
OWNERSHIP MORE IMPORTANT THAN EVER

Dr. Rob Davies, Minister of Trade and Industry, published his revised Broad-Based Black Economic Empowerment Codes of Good Practice on the 05th of October 2012.

The purpose of this article is to highlight the proposed changes to Code Series 000 the Application of the Codes and Code Series 100 the General Principals for measuring Ownership.

The first observation that needs to be highlighted is the increased weight of Ownership within the element model. Ownership has increase from 20 points to 25 points within the aforementioned model. This is an indication of the Legislator's intention of encouraging participants in Broad-Based Black Economic Empowerment (BBBEE) initiatives to focus on this element.

Whilst small changes has been made to the Ownership scorecard, it is the writer's opinion that these changes will not be to the detriment of participants, which have a well-structured ownership structure in place and is it the writer's opinion that the aforementioned participants will welcome the higher emphasis on Ownership as an element.

The flip-side of the coin is the prejudice that will be suffered by participants in Broad-Based Black Economic Empowerment Initiatives, which does not make use of a proper structured ownership scheme as they will not only be penalised by an additional 5 points, but now becomes a victim of an additional penalty.

A threshold requirement has been inserted in the Act, which stipulate that in the event that a measured entity does not achieve a minimum of 40% of the Annual Net Value target pertaining to ownership, the entity will become subject to discounting of its overall scorecard.

Code Series 000 states that non-compliance with the threshold requirements, of which ownership forms a part, will result in a BBBEE status level being discounted by two levels for a measured entity and one level for a qualifying small enterprise.

Taking the above into account, it is the writer's opinion that ownership will no longer be an optional element for consideration for entities wishing to embark on a BBBEE initiative.

The modified flow-through principal has stayed unaffected in the proposed amendments and can still be used to great effect and to the advantage of an enterprise wishing to embark on a BBBEE initiative.

The modified flow-through principal, if used correctly, will still provide measured entities with a vehicle to comply with ownership by departing with the minimal amount of equity and is in the writer's opinion a model that will receive great attention, once the amended codes are accepted by Parliament.

It is important to note that the exclusion principal have been altered to exclude companies making use of the modified flow-through principal to benefit from its stipulations. Companies with Organs of State as shareholders will therefore in the future have to weigh the benefit of the modified flow-through principal against the benefit of the exclusion principal before embarking on an ownership structure.

An added incentive for ownership compliance is found in the proposed revised BBEE recognition levels with proposed amendments as per the schedule included below:

B-BBEE Status	Qualification	B-BBEE Recognition Level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥ (85) <u>95</u> but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥ (75) <u>90</u> but < (85) <u>95</u> on the Generic Scorecard	110%
Level Four Contributor	≥ (65) <u>80</u> but < (75) <u>90</u> on the Generic Scorecard	100%
Level Five Contributor	≥ (55) <u>75</u> but < (65) <u>80</u> on the Generic Scorecard	80%
Level Six Contributor	≥ (45) <u>70</u> but < (55) <u>75</u> on the Generic Scorecard	60%
Level Seven Contributor	≥ (40) <u>55</u> but < (45) <u>70</u> on the Generic Scorecard	50%
Level Eight Contributor	≥ (30) <u>40</u> but < (40) <u>55</u> on the Generic Scorecard	10%
Non-Compliant Contributor	< (30) <u>40</u> on the Generic Scorecard	0%

KMG & Associates Incorporated can assist you in any of your Ownership and restructuring requirements, we invite you to engage with our Company for any further assistance.

The proposed amendments as well as various articles on the proposed amendments can be found on our website: www.kmgattorneys.co.za.

It is further important to note that should you wish to submit comments on the proposed amendments, your comments should be submitted on or before the 04th of December 2012.

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