

March 2014

“Do not strive for success, strive for excellence and success will follow” - Anonymous

## **THE NEW BBEE CODES: A GENERAL OVERVIEW**

Towards the end of 2013, the revised Broad-Based Black Economic Empowerment Codes (the “BEE Codes”) was released by the Department of Trade and Industry.

The final BEE Codes will become effective during October 2014 which entails a 12 month transitional period for all companies expected to comply therewith. This article will be the first in a series aimed at informing our clients of all the material changes you should be aware of. In essence, the new BEE codes contain similar general principles to the old codes however a few minor, and one major, changes have been made to its implementation. These changes will be discussed in the aforementioned series.

The 7 elements of the BEE scorecard have been reduced to the following 5 elements:

- Ownership
- Management Control
- Skills Development
- Socio-Economic Development
- Enterprise and Supplier Development

The point weighting of the first 3 element scorecards have been increased while Management Control now includes the previous employment equity elements. As is evident, the previous Enterprise Development element remains but now includes supplier procurement (which includes preferential procurement) and supplier development with a score for this new element of 40 points. The previous Employment Equity and Preferential Procurement Elements have been deleted from the scorecard.

Another noteworthy difference from the old BEE codes is that the new scorecard is calculated out of 105 points with an additional 13 bonus points which can be achieved. More points are now required to be recognized as a certain level BEE contributor, for example, a level 3 Contributor previously needed between 75 and 85 points while in future they will be required to have between 90 and 95 points.

It is imperative for all companies to be fully informed of the implications and requirements of the new BEE codes and to ensure that swift action is taken prior to October this year.

*Law & Laughter*

Q: “How many lawyers does it take to screw in a light bulb?”  
A: “How many can you afford?”

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# ENVIRONMENTAL LAW: A FIRST STEP TOWARDS GREENING MINING COMPANIES' COMPLIANCE

On 31 January 2014, the Naphuno Regional Court in Limpopo issued a revolutionary decision in holding Matome Maponya, the managing director of Blue Platinum Ventures Pty Ltd ("Blue Platinum"), a clay mining company, liable for causing extensive environmental damage outside the village of Tlhabine in Limpopo. Maponya was sentenced to five years imprisonment due to the fact that Blue Platinum failed to take the necessary rehabilitation measures set out by mining and environmental legislation. Maponya's sentence was suspended for five years, on condition that the mining operation's damage to the environment is sufficiently rehabilitated within 3 months.

This was the first time in South Africa that a director of a mining company faced direct imprisonment for mining-related environmental offences, without the option of a fine.

The Batlhabine community, who had been affected by the environmental degradation, spent several years in vain trying to get the Department of Mineral Resources, the government department responsible for making sure that mining companies comply with the law, to force Blue Platinum to comply with all the relevant environmental legislation and the prerequisites of their authorizations. The community then resorted to lay criminal charges against the company and its directors supported by evidence and expert reports.

Blue Platinum, Maponya and five other directors had been charged with numerous offences under the National Environmental Management Act (NEMA), the National Water Act and the Mineral and Petroleum Resources Development Act. Subsequently, the company and its managing director pleaded guilty to violating Section 24F of NEMA.

With all the current development in the environmental law arena, this case paves the way toward ensuring compliance amongst companies (specifically in the mining sector) and sets a precedent that companies causing environmental degradation will not be left unpunished.

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