



# NEW CODES

2013 CODES SUMMARY

**EMPOWERDEX**   
Unlocking Africa's Value



# CONTENTS

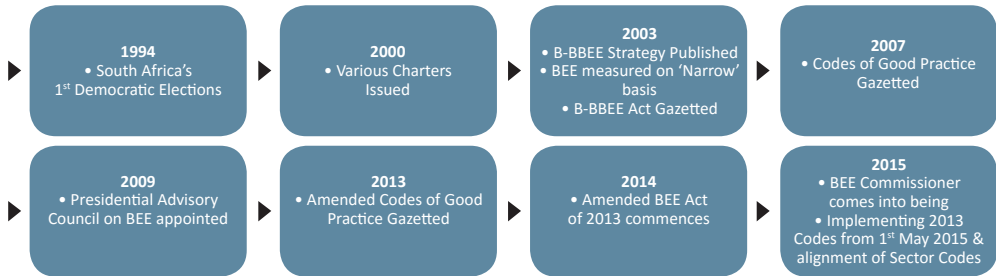
BEE in history	4
Ownership	6
Measurement of transformation	10
Management Control	12
Skills Development	14
Enterprise and Supplier Development	16
Socio-Economic Development	18



# BEE IN HISTORY



## SOUTH AFRICA'S TRANSFORMATION JOURNEY



## B-BBEE ACT NO. 46 OF 2013

As Amended from Act 53 of 2003 on B-BBEE

Definition of **black** in terms of the Codes

“Africans, Coloured and Indians –

- (a) who are citizens of the Republic of South Africa by birth or descent; or
- (b) who become citizens of the Republic of South Africa by naturalisation –

- before 27 April 1994; or
- on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date”

Viable economic empowerment of all black people including, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include:

- increasing the number of **black people that manage, own and control** enterprises and productive assets;
- **facilitating ownership and management** of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- **human resource and skills development;**
- achieving **equitable representation in all occupational categories** and levels in the workforce;
- **preferential procurement** from enterprises that are owned or managed by black people; and
- **investment in enterprises** that are owned or managed by black people

## FRONTING

### B-BBEE ACT NO. 46 OF 2013 – FRONTING

A transaction, arrangement or other act or conduct that **directly or indirectly** undermines or frustrates the achievement of the objectives of the Act or the implementation of any of the provisions of the Act.

Examples:

- Black people **appointed** to a company **& discouraged** from substantially **participating** in the **core activities** of the company;
- **Economic benefits** received as a result of BEE status of an enterprise **do not flow to black people in the ratio** specified in the relevant legal documentation
- Conclusion of a **legal relationship** with a black person **to achieve a certain level of BEE compliance without** giving that black person the **economic benefits** that would **reasonably be expected** to be associated with the status or position held by that black person
- Conclusion of an **agreement** with another enterprise in order **to achieve or enhance BEE** status in where:
  - (i) there are **significant limitations on the identity of suppliers**, service providers, clients or customers;
  - (ii) the **maintenance of business operations** is reasonably considered to be **improbable**, having regard to the resources available;
  - (iii) the terms and conditions were **not negotiated at arm's length** and on a **fair and reasonable basis**.

### BEE COMMISSIONER FUNCTIONS

- Functions:
- Oversee, supervise & promote **adherence** to the Act
- **Safeguard** the objectives of B-BBEE
- Receive, Investigate & respond to **complaints** relating to B-BBEE
- Maintain a **registry of major** BEE transactions (above a certain threshold)
- **Penalties**
  - 10% of annual turnover or
  - up to 10 years imprisonment for those convicted of the offence of fronting

## CHALLENGES SOUTH AFRICA FACES

### CHALLENGES IN THE ECONOMY

### SOLUTIONS FROM COGP

The widening gap between rich and poor	▶	Ownership, Management Control, Enterprise and Supplier Development
Low-skilled labour force	▶	Skills Development
High unemployment rate	▶	Management Control, Enterprise Development

# OWNERSHIP



## OWNERSHIP – KEY PRINCIPLES

### Valid vehicles through which shares may be held

- a company as defined in the Company’s Act of 2008
- a Close Corporation\*
- a Co-operative
- a Trust
- a Broad-Based Ownership Scheme
- an Employee Share Ownership Scheme
- A partnership or other association of natural persons
- Any form of juristic person recognised under law in RSA

*\*CC’s no longer exist, but ones that were registered in the past will continue to exist*

## OWNERSHIP – SCORECARD (QSE)

OWNERSHIP INDICATOR	WEIGHTING POINTS	COMPLIANCE TARGET
Exercisable Voting Rights in the Enterprise in the hands of black people	5	25%+1 vote
Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
Economic Interest of black people in the Enterprise	5	25%
Economic Interest of black women in the Enterprise	2	10%
Economic Interest of the following black natural people in the Enterprise: designated groups, Participants in Employee Ownership Schemes, beneficiaries of Broad-Based Ownership Schemes; or Participants in Co-operatives	3	2%
Net Value	8	10 year targets on Formula A

## OWNERSHIP – GENERIC SCORECARD

OWNERSHIP INDICATOR	WEIGHTING POINTS	COMPLIANCE TARGET
Exercisable Voting Rights in the Enterprise in the hands of black people	4	25%+1 vote
Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
Economic Interest of black people in the Enterprise	4	25%
Economic Interest of black women in the Enterprise	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; or black Participants in Co-operatives	3	3%
New Entrant (R50,000,000)	2	2%
Net Value (priority indicator)	8	10 year targets on Formula A

## INDIRECT OWNERSHIP

### CONTINUING CONSEQUENCES

- Continued Recognition of Black Ownership
- Cannot contribute more than 40% of the points on the ownership score
- Conditions:
  - The shares must have held for a minimum of 3 years
  - Value must have created in the hands of black people
  - Transformation must have taken place from the period of entry of participants to the exiting period

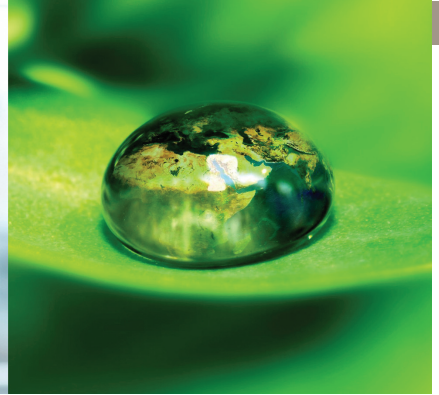
### SALE OF ASSETS

- Sale of assets, equity, business of a separately identifiable related business
- Result in the following for black people:
  - creation of a viable & sustainable business
  - Transfer of critical, specialised & managerial skills & productive capacity
  - Involve a separately identifiable related business
  - No unreasonable limitations / conditions iro clients / customers

### Equity Equivalency Programmes

- Applicable specifically to multinationals
- Approval by ministers
  - Finance
  - Trade and industry
- In line with programmes
  - Industrial Policy Action Plan (IPAP)
  - New Growth Path (NGP)
  - National Skills Development Strategy (NSDS)
  - National Development Plan (NDP)
  - Accelerated and Shared Growth Initiative for SA
  - Joint Initiative for Priority Skills.

# OWNERSHIP



## THINGS TO KNOW

- Priority Element
  - min 3.2 points of net value to avoid discounting
- Cannot use modified flow through principle and mandated investments exclusions simultaneously
- Big focus on designated groups
  - Youths, disabled, rural areas
- Mandated Investments choices
  - Include (obtain competent persons report for % included)
  - Exclude (up to max 40%)
  - Include (assume 0%)
- New Entrants
  - R50 million cumulative value
- Family Trusts
  - Almost always have discretion – but allowed
  - Condition – all accumulated interest must flow to beneficiaries

### Exclusions for Complex structures

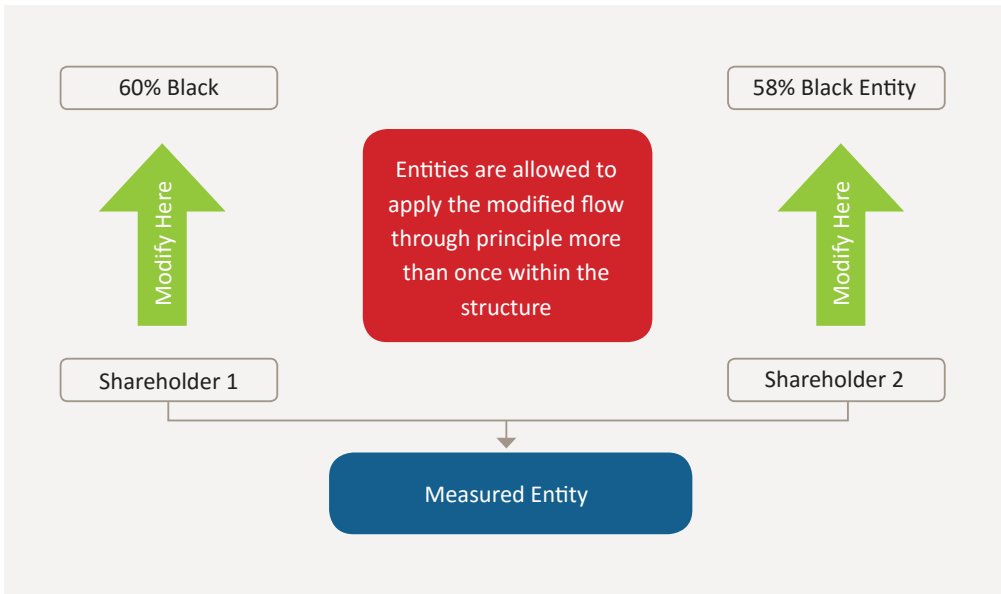
- Mandated Investments (choose to include or exclude)
- Multinational can be SA or non-SA HQ
  - Foreign revenue
- Government Shareholding

### BEE Facilitators

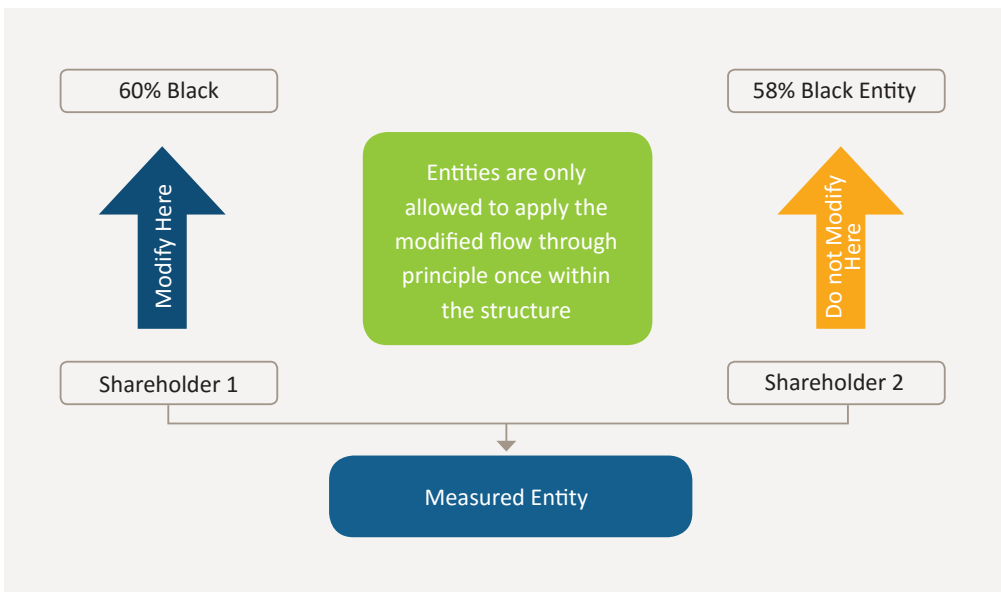
- Treat as follows
  - 100% black
  - 40% black women
  - 20% black designated groups
  - 0% encumbrance



OWNERSHIP – MODIFIED-FLOW THROUGH (PREVIOUS)



OWNERSHIP – MODIFIED-FLOW THROUGH (AMENDED)



# MEASUREMENT OF TRANSFORMATION



## CODES OF GOOD PRACTICE

### Transformation Charters

- Agri-BEE Charter
- Financial Sector Charter
- Information and Communication Technology Charter
- Property Sector Charter
- Chartered Accountancy Sector
- Integrated Transport Sector
- Forest Sector
- Construction Sector
- Tourism Sector

## CLASSIFICATION PER THE CODES

ENTITY SIZE CLASSIFICATIONS	2007 CODES OF GOOD PRACTICE Turnover Threshold	2013 CODES OF GOOD PRACTICE Turnover Threshold
Exempted Micro Enterprise	< R5 million	< R10 million
Qualifying Small Enterprise	R5 million ≤ R 35 million	R10 million ≤ R50 million
Generic Enterprises	≥ R35 million	≥ R 50 million

## AMENDED GENERIC SCORECARD

BEE ELEMENTS	2007 CODE WEIGHTINGS	AMENDED CODES WEIGHTINGS
Ownership	20 Points	25* Points
Management Control	10 Points	19 Points
	15 Points	
Skills Development	15 Points	20* Points
Enterprise and Supplier Development	20 Points	40* Points
	15 Points	
Socio Economic Development	5 Points	5 Points

*\* Priority Elements – will lead to discounting where thresholds not met*

# MEASUREMENT OF TRANSFORMATION

## AMENDED GENERIC SCORECARD

*Any enterprise that fails to meet the subminimum set for each the priority elements will be discounted by one level*

PRIORITY ELEMENT	AREA RESULTING IN DISCOUNTING	MAX NUMBER OF POINTS	THRESHOLD
Ownership	Net Value Points	8	3.2
Skills Development	Total Weighting Points	20	8
Enterprise and Supplier Development	Preferential Procurement	25	10
	Supplier Development	10	4
	Enterprise Development	5	2

*\* Priority Elements – will lead to discounting where thresholds not met*

## BEE RECOGNITION LEVELS

BEE STATUS	POINTS ON THE GENERIC SCORECARD		BEE PROCUREMENT RECOGNITION LEVEL
	2007 CODES	2013 CODES	
Level One Contributor	≥100	≥100	135%
Level Two Contributor	≥95 but <100	≥85 but <100	125%
Level Three Contributor	≥90 but <95	≥75 but <85	110%
Level Four Contributor	≥80 but <90	≥65 but <75	100%
Level Five Contributor	≥75 but <80	≥55 but <65	80%
Level Six Contributor	≥70 but <75	≥45 but <55	60%
Level Seven Contributor	≥55 but <70	≥40 but <45	50%
Level Eight Contributor	≥40 but <55	≥30 but <40	10%
Non Compliant Contributor	<40	<30	0%



## MANAGEMENT CONTROL



### MANAGEMENT CONTROL – KEY PRINCIPLES

#### Board & Executive management

- Legislative Framework
  - Employment Equity Act
  - Legislation Relations Act
  - Basic Conditions of Employment Act
  - Skills Development Act
  - Public Provident Fund Act

### MANAGEMENT CONTROL – QSE SCORECARD

INDICATOR	WEIGHTING	TARGET
<b>Executive Management</b>		
Black representation at Executive Management	5	50%
Black female representation at Executive Management	2	25%
<b>Senior, Middle and Junior Management</b>		
Black representation at Senior, Middle and Junior Management	6	60%
Black female representation at Senior, Middle and Junior Management	2	30%

*The requirement for demographic measurement does not apply here*

## KEY PRINCIPLES: ECONOMICALLY ACTIVE POPULATION TARGETS

DEMOGRAPHIC	W Cape	E Cape	N Cape	Freestate	KZN	N West	Gauteng	MPUM	Limpopo	South Africa
Total African Male	18.2%	37.1%	26.5%	47.3%	42.9%	52.1%	43%	49.6%	53%	40.7%
Total Coloured Male	26.2%	8.1%	20.9%	1.6%	1.4%	1.2%	2%	0.2%	0.3%	5.8%
Total Indian Male	0.4%	0.7%	0.2%	0.2%	6.7%	0.2%	1.6%	0.3%	0.4%	1.9%
Total White Male	7.4%	6.3%	5.6%	5.9%	3.5%	5.8%	9.4%	4.5%	2.2%	6.4%
Total African Female	15.8%	35.3%	25.6%	39.2%	38.4%	36.4%	34.1%	42.1%	42.1%	34%
Total Coloured Female	24.1%	6.3%	17%	1.3%	0.8%	0.6%	1.8%	0.1%	0.1%	5%
Total Indian Female	0.3%	0.6%	0.1%	0%	3.9%	0%	0.9%	0.1%	0.2%	1.1%
Total White Female	7.5%	5.6%	4%	4.4%	2.4%	3.8%	7.2%	2.9%	1.6%	5.1%
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

As per stats SA Quarterly Labour Survey

## MANAGEMENT CONTROL – KEY PRINCIPLES

- Senior Management
- Middle Management
- Junior Management
- People living with disabilities

## MANAGEMENT CONTROL – GENERIC SCORECARD

INDICATOR	WEIGHTING	TARGET
<b>Board</b>		
Exercisable voting rights of black board members as a percentage of all board members	2	50%
Exercisable voting rights of black female board members as a percentage of all board members	1	25%
Black Executive directors as a percentage of all executive directors	2	50%
Black female Executive directors as a percentage of all executive directors	1	25%
<b>Other Executive Management</b>		
Black other Executive Management as a percentage of all executive directors	2	60%
Black female other Executive Management as a percentage of all executive directors	1	30%
<b>Senior Management</b>		
Black other Senior Management as a percentage of all Senior Management	2	60%
Black female other Senior Management as a percentage of all Senior Management	1	30%
<b>Middle Management</b>		
Black other Middle Management as a percentage of all Middle Management	2	75%
Black female other Middle Management as a percentage of all Middle Management	1	38%
<b>Junior Management</b>		
Black other Junior Management as a percentage of all Junior Management	2	88%
Black female other Junior Management as a percentage of all Junior Management	1	44%
Employees with <b>disabilities</b> as a percentage of all employees	2	2%

## MANAGEMENT CONTROL – WHAT YOU NEED TO KNOW

- It is a combination of the Employment Equity and Management Control sections of the 2007 Codes of Good Practice
- There is no subminimum requirements for employment equity
- New formula has been devised and it works - need to be distributed by the DTI

## SKILLS DEVELOPMENT



### LEARNING PROGRAM MATRIX

<b>A</b>	<b>BURSARIES</b>	<ul style="list-style-type: none"> <li>• Institutional instruction</li> <li>• Institutions</li> <li>• Degree, diploma or certificate</li> </ul>
<b>B</b>	<b>INTERNSHIPS</b>	<ul style="list-style-type: none"> <li>• Mixed mode delivery</li> <li>• Institutions and workplace</li> <li>• Degree, diploma or certificate</li> </ul>
<b>C</b>	<b>LEARNERSHIPS</b>	<ul style="list-style-type: none"> <li>• Structured learning</li> <li>• Workplace</li> <li>• Registration and licensing</li> </ul>
<b>D</b>	<b>LEARNERSHIPS OR APPRENTICESHIP</b>	<ul style="list-style-type: none"> <li>• Institutional instruction and experiential learning</li> <li>• Institution and workplace</li> <li>• Professional qualification</li> </ul>
<b>E</b>	<b>WORK INTEGRATED LEARNING</b>	<ul style="list-style-type: none"> <li>• Structured, supervised experiential learning</li> <li>• Workplace, institutional as well as ABET providers</li> <li>• Credits, professional development...</li> </ul>
<b>F</b>	<b>INFORMAL TRAINING</b>	<ul style="list-style-type: none"> <li>• Structured information</li> <li>• Institutions, conferences and meetings</li> <li>• Professional development</li> </ul>
<b>G</b>	<b>INFORMAL TRAINING</b>	<ul style="list-style-type: none"> <li>• Informal training</li> <li>• Workplace</li> <li>• Understanding job/work context</li> </ul>

### SKILLS DEVELOPMENT – QSE CODES

INDICATOR	WEIGHTING	TARGET
Skills Development Expenditure on learning programmes specified in the learning programme matrix for black people as a percentage of leviab amount	15	3%
Skills Development Expenditure on learning programmes specified in the learning programme matrix for black female as a percentage of leviab amount	7	1%
Skills Development Expenditure on learning programmes specified in the learning programme matrix for black people with disabilities as a percentage of leviab amount	3	0.15%
Bonus points: Number of black people absorbed by the Measured Entity and Industry at the end of the learnership programme	5	100%

### SKILLS DEVELOPMENT – GENERIC CODES

INDICATOR	WEIGHTING	TARGET
Skills Development Expenditure on learning programmes specified in the learning programme matrix for black people as a percentage of leviab amount	8	6%
Black disabled employees	4	0.30%
Number of black people participating in a learnership, internship or apprenticeship as a percentage of all employees	4	2.5%
Number of unemployed black people participating in training specified in the learning programmes matrix as a percentage of number of employees	4	2.5%
Bonus Points: Number of black people absorbed by the Measured Entity and Industry at the end of the learnership programme	5	100%

### SKILLS DEVELOPMENT – WHAT YOU NEED TO KNOW

- This is a **priority element**, meaning an entity will drop a level should it fail to meet or exceed 40% of the total weighting points
- The scorecard uses an approach similar to Employment Equity with targets that are **based on racial demographics** provided in the Employment Equity Act and Commission on Employment Equity Report
- Bonus points are awarded for the **absorption of unemployed black learners** after the completion of the learnership programs
- Unemployed people who receive training reflected on the learning matrix will also be accounted for under skills development

TRAINING EXPENDITURE	RECOGNISED
Category A to E	100%
Category F & G	15% of total skills expenditure
Mandatory Training(e.g.) Health And Safety	0%
International Training	100% (if meets The SAQA requirements)
Incidental Costs (Accommodation, travel, catering)	15% of total skills expenditure

## ENTERPRISE AND SUPPLIER DEVELOPMENT



### ESD – EMPOWERING SUPPLIERS

An Empowering Supplier within a context of B-BBEE is a B-BBEE compliant entity, which is a good South African entity, comply with all regulatory requirements of the country and should meet at least three if it is a large enterprise or one if it is a QSE of the following criteria:

- At least **25% of cost of sales** excluding labour cost and depreciation must be procured from local producers or local supplier in SA, for the service industry labour cost are included but capped to 15%
- Job Creation - **50% of jobs created** for Black people provided that the number of Black employees since the immediate prior verified B-BBEE Measurement is maintained.
- At least **25% transformation** of raw material/beneficiation which include local manufacturing , production and/or assembly, and/or packaging
- Skills Transfer – at least spend **12 days per annum of productivity** deployed in assisting Black EMEs and QSEs beneficiaries to increase their operation or financial capacity.
- At least 85% of labour costs should be paid to South African employees by Service industry entities.

## ENTERPRISE AND SUPPLIER DEVELOPMENT

INDICATOR: PREFERENTIAL PROCUREMENT	WEIGHTING	TARGET
B-BBEE procurement spend from all Empowering Suppliers based on its BBBEE procurement recognition level as a percentage of total measured spend	5	80%
B-BBEE procurement spend from all Empowering Suppliers that are QSEs based on its BBBEE procurement recognition level as a percentage of total measured spend	3	15%
B-BBEE procurement spend from EMEs based on its BBBEE procurement recognition level as a percentage of total measured spend	4	15%
B-BBEE procurement spend from all Empowering Suppliers that are at least 51% black owned based on its BBBEE procurement recognition level as a percentage of total measured spend	9	40%
B-BBEE procurement spend from all Empowering Suppliers that are least 30% black women owned based on its BBBEE procurement recognition level as a percentage of total measured spend	4	12%
Bonus Points: B-BBEE Procurement Spend from Designated Group that are at least 51% black owned	2	2%



# ENTERPRISE AND SUPPLIER DEVELOPMENT

## ESD – WHAT YOU NEED TO KNOW



Capital Goods /  
Components for Value  
Added Production

- No existing local production
- Promotes further value added production in RSA



Goods and Services

- Carry a different brand
- Different technical specifications

Entity needs to have developed and implemented an ESD plan for imported goods/services detailing

- Clear objectives
- Priority interventions
- Concise implementation plan with clearly articulated milestones
- KPIs

## ENTERPRISE AND SUPPLIER DEVELOPMENT SCORECARD

INDICATOR: SUPPLIER DEVELOPMENT	WEIGHTING	TARGET
Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target	10	2% of NPAT
INDICATOR: ENTERPRISE DEVELOPMENT		
Annual value of all Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target	5	1% of NPAT
Bonus Points: Graduation of 1 or more ED beneficiaries to SD	1	
Creating 1 or more jobs directly as a result of SD and ED initiatives	1	

## ESD – WHAT YOU NEED TO KNOW

- Preferential Procurement and Enterprise Development were merged to form an element to be known as Enterprise and Supplier Development
- B-BBEE Procurement Spend calculated from Empowering Suppliers who meet the requirements set out in the slide
- Exempt Micro Enterprises (EME) and Start-Ups are automatically recognised as Empowering Suppliers

REQUIREMENT	ENHANCEMENT FACTOR
Black Owned EME's and QSE's with 3 year Contracts	1.2
First time suppliers	1.2

- The cumulative approach has been replaced with **annual calculations** for Enterprise and Supplier Development.
  - Entities are allowed to average the value of contributions, programmes and/or initiatives that span over multiple years
- Shorter payment terms are **capped at 15%** of the invoice amount and can only contribute up to 15% of the available **10 points**
- A **subminimum of 40%** is set for each of the three categories within the Enterprise and Supplier Development scorecard and entities that fail to meet this requirements will be **discounted by one level**.

## SOCIO-ECONOMIC DEVELOPMENT



### SOCIO AND ECONOMIC DEVELOPMENT – CODES

CRITERIA	WEIGHTING POINTS	COMPLIANCE TARGET
Average annual value of all Socio-Economic Development Contributions and Qualifying Socio-Economic Development Contributions made by the Measured Entity as a percentage of the target.	5	1% of NPAT

### SED – WHAT YOU NEED TO KNOW

- The target and weightings remain unchanged
- SED beneficiaries must be 75% black or higher for full recognition
- SED contributions must be geared towards income generating activities for beneficiaries





**JOHANNESBURG**

T: 011 883 8548 • F: 011 326 7803

**CAPE TOWN**

T: 021 419 5130 • F: 021 419 5131

**DURBAN**

T: 031 566 1938 • F: 031 566 4621

**PRETORIA**

T: 012 665 2078 • F: 012 665 0647

E-mail: [info@empowerdex.com](mailto:info@empowerdex.com) • [www.empowerdex.com](http://www.empowerdex.com)

**EMPOWERDEX**



Unlocking Africa's Value