

April 2014

“In order to succeed, your desire for success should be greater than your fear of failure.”  
- Bill Cosby

## **BBEE UPDATE: THE BEE SCORECARD AND CONTRIBUTOR STATUS**

The revised BBEE codes, first scheduled to take effect October 2014 have now been extended by The Minister of Trade and Industry to come into operation end of April 2015.

In our previous article the 5 revised elements were briefly set out. The purpose of this article is to focus on the weighting of the elements and the application of the obtained scores to determine the Contributor Status.

The following points were allocated to each of the revised elements:

- **Ownership** – 25 points [up from 20]
- **Management Control** – 15 points [up from 10]
- **Skills Development** – 20 points [up from 15]
- **Enterprise and Supplier Development** – 40 points [up from 35]
- **Socio-Economic Development** – 5 points [as before]
- Total** – 105 points

From the above scoring the enterprise's status will be calculated as follows:

- **Level One** – higher than 100 points [as previously]
- **Level Two** – higher than 95 points but lower than 100 points [Up 10 points]
- **Level Three** – higher than 90 points but less than 95 points [Up 15 points]
- **Level Four** – higher than 80 points but lower than 90 points [Up 25 points]
- **Level Five** – higher than 75 points but lower than 80 points [Up 20 points]
- **Level Six** – higher than 70 points but lower than 75 points [Up 25 points]
- **Level Seven** – higher than 55 points but lower than 70 points [Up 15 points]
- **Level Eight** – higher than 40 points but lower than 55 points [Up 10 points]
- **Non-compliant** – less than 40 points [Up 10 points]

It is thus of cardinal importance that an enterprise adhere to and implement the necessary measures to obtain the required scores in terms of the revised BEE codes to prevent losing its hard earned BEE status.

*Law & Laughter*

Question: “Have you heard about the lawyers' word processor?”  
Answer: “No matter what font you select, everything comes out in fine print.”

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# COMPANY LAW: DIRECTORS HELD PERSONALLY LIABLE TO INVESTORS

In terms of the Companies Act 71 of 2008, a director of a company must exercise the powers and perform the functions of a director:

- (a) in good faith and for proper purpose;
- (b) in the best interest of the company; and
- (c) with the degree of care, skill and diligence that may reasonably expected of a person carrying out the same functions in the company as that director and having the same general knowledge, skill and experience as that director.

In addition, a director must not use his / her position as a director, or any information obtained as a director, to gain personal financial advantage or to cause any form of harm to the company or its subsidiaries.

During the course of last month, the High Court in Pretoria held that two prominent directors (of a total of nineteen) of a failed investment scheme were personally liable to investors in the scheme who had lost a substantial portion or all of their savings. The directors were sued by Corporate Money Managers (“CMM”), the curators of the failed scheme, in their personal capacity for an amount of R522 million, being the largest personal liability claim awarded against directors in the history of South Africa.

The failed scheme involved a total of 26 companies, most of which were at the direction of the two directors who besides levying exorbitant management fees against the companies, also used any interest that could be earned for their personal gain. CMM further alleged that the directors knew that the majority of the projects in which investors' funds were poured had no reasonable prospect of generating any form of a return.

The High Court agreed and held the directors personally liable to investors for repayment of their investments in a landmark judgment of its kind.

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