

May 2014

“Whatever you are, be a good one.” – Abraham Lincoln

BBBEE UPDATE: YOUR SCORECARD AND THE OWNERSHIP ELEMENT

In our previous article the weighting of the revised 5 elements of the BBBEE scorecard was discussed. This article will focus briefly on one of those elements, namely ownership.

The ownership element, which measures the effective ownership of enterprises by black people, amounts to 25 points of the possible 105 points. This is the second largest weighted element in the generic scorecard and also a priority element next to Enterprise and Supplier Development and Skills Development. In terms of the new codes, all three priority elements (two for QSE's – of which one must be ownership) needs to be met to not risk dropping a level in overall score. A minimum of 40% of the 25 points (8 points in total) is required to avoid dropping a level.

The ownership score card is based on Statement 100 (The general principles for measuring ownership) in the codes of good practice, and consists of three sub-elements, each with its own weighting points, namely:

- **Voting Rights**– control of the enterprise through the exercise of voting rights at shareholders meetings – 6 points
- **Economic Interest**– the entitlement to dividends, capital gains and other rights of shareholders – 11 points
- **Realization points**– the accumulation of net economic interest in the hands of black shareholders, after the deduction of monies owed by such shareholders – 8 points

If a “black person” has the exercisable voting rights in a company, the company could receive a possible 4 points out of the allocated 6 points. In return, if that person has an economic interest in the entity to which he is entitled to, another 4 points may be allocated out of the 11 points. This already amounts to the required subminimum of 8 points. Should the net economic interest held by that person be debt free, another possible 8 points can be allocated.

The allocated scores to each of these sub-elements are determined by specific formulae as set out in the codes. It is advisable that companies seek legal assistance in determining the exact scores as required by the codes, to fulfil the requirements of the ownership element, together with the remaining 4 elements.

Law & Laughter

Question: “What dit the lawyer name his daughter?”

Answer: “Sue”

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ENVIRONMENTAL LAW: HOW THE CARBON TAX OFFSETS PAPER COULD AFFECT BUSINESSES

The Carbon Offsets Paper (released for comment before 30 June 2014) introduces proposals to enable businesses to lower their carbon tax liability and incentivises investment in greenhouse gas (GHG) mitigation projects, that reduce carbon emissions 'at a cost lower than the carbon tax'.

The paper also sets out principles with which a proposed project will need to comply if it is to be awarded a tradable emissions reduction credit under a specific standard' along with other eligibility criteria. According to the statement accompanying the paper, initial analysis has shown that the development and adoption of 'an eligible project methodology' could focus on energy and energy efficiency, agriculture, forestry, other land uses and waste.

It is believed that South African companies will find it difficult to influence reductions in emissions, as they operate in a country that is particularly dependant on fossil-fuels for its generation of energy. Protecting energy and carbon-intensive industries to the extent that business-as-usual GHG emissions continue, could exacerbate climate change impacts such as changes in water availability, increased floods and droughts, biodiversity loss and crop losses or lower agricultural production.

This could result in lower productivity, potentially leading to food price volatility, operational and supply chain disruption, loss of license to operate (e.g. mines), and increased vulnerability to extreme weather events.

Companies with carbon-intensive operations, products or supply chains should be concerned about their ability to compete against lower carbon sector peers in South Africa, or against competitors in countries that do not yet price carbon. This could limit their ability to pass on some or all of the tax to business customers or consumers, whereas companies that are able to demonstrate sound carbon monitoring and management are likely to be better positioned to maintain market share and profitability during the shift to a low-carbon economy.

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