

SED and the October 2012 draft BEE codes of good practice

Paul Janisch

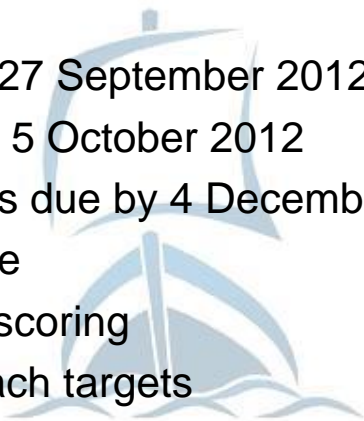
083 227-1375

paul@caird.co.za



Gazette number 35754

- Gazetted 27 September 2012
- Published 5 October 2012
- Comments due by 4 December 2012
- Incomplete
- Negative scoring
- Out-of-reach targets



Rob at the launch

Davies said the revised codes sought to amend the secondary legislation arising from Broad-based BEE Act to make sure people were truly and broadly empowered in South Africa and genuine broad-based BEE took place.

www.iol.co.za

How much research did Rob do?

BEE SED was never intended to displace Corporate Social Resp/Invest of companies, its meant to alleviate inherent social challenges confronted by a specific group of the society through no design of theirs as an add on to corporate social responsibility. Thus companies must continue to do their CSI in spite of the BEE SED.

DTI press release 8 Nov 2012

Five elements

Element	Weighting	Code series reference
Ownership	25 points	100
Management control	15 points	200
Skills development	20 points	300
Enterprise and Supplier Development	40 points	400
Socio-Economic Development	5 points	500
TOTAL	105	

SED issues

- 100% benefits to black people
 - Not prorated as the current codes are
 - Impossible to prove 100% black beneficiaries
 - Consider 450,000 white people and an unknown number of foreigners
- Contributions limited to *“income generating activities”*
 - As opposed to “facilitating sustainable access to the economy”
 - This definition excludes millions of people in South Africa

SED issues

- Raising of EME threshold
 - From R5m to R10m
 - Reduces the number of companies that might have contributed to SED substantially
- Complexity of complying
 - BEE remains a voluntary process
 - Negative scoring
 - Higher thresholds
 - Entry level is now 40 points

Points' adjustment

Level	Draft codes	Current codes	Recognition Level
1	100	100	135%
2	95 but <100	85 but <100	125%
3	90 but <95	75 but <85	110%
4	80 but <90	65 but <75	100%
5	75 but <80	55 but <65	80%
6	70 but <75	45 but <55	60%
7	55 but <70	40 but <45	50%
8	40 but <55	30 but <40	10%
Non-Compliant	<40	<30	0%

And then the DTI said

The department has received feedback expressing alarm that some charitable organisations and beneficiaries will lose benefits associated with the current version of the BEE Codes. This is not true. The proposed socio- economic development (SED) code encourages charitable organisations who receive CSI funding as a result of BEE policy, to ensure that their beneficiaries are representative of South African Society.

And the charters

- New codes only apply to the DTI's generic codes
- All charters issued under section 9(1) remain unchanged

BEE and the constitution

- Constitution of the Republic of South Africa
 - 9(2) To promote the achievement of equality, legislative and other measures may be taken.
 - (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds
 - 10. Everyone has inherent dignity and the right to have their dignity respected and protected.
 - 18. Everyone has the right to freedom of association.
 - 22. Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.
 - 36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable

Thank you

Paul Janisch

083 227-1375

paul@caird.co.za

Blog:

http://www.bbbee.typepad.com/paul_janisch/