

Deadline to meet revised B-BBEE codes drawing closer

With only a few weeks remaining until the deadline for effectiveness of the Department of Trade and Industry's (dti's) revised broad-based black economic-empowerment (B-BBEE) codes, many sector codes will still not meet the extended 30 April deadline in terms of the re-alignment process.



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This is according to Agnes Dire, director at SizweNtsalubaGobodo. "Although the revised codes have been there since October 2013, the sectors will await the impact on them and should the effective dates be effective, retrospectively organisations will be measured on criteria on which they have not been monitoring themselves," she comments.

Because the revised codes fundamentally change the current B-BBEE framework, where many organisations are struggling is in their application, particularly in the first year where the reality is that there will still be an overlap of the revised codes with the current dti codes and sector codes.

"This is largely due to the fact that some aspects like the EAP target formula in Management Control and Skills Development still need to be ironed out. And because there is no history or frame of reference in terms of how they have been applied in the past especially with the new elements, this is something organisations are finding particularly challenging," she says.

Calculation of status

Because the amendments to the codes significantly change the manner in which an organisation's B-BBEE status is calculated when it comes to the points allocated to each B-BBEE level, Dire warns that in reality most firms potentially stand to face an automatic downgrade to their B-BBEE status, making the lack of compliance across sectors a distinct possibility.

"For organisations that conduct business with or have contracts with government or public entities are now obligated to take the codes into account in their procurement policies and in issuing licenses and authorisations, it's no longer optional. It is therefore critical for these organisations in particular review their current B-BBEE strategy and implement measures to try and maintain their existing ratings.

"In addition the risk of a downgrade has serious implications for B-BBEE ownership transactions. Existing B-BBEE transactions will have to be reviewed to assess effect of a possible downgrade. Here alternative approaches of funding may be necessary to deal with the possible failure to meet the minimum 'net value' ownership targets," she adds.

Dire says the addition of the concept of an 'empowering supplier' to the preferential procurement subcategory of the enterprise and supplier development element and the revised targets in this element is indicative of government's focus on sustainability of black business and in particular small business and another amendment to the codes that organisations should be aware of.

Qualifying conditions

"Qualifying as an 'empowering supplier' requires being a 'B-BBEE compliant entity', a 'good citizen', complying with 'all regulatory requirements' and meeting at least three (one for QSEs) of a number of stipulated local procurement, job creation, raw material transformation/beneficiation and skills transfer requirements.

"While onerous, no preferential procurement points will be obtained if a supplier does not comply with these requirements. With the current codes only focusing on 'B-BBEE related' issues as a qualifying criteria, this is a major departure suppliers should be factoring into their B-BBEE strategies.

"Should the supplier fail to meet the minimum 40% target for preferential procurement, its B-BBEE status faces an automatic downgrade because of the discounting principles from the priority elements," she explains.

Penalties for non-compliance

With the new B-BBEE framework introducing penalties in the form of discounting for non-compliance in certain cases, Dire says this is even more motivation for all organisations conducting business in South Africa to implement compliance strategies that are effectively monitored.

"While organisations are not legally obliged to comply with B-BBEE targets, it may be a determining factor when it comes to qualifying for government and public sector tenders. Even foreign multinationals will be subject to a downgrade if they don't comply with minimum standards. That being said, government will have to ensure that all other legislation is aligned to ensure that B-BBEE efforts are adequately recognised," she concludes.

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