerment strategy and introduced TOSACO as its BEE partner	Advisor to General Electric on its BEE strategy and introduced Mineworkers Investment Company as its BEE partner
					
Advisor to 3M on its BEE strategy for its local subsidiary and introduced Malesela Holdings as its BEE shareholder	Advisor to African Rainbow Minerals Ltd on its BEE strategy & introduced Maandaghoek Platinum Minerals Ltd as its BEE partner	Advisor to Alexander Forbes Ltd on its BEE strategy	Advisor to Sembcorp , a global energy, water and marine group, on its South African Subsidiary's BEE transaction with Thamago Utilities	Advisor to Certain Subsidiary of Japanese Company on its BEE strategy for its South African subsidiary	Advisor to Alstom SA on its BEE strategy that involved Kgorong Investments becoming its BEE partner
					



Contact Details – PwC Assurance



Stephan Eicker

Partner/Director | Assurance – Private Company Services

Office: +27 (13) 813 0600

Mobile: +27 (72) 117 3451

Fax: +27 (13) 813 0753

Email: stephan.eicker@za.pwc.com



Contact Details – PwC Japanese Business Network

Simon Venables



Partner/Director | Deals - Africa leader & Japanese business network leader for Africa.

Office: +27 (11) 797 5660

Mobile: +27 (83) 251 6653

Fax: +27 (11) 209 5660

Email: simon.venables@za.pwc.com

Kenichi Saito



Senior Manager | Assurance & Japanese business network

Office: +27 (31) 271 2034

Mobile: +27 (78) 333 3070

Fax: +27 (31) 815 2034

Email: saito.kenichi@za.pwc.com



Contact Details – PwC Deals



Guy Steele

Associate Director | Mergers & Acquisitions

Office: +27 (11) 797 4827

Mobile: +27 (83) 564 7968

Fax: +27 (11) 209 4827

Email: guy.steele@za.pwc.com



Joanna Jezewska-Oudhof

Senior Manager | Mergers & Acquisitions

Office: +27 (11) 797 4766

Mobile: +27 (82) 879 6976

Fax: +27 (11) 209 4766

Email: joanna.jezewska-oudhof@za.pwc.com



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