

SIMANYE

High level impact assessment of the recently published amended Codes of Good Practice



2015



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- Move from a compliance, check box approach to **sustainable, inclusive and meaningful** transformation
- Encourage entrepreneurship and **job creation**
- Promote and **encourage public-private partnerships** as well as partnerships between **big business and emerging business**
- Address the **unintended consequences** of the current Codes
- **Align the Codes** with government priorities as stated in policy documents such as the IPAP and New Growth Plan

Although in many cases, we do not believe the dti will achieve these objectives, they are useful, in the absence of any technical guidelines, to evaluate proposed initiatives against in terms of the “spirit of the Codes”, which theoretically take precedence over legal (technical) form

General overview of the scorecard: old and new compared

■ The biggest losers
■ The biggest gainers

Element	Weighting (Current criteria)	% Contri- bution	Weighting (New criteria)	% Contri- bution	
Ownership	20 points (+3)	21.5%	25 points	21.9%	
Management Control	10 points (+1)	10.3%	15 points (19?)	13.2%	} Merged into one element
Employment Equity	15 points (+3)	16.8%			
Skills Development	15 points	14.0%	20 points (+5)	21.9%	
P r e f e r e n t i a l Procurement	20 points	18.7%	40 points (+4)	23.7%	
E n t e r p r i s e Development	15 points	14.0%		14.9%	} Merged into one element
S o c i o - E c o n o m i c Development	5 points	4.7%	5 points	4.4%	
TOTAL	100 points (+7)		105 points* (+9)		

* The new scorecard seems to be out of **105 points**, with Management Control constituting 15 points. However, from the breakdown of the Management Control scorecard, it appears total points should amount to 109 points with MC constituting **19 points**.

Applicability

- **From May 2015 audits must be conducted against the amended Codes**
- Companies to develop and implement new strategies NOW
- Benefit of 51% black owned
- Note that many BEE certificates could remain valid for the purposes of a client's BEE audit well into 2017
- Legal applicability now extended to any measured entity undertaking "any economic activity" with any organ of state, as opposed to "undertaking business"

5 Elements

- **Must measure all 5 elements**
- Employment Equity now integrated into Management Control
- Preferential Procurement and Enterprise Development merged into Enterprise and Supplier Development

Priorities

- Three priority elements introduced for generics
- **Failure to meet sub-minimums = level drop**

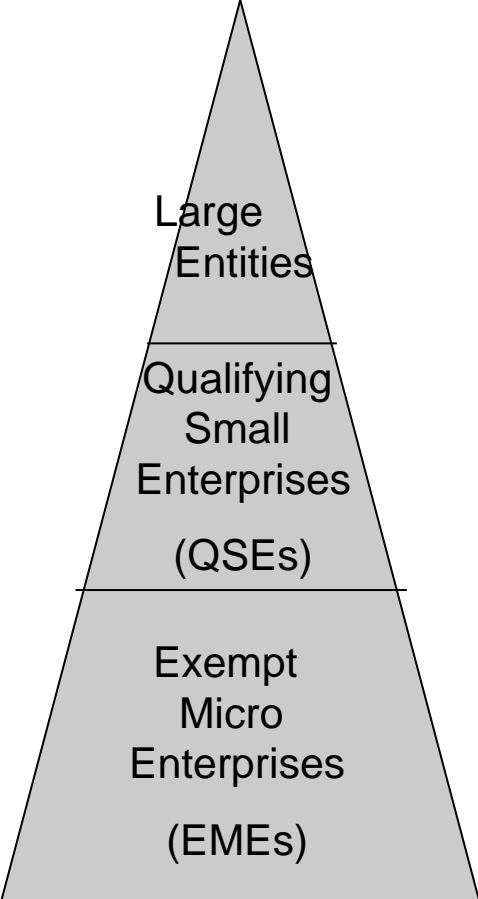
Other Key Changes

- Changes to turnover thresholds (R10m and R50m respectively)
- Use of affidavits
- Must be "empowering supplier" (?)

Proposed qualification levels have changed significantly

Contribution Level	Qualification	Proposed Qualification levels	BEE Recognition
Level One Contributor	≥ 100 points	≥ 100 points	135%
Level Two Contributor	≥ 85 but < 100 points	≥ 95 but < 100 points	125%
Level Three Contributor	≥ 75 but < 85 points	≥ 90 but < 95 points	110%
Level Four Contributor	≥ 65 but < 75 points	≥ 80 but < 90 points	100%
Level Five Contributor	≥ 55 but < 65 points	≥ 75 but < 80 points	80%
Level Six Contributor	≥ 45 but < 55 points	≥ 70 but < 75 points	60%
Level Seven Contributor	≥ 40 but < 45 points	≥ 55 but < 70 points	50%
Level Eight Contributor	≥ 30 but < 40 points	≥ 40 but < 55 points	10%
Non Compliant Contributor	< 30 points	< 40 points	0%

What will be the “new Level 4 contributor status” i.e. what level will become the generally accepted “good” level? Level 5? Level 6? Level 7?

Company Size	Definition	Application of the Codes	Special recognition for black ownership
 <p>Large Entities</p>	<p>Turnover greater than R50m</p>	<ul style="list-style-type: none"> ▪ Generic Scorecard or approved Sector Charter applies 	<ul style="list-style-type: none"> ▪ Score on generic scorecard translates to Contribution level and associated BEE recognition %
<p>Qualifying Small Enterprises (QSEs)</p>	<p>Turnover between R10m and R50m</p>	<ul style="list-style-type: none"> ▪ QSE scorecard similar to the Generic except for few amendments ▪ Ownership mandatory for QSEs or level drop 	<ul style="list-style-type: none"> ▪ Black ownership >51% = Level 2 ▪ Black ownership 100% = Level 1 ▪ Entities measuring the Adjusted Scorecard that have 51%-100% black beneficiaries are now also considered Level 2 and Level 1 respectively
<p>Exempt Micro Enterprises (EMEs)</p>	<p>Turnover less than R10m</p>	<ul style="list-style-type: none"> ▪ Exempt from BEE 	<ul style="list-style-type: none"> ▪ Affidavits sufficient evidence – or will they?

An “**empowering supplier**” within a context of B-BBEE is a *B-BBEE compliant entity*, which is a *good citizen* South African entity, *compliant 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:

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

Note that EMEs and Start Ups are automatically recognised as Empowering Suppliers but 51%-100% black owned QSEs will need to prove (or warrant in an affidavit) their Empowering Supplier status

BEE Elements	Current Weighting	New Weighting	Key changes
Equity Ownership	20(+3)	25	<ul style="list-style-type: none"> ▪ A few fairly immaterial changes to the structure and points for Voting rights and Economic Interest ▪ Reduction in broad-based targets and an indication from the dti that broad-based groups and ESOPs are going to come under the spotlight ▪ Sub minimum introduced – 40% of the Net Value points (3.2)
Management Control (incl EE)	10(+1)	15(+4)	<ul style="list-style-type: none"> ▪ EE now incorporated into Management Control ▪ Board and Exec (top mgmt) measures remain very similar but with the removal of points for independent non-executives
	15(+3)		<ul style="list-style-type: none"> ▪ Increased weightings for more senior levels with the same targets; junior management has very few points ▪ Black people measured against provincial or national EAP targets by race ▪ Separate measures for black women enhance black female participation
Skills Development	15	20(+5)	<ul style="list-style-type: none"> ▪ Target doubled to 6% of payroll cost, but training of non-employees now allowed ▪ Sub-minimum requires at least 8 points on the Skills Development scorecard with differing views on whether bonus points count towards this ▪ Recognition minimised for unaccredited training, whether internal or external ▪ Emphasis on learnerships and internships and unemployed youth ▪ Significant points available for initiatives involving disabled people

BEE Elements	Current Weighting	New Weighting	Key changes
ESD: Preferential Procurement	20	25 (+2)	<ul style="list-style-type: none"> ▪ PP and ED merged together to form Enterprise and Supplier Development ▪ Suppliers must be “Empowering Suppliers” to be recognised for BEE ▪ Sub minimum applies to indicators under both Procurement and ED (with the application of Procurement being unclear) ▪ Imports exclusion allowed under certain circumstances only (unless a designated sector by govt for local content) and may require implementation of local content plans ▪ Targets and weightings for spend with QSEs and EMEs probably unachievable for certain industries and companies with value chains ▪ Targets and weightings for spend with black owned businesses very challenging ▪ QSEs more than 50% black owned achieve Level 1 or 2 and need only an affidavits – which is problematic for the verification industry
ESD: Enterprise Development	15	15 (+2)	<ul style="list-style-type: none"> ▪ 2/3 of ED target now reserved for Supplier Development ▪ Qualifying businesses must be at least 51% black owned QSEs or EMEs
Socio-economic Development	5	5	<ul style="list-style-type: none"> ▪ Slight change in wording to “income generating activities” ▪ Practically this change is unlikely to filter through to BEE auditors
Total	100 (+7)	105 (+13)	

- Level 7 is likely to be considered an “acceptable” level of BEE compliance for the next 1-2 years
- Compliance with Empowering Supplier requirements is critical and not all industries and business are created equal in terms of their ability to comply
- Pre-existing Ownership deals that are underwater and/or deals which do not sufficiently represent a broad demographic (including women, broad-based, designated groups and new entrants) are going to cost clients 2-4 BEE levels
- The shift in points, focus and spend requirements in Skills Development means companies generally need to rethink their entire skills strategy. The skills industry will see a boom as players move into make their money; Measured Entities should beware and choose service providers carefully based on impact not price
- The days of gathering the 20% of BEE certificates that make up 80% of a company’s spend are over; companies need to rethink Procurement compliance to achieve sub-minimums and maximise points
- Companies that do not develop targeted Preferential Procurement strategies supported by Procurement policies whose implementation is enforced from the top will struggle for points and may miss sub-minimums
- Companies wanting to improve their Procurement need integrated Supplier Development strategies, but many companies will look to circumvent the objectives of supplier development and many intermediaries and “service providers” will be only too happy to provide ways around the requirements in return for a fee (or the whole contribution)
- Affidavits will continue to be a hot topic and the verification industry is likely to require additional evidence beyond these affidavits, at least for entities which add materiality or risk to their client’s score
- The use of the modified flow through principle will enable previously white owned businesses to retain 74% of their businesses while structuring BEE deals which enable them to become black owned and qualify as ESD beneficiaries
- We expect to see a significant increase in fronting, some of it obvious, some of it more subtle, and most of it debatable (at least from the perspective of the entity or individual which is fronting)

- Do a proper assessment against the amended Codes and understand what they mean for your organisation
- Not all companies or industries are the same, therefore the approach to BEE will – and should – differ from company to company
- Decide, for the company as a whole, or element by element, whether a “strategic” or “tactical” approach - or something inbetween – is best for your company
 - We define “strategic” as a strategy, initiative or set of initiatives which adds value to the business beyond BEE points, and may include opening up of new revenue streams through new products and markets, reduction in costs, improvement in performance of aspects of the business or supply chain, the development of skills and capacity needed in the ordinary course of business
 - Not all companies are able to be strategic with their money for a variety of reasons
 - On the other hand, BEE requirements and an emotional response to them often blind companies to the real commercial opportunities that BEE sometimes can present
 - We define “tactical” as a strategic approach to BEE or certain elements where cost efficiency and points maximisation is the primary driver
 - This is the “best bang for buck” approach where companies are unable, or unwilling to be strategic
- Whether adopting a strategic or tactical approach, we recommend clients select initiatives and service providers based on expected impact, not based on cost or on whatever option is the easiest
 - Companies that complain that BEE does not add to the economy or benefit SA in any way contribute to the problem when they do BEE without impact in mind

Simanye has products and services to address both strategic and tactical requirements, and is flexible to create bespoke solutions anywhere inbetween



Generic BEE scorecard by element and indicator, comparing old and new Codes



Indicator	Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Voting Rights	Exercisable Voting Rights in the Enterprise in the hands of black people	3	25%+1 Vote	Exercisable Voting Rights in the entity in the hands of Black people	4	25%+1 Vote
	Exercisable Voting Rights in the Enterprise in the hands of black people	2	10%	Exercisable Voting Rights in the entity in the hands of Black women	2	10%
Economic Interest	Economic interest of black people in the Enterprise	4	25%	Economic Interest in the Entity to which Black people are entitled	4	25%
	Economic interest of black women in the Enterprise	2	10%	Economic Interest in the Entity to which Black women are entitled	2	10%
	Economic interest of black broad-based groups, ESOPs, designated groups in the Enterprise	1 (+1 bonus)	2.5% (10% for bonus pts.)	Economic interest of black broad-based groups, ESOPs, designated groups in the Enterprise	3	3%
	Economic interest of new entrants	2 bonus	10%	Economic interest of new entrants	2	2%
Realisation points	Net value	7	Refer to Annexe C paragraph 4	Net value	8	Refer to Annexe C
	Ownership fulfilment	1	Refer to paragraph 10.1	Ownership fulfilment	N/A	N/A
Totals		20 (+3)			25	

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Board Participation			Board Participation		
Exercisable Voting Rights of black board members as a percentage of all board members <i>using the Adjusted Recognition for Gender</i>	3	50%	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 directors <i>using the Adjusted Recognition for Gender</i>	2	50%	Black Executive Directors as a percentage of all directors	2	50%
			Black female Executive Directors as a percentage of all directors	1	25%
Bonus Points: Black Independent Non-Executive Board Members	+1	40%	Bonus Points: None documented	Assumed N/A	Assumed N/A
Top Management			Other Executive Management		
Black Senior Top Management <i>using the Adjusted Recognition for Gender</i>	3	40%	Black Executive management as a percentage of all executive directors	2	60%
Black Other Top Management using the Adjusted Recognition for Gender	2	40%	Black female Executive management as a percentage of all executive directors	1	30%
TOTAL	10 (+1)		TOTAL	9	

Generic Management Control Scorecard: Employment Equity indicators

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Senior Management			Senior Management		
Black employees in Senior Management as a percentage of all such employees <i>using the Adjusted Recognition for Gender (ARG)</i>	5	60%	Black employees (by race)	2	60%
			Black female employees (by race)	1	30%
Middle Management			Middle Management		
Black employees in Middle Management as a percentage of all such employees <i>using the ARG</i>	4	75%	Black employees (by race)	2	75%
			Black female employees (by race)	1	38%
Junior Management			Junior Management		
Black employees in Junior Management as a percentage of all such employees <i>using the ARG</i>	4	80%	Black employees (by race)	1	88%
			Black female employees (by race)	1	44%
Employees with Disabilities: Black employees with disabilities as a percentage of all employees <i>using the ARG</i>	2	3%	Employees with Disabilities: Black employees with disabilities as a percentage of all employees	2	2%
Bonus points for meeting or exceeding the EAP targets in each category under the above	+3				
TOTAL	15 (+3)		TOTAL	10	

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Skills Development expenditure on training for black employees as a percentage of Leivable amount*	6	3%	Skills Development Exp on Learning programmes for black people as a percentage of Leivable Amount.	8	6%
Adjusted Skills Development expenditure on training for black employees with disabilities as a percentage of Leivable amount*	3	0.3%	Skills Development Exp on Learning programmes for black disabled employees as a percentage of Leivable Amount.	4	0.3%
Adjusted number of black employees participating in Learning Programmes as a percentage of total employees	6	5%	Number of black people participating in learnerships, apprenticeships and internships as a percentage of total employees.	4	2.5%
N/A	N/A	N/A	Number of black unemployed people participating in training specified in the learning programme matrix as a percentage of number of employees.	4	2.5%
N/A	N/A	N/A	Bonus points: Number of black people absorbed by the measured and industry entity at the end of the learnership programme.	5	100%
TOTAL	15		TOTAL	20 (+5)	

Generic Enterprise and Supplier Development (priority element): Procurement indicators

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Preferential Procurement:			Preferential Procurement:		
B-BBEE Procurement spend from all Suppliers based on their BEE recognition levels	12	70%	B-BBEE Procurement spend from all <u>Empowering Suppliers</u> Suppliers based on their BEE recognition levels	5	80%
B-BBEE Procurement spend from all QSE and EME Suppliers based on their BEE recognition levels	3	20%	B-BBEE Procurement spend from all <u>Empowering Suppliers</u> that are QSEs	3	15%
			B-BBEE Procurement spend from all <u>Empowering Suppliers</u> that are EMEs	4	15%
B-BBEE Procurement spend from all Suppliers that are >50% black owned	3	12%	B-BBEE Procurement spend from all <u>Empowering Suppliers</u> that are at least 51% black owned	9	40%
B-BBEE Procurement spend from all Suppliers that are >30% black women owned	2	8%	B-BBEE Procurement spend from all <u>Empowering Suppliers</u> that are >30% black women owned	4	12%
			Bonus points: B-BBBEE Procurement Spend from Designated Group Suppliers that are at least 51% black	2	2%
Total	20			25 (+2)	

Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Enterprise and Supplier Development:			Enterprise and Supplier Development:		
N/A	N/A	N/A	Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of target	10	2% of NPAT
Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of target	15	3% of NPAT	Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of target	5	1% of NPAT
Bonus Points for the following (during measured period)			Bonus Points for the following (during measured period)		
N/A	N/A	N/A	Graduation from Enterprise Development to supplier development beneficiary	1	
N/A	N/A	N/A	Jobs created by supported supplier from Enterprise Development to Supplier Development (a multiplier of 1.25)	1	
TOTAL	15		TOTAL	15 (+3)	

Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Socio-economic Development:			Socio-economic Development:		
Average/cumulative annual value of all Socio-economic Development Contributions made by the Measured Entity as a percentage of target	5	1% NPAT	Annual value of all Socio-economic Contributions made by the Measured Entity as a percentage of target	5	1% of NPAT
TOTAL	5		TOTAL	5	



QSE BEE scorecard by element and indicator, comparing old and new Codes





Indicator	Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Voting Rights	Exercisable Voting Rights in the Enterprise in the hands of black people	6	25%+1 Vote	Exercisable Voting Rights in the Enterprise in the hands of black people	5	25%+1 Vote
	Bonus points: Involvement in the ownership of the Enterprise by black women	2	10%	Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
Economic Interest	Economic interest of black people in the Enterprise	9	25%	Economic Interest of black people in the Enterprise	5	25%
	Economic interest of black women in the Enterprise	N/A	N/A	Economic Interest of black women in the Enterprise	2	10%
	Bonus points: Economic interest of black broad-based groups, ESOPs, designated groups in the Enterprise	1	10%	New Entrants or Black Designated Groups	3	2%
Realisation points Totals	Ownership fulfilment	1		Net value	8	Refer to Annexe 100 E
	Net value	9		Ownership fulfilment	N/A	N/A
Totals		25 (+3)			25	

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Management control criteria			Executive Management		
Black representation at Top Management level	25	50.1%	Black representation at Executive Management	5	50%
Bonus points: Black women representation at Top-Management	2	25%	Black female representation at Executive Management	2	25%
Employment Equity criteria			Non-Executive Management		
Black employees of the Measured Entity who are Management as a percentage of all Management adjusted using the Adjusted Recognition for Gender	15	60%	Black representation at non-executive management	6	60%
Black employees of the Measured Entity as a percentage of all employees adjusted using the Adjusted recognition for Gender	10	70%	Black female representation at non-executive management	2	30%
Bonus points: Meeting or exceeding the EAP targets in each category above	2		N/A	N/A	N/A
TOTAL	50 (+4)		TOTAL	15	

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Adjusted skills development spend on learning programmes for black employees as a percentage of leviabale amount	25	2%	Skills development expenditure on learning programmes specified in the learning programme matrix for black people as a percentage of leviabale amount	15	3%
N/A	N/A	N/A	Skills development expenditure on learning programmes specified in the learning programme matrix for black females as a percentage of leviabale amount	7	1%
N/A	N/A	N/A	Skills Development Exp on Learning programmes for black disabled employees as a percentage of Leviabale Amount.	3	0.15%
N/A	N/A	N/A	Bonus points: Number of black people absorbed by the measured and industry entity at the end of the learnership programme.	5	100%
TOTAL	25		TOTAL	25(+5)	

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Preferential Procurement:			Preferential Procurement:		
B-BBEE Procurement spend from all Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	25	50%	B-BBEE Procurement spend from all <u>Empowering Suppliers</u> Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	15	60%
N/A	N/A	N/A	B-BBEE Procurement spend from all <u>Empowering Suppliers</u> that are at least 51% black owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	5	15%
			Bonus points: B-BBEE Procurement Spend from Designated Group Suppliers that are at least 51% black	1	1%
Total	25			21	

Current Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Supplier Development:			Supplier Development:		
N/A	N/A	N/A	Annual value of all Supplier Development Contributions made by the Measured Entity as percentage of the target	5	1% of NPAT
Enterprise Development:			Enterprise Development:		
Average annual value of all Qualifying Contributions made by the Measured Entity as a percentage of the target	25	2% of NPAT	Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target	5	1% of NPAT
Bonus Points for the following (during measured period)			Bonus Points for the following (during measured period)		
N/A	N/A	N/A	Graduation from Enterprise Development to supplier development beneficiary	1	
N/A	N/A	N/A	Jobs created by supported supplier from Enterprise Development to Supplier Development	1	
Total	50			30	

Criteria	Weighting Points	Compliance Targets	New Criteria	Weighting Points	Compliance Targets
Socio-economic Development:			Socio-economic Development:		
Average annual value of all Socio-Economic Development Contributions and Approved Socio-Economic Development Contributions made by the Measured Entity as a percentage of the target	25	1% NPAT	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
TOTAL	25		TOTAL	5	