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BEE AND PROCUREMENT – JUST HOW IMPORTANT ARE THEY TO BUSINESSES IN SOUTH AFRICA?

The South African government introduced Broad-Based Black Economic Empowerment (B-BBEE or BEE) as a policy to improve economic transformation and enhance the economic participation of Black people (African, Coloured and Indian people who are South African citizens) in the South African economy.

The old dispensation had caused a historical economic disparity based on race and resulted in numerous Black people in South Africa not being privy to the same opportunities available to the rest of South Africa.

B-BBEE is governed by the Broad-Based Black Economic Empowerment Act ("BEE Act") as well as Codes of Good Practice and various sector charters issued in terms of the BEE Act. An entity operating in a sector with a Sector Code will be governed by that Sector Code and not the General Codes of Good Practice.

But the question remains – ***What is the scope of application of BEE legislation?*** For the purpose of this blog we will focus on the basics of the Codes of Good Practice and the importance of Preferential Procurement on the B-BBEE Scorecard.

Understanding the Codes of Good Practice

The Codes of Good Practice are legally binding on all state and state-owned entities. This means that government will have to use the Codes to measure *B-BBEE compliance* when choosing suppliers, granting licences or making concessions. Certain industries require an entity to have a specific percentage of Black ownership or BEE level in order to receive and maintain a licence to operate.

These empowerment requirements are specific to the underlying legislation and relate to the licence to operate. A typical example is that in terms of The Broad-Based Socio Economic Empowerment Charter for the Mining and Minerals Industry of 2018, the holder of a mining right granted after 27 September 2018 must have a minimum of 30% Black shareholding.

Entities in certain industries may be required to show their transformation initiatives, thereby enabling them to obtain concessions to export.

What is the cascading effect of B-BBEE-compliant companies?

- The cascading effect of the focus on B-BBEE-compliant companies is that non-compliant businesses will find it difficult to grow or maintain their level of business success within South Africa.
- On the other hand, private companies will also need to apply the Codes if they want to do business with any government enterprise – in order to tender for business, apply for licences and concessions, enter into public-private partnerships or buy state-owned assets.
- Private companies, among themselves, are now starting to focus on other private companies (suppliers) with the best possible BEE score, which will count towards their *Procurement recognition level*. The best possible BEE score of your suppliers will ensure a better score for the company being measured.

From personal experience I can safely state that most of the points usually not obtained during *B-BBEE verifications* are those under the element of Preferential Procurement. To add insult to injury, amendments were made in May 2019 to the Enterprise and Development Scorecard, which came into effect as from 01 December 2019.

To summarise these amendments on the Procurement element:

- The target spend with 51% Black-Owned entities has increased from 40% to 50%, with 11 points allocated as opposed to the 9 points in the previous Codes.
- Clarity on the indicative profit calculation for Enterprise and Supplier Development targets.
- Spend with 51% Black-Owned or 51% Black Women-Owned suppliers will attract a further recognition multiplier of 1.2, while the first-time supplier recognition multiplier falls away.
- Clarity has been provided on the difference between Enterprise Development and Supplier Development
- The introduction of 51% Black-Owned Generics as beneficiaries for Enterprise and Supplier Development contributions - provided a Generic entity, at first instance of receiving assistance from the company being measured, was identified as an EME or a *QSE*. The inclusion of Generic entities is limited to a period of 5 years from the first time the Generic entity received assistance from the company being measured.
- Amendment to the Enterprise and Supplier Development (ESD) matrix – guarantees provided to ESD beneficiaries will now attract 50% recognition, as opposed to the 3% in the previous Codes.

In conclusion

With a proper analysis of a company's suppliers and their BEE status, it will become easier for companies to maximise their points on the Preferential Procurement element of the scorecard. It sounds simple, but with the necessary *guidance of a BEE specialist* it will become easier for companies to have a structured approach to their Procurement score. This will enable a company to make decisions about possible focused procurement where possible.

Companies with low BEE scores may therefore be marginalised by the greater economy, which in turn may have a detrimental effect on the existence of the said companies. This means that BEE and Procurement will enjoy continuous focus and attention from most BEE-sensitive companies. Companies that will be affected by this approach will have the opportunity to improve themselves, thereby ensuring that they will enjoy more attention from companies that use them as suppliers.

As SA's leader in Legal Compliance and Transformation Solutions, *SERR Synergy provides local and multi-national businesses, with tailor-made B-BBEE strategies and solutions to meet South Africa's legislative requirements.* We can assist companies to improve their BEE score and, more specifically, their Preferential Procurement score.