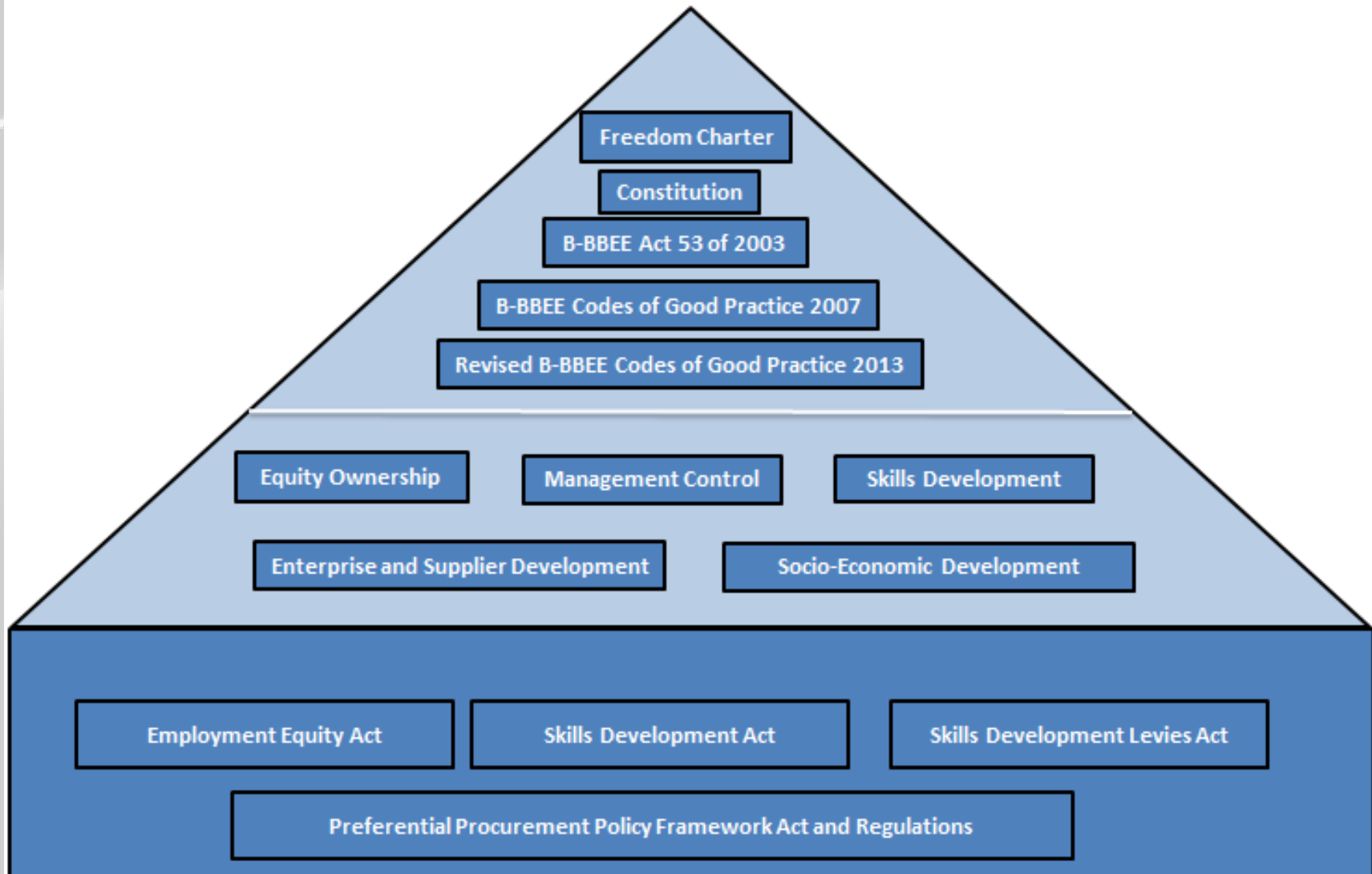


Revised BBBEE Codes

Gazetted on 11 October 2013

Overview of the BBBEE Legislative Framework and Relevance

BBBEE Legislative Framework



BBBEE Legislative Framework

Recent Developments:

- **BBBEE Act Amendment Bill:**

Will be promulgated “before the end of this Administration” (per Minister Davies)

- Employment Equity Act Amendment Bill - gazetted on 19 Oct '12
- Revised BBBEE Codes gazetted 11 October 2013

Transitional period of 1 year meaning:

- May elect to measure on Revised Codes; OR
- Measure on “old” 2007 Codes and as of 11 October 2014 an entity **MUST** apply Revised Codes, Sector Codes to be aligned.

Cut-off to be clarified, however, determined either as:

- verification engagements signed after 11/10/14; (used on new Sector Codes); or
- measurement periods ending on or after 11/10/14; (used with new targets)
- or...?

Timelines - example

Revised Codes “will come into operation within 12 months of 11 October 2013”

Possibility 1: Measurement periods ending on or after 11 October 2014
i.e. Measured Period for Skills, Procurement, Enterprise and Socio Economic
Development: 1 November 2013 – 31 October 2014

Possibility 2: Verification engagements letters signed on or after 11 October 2014

Example:

- Measured Period for Skills, Procurement, Enterprise and Socio Economic
Development: 1 October 2013 – 30 September 2014
- BUT engagement letter signed on 12 October 2014

Possibility 3: Anything else

Revised BBBEE Codes (2013)

General Principles and Scorecard

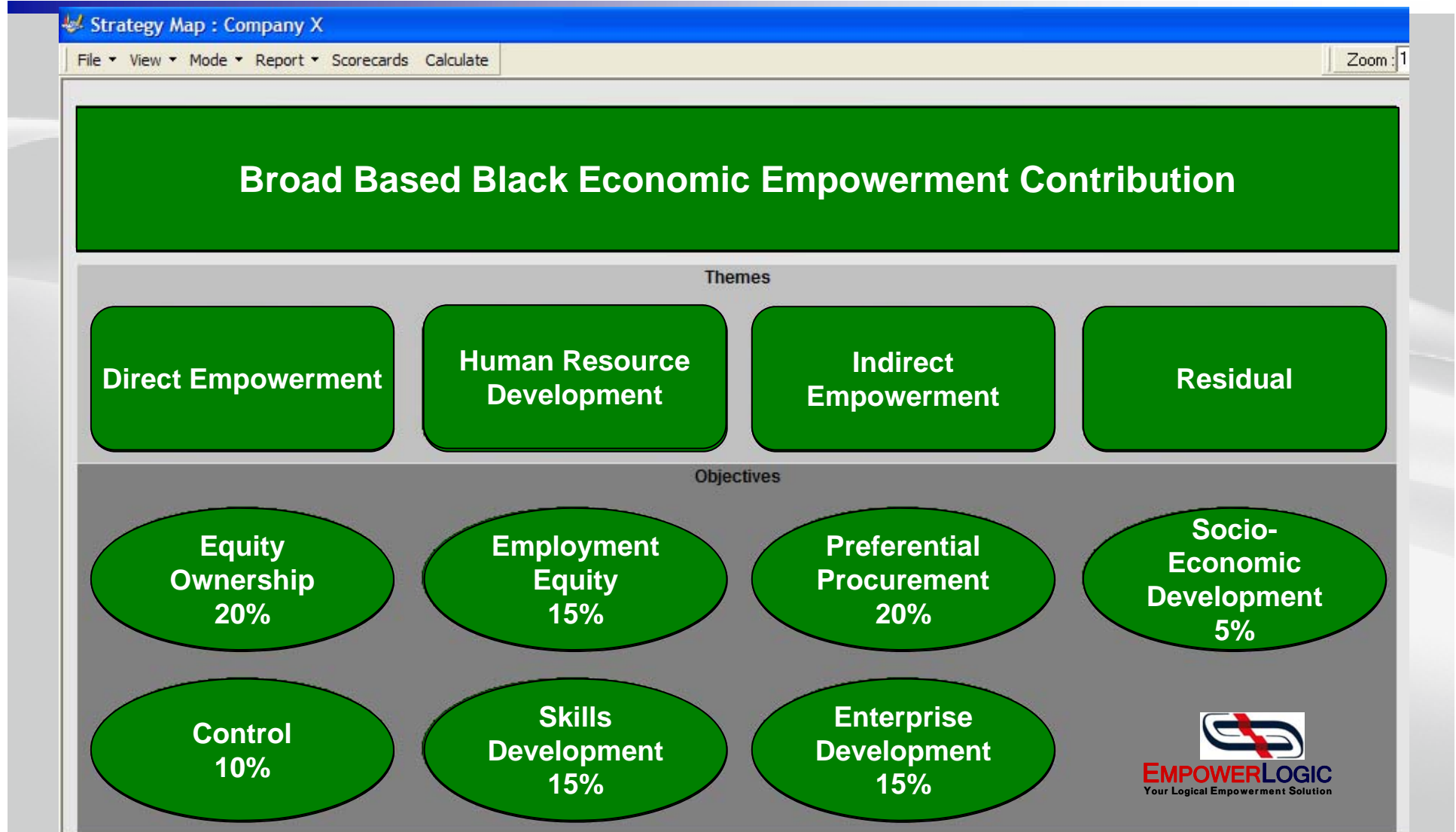
BBBEE Status Level and Procurement Recognition

BBBEE Status	Qualification (Measured in Points)		BBBEE Procurement Recognition
	Old	New	
Level One	>/=100	>/=100	135%
Level Two	85 – 100	95 - 100	125%
Level Three	75 – 85	90 – 95	110%
Level Four	65 – 75	80 – 90	100%
Level Five	55 – 65	75 – 80	80%
Level Six	45 – 55	70 – 75	60%
Level Seven	40 – 45	55 – 70	50%
Level Eight	30 - 40	40 – 55	10%
Non-compliant	Less than 30	Less than 40	0%

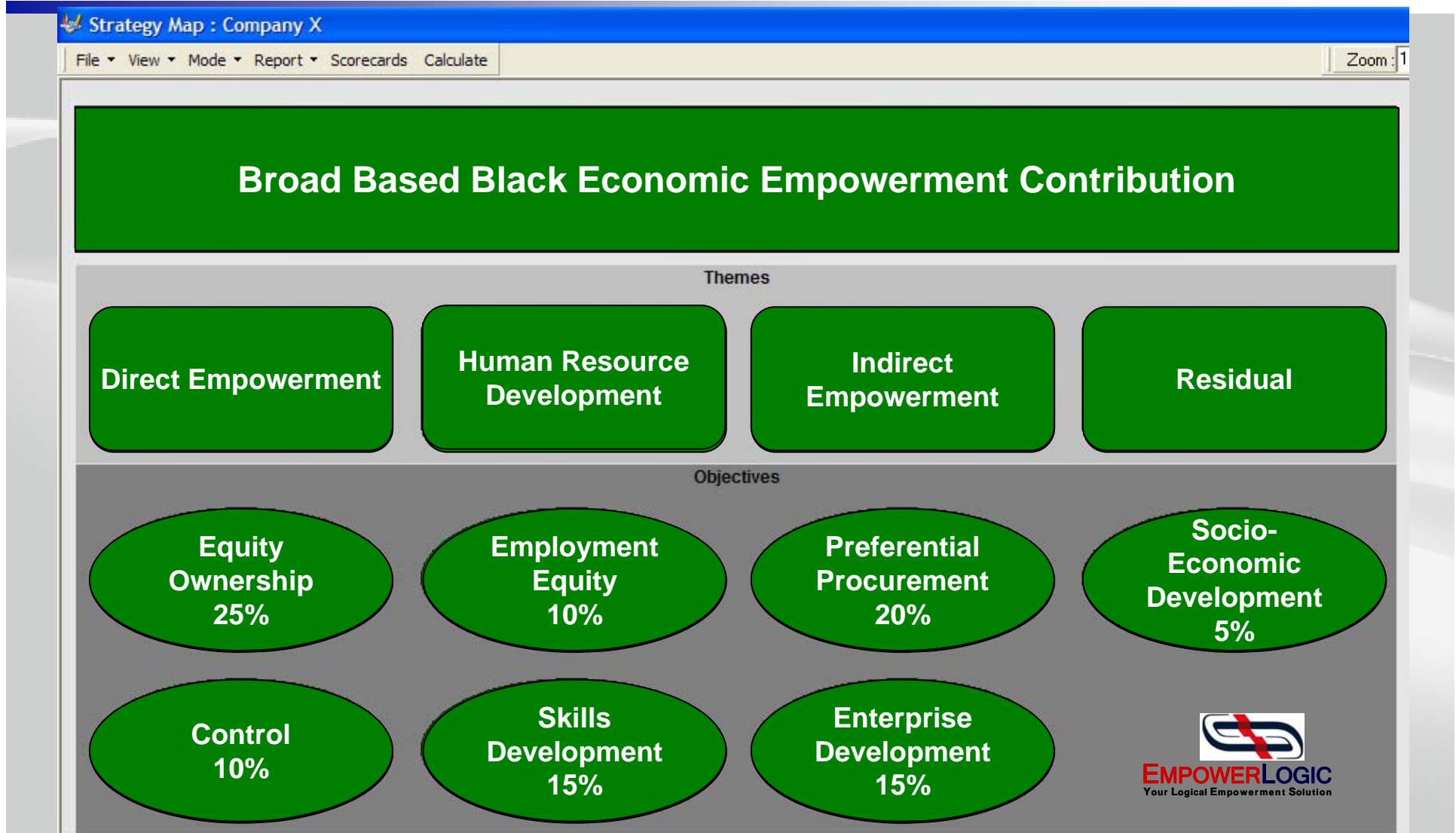
BBBEE Scorecard Weightings

Element	Weighting Points		
	Old dti Codes	Construction Code	New
Ownership	20 + 3 bonus	25	25
Management Control	10 +1 bonus	10	9
Employment Equity	15 + 3 bonus	10	10
Skills Development	15	15	20 + 5 bonus
Preferential Procurement	20	20	25 + 2 bonus
Enterprise & Supplier Development	15	15	15 + 2 bonus
Socio-Economic Development	5	5	5
Total points	100 + 7 bonus	100	109 + 9 bonus

Current (2007) BBBEE Scorecard Elements



Current (2009) Construction Code Scorecard Elements



Revised (2013) BBBEE Scorecard Elements

Broad Based Black Economic Empowerment Score - Revised Codes of Good Practice
Total Score = 109 Points + 9 Bonus Points

**Equity
Ownership
25 Points**

**Management
Control
19 Points**

**Skills
Development
20 Points + 5
Bonus Points**

**Enterprise &
Supplier
Development
40 Points + 4
Bonus**

**Socio
Economic
Development
5 Points**

**Employment
Equity
10 Points**

**Preferential
Procurement
25 Points**

**Management
Control
9 Points**

**Enterprise
Development
15 Points**

Priority Element Thresholds and Discounting of Level

Compulsory Thresholds	Achieved
1. Equity Ownership: 40% of the 8 Net Value points	?
2. Skills Development: 40% of total Skills Scorecard points (excl. bonus?)	?
3. Enterprise and Supplier Development: 40% of each of the 3 categories; i.e.: <ul style="list-style-type: none"> - 40% of the Preferential Procurement points (par 2.1); and - 40% of the Supplier Development points (par 2.2); and - 40% of the Enterprise Development points (par 2.3) 	?

- Large Enterprises must comply with all 3 Priority Element thresholds. **Non compliance = BBEE Status Level discounted by 1 Level**
- Qualifying Small Enterprises must comply with the Equity Ownership threshold and one of either the Skills Development or Enterprise and Supplier Development threshold. **Non compliance = BBEE Status Level discounted by 1 Levels**
- Verification agencies to certify total points; Pre Discounting Level, and Post Discounting Level

General Principles and Definitions

- Threshold for scorecard types have been amended:

Total Revenue	Scorecard Type
Greater than R50 million	Large Enterprise – Generic Scorecard
R10 million – R50 million	Qualifying Small Enterprise (comply with all elements)
R0 – R10 million	Exempted Micro Enterprise

Exempted Micro Enterprise AND Qualifying Small Enterprise with Ownership %	BBBEE Status Level
Equal or greater than 51% but less than 100%	Level 2
100% Black owned	Level 1

General Principles and Definitions

- No separate Code for QSE's, they must comply with all elements (Code 000, par 5.2 p9) – An announcement is expected on this before the end of the year.
- Revised Codes do not mention anything regarding Sector Codes
 - Unclear which BBEE Status Levels to be applied by Sector Codes
 - General principles may impact, i.e. calculation method of shorter payment period contribution if not specified in Sector Code; only impacts when in operation (11/10/'14); OR Code Specific?
 - Sector Codes to be aligned to revised BBEE Codes (however not specified in Revised Codes)

General Principles and Definitions

- **No more ARG** (adjusted Recognition for Gender), but separate targets;
- **No more 40% sub-minimum on “Employment Equity”** (SM, MM, JM, Disabled);
- Current Codes (2007) Code 000 par 13.1 states that:
“A Code remains in effect until amended, substituted or repealed under section 9 of the Act.” Consequently:
 - Code 100, Statement 102 (Sale of Assets) and Statement 103 (Equity Equivalents) (and others, i.e. 800) have not been amended, substituted or repealed, therefore still effective



Ownership

Equity Ownership – Construction Code vs. Revised Codes

Indicator	New Points	Old Target	New Target
Equity Ownership	25		
Exercisable Voting Rights in the Measured Entity in the hands of Black People	4	30%	25% +1
Exercisable Voting Rights in the Measured Entity in the hands of Black Women	2	10%	10%
Economic Interest in the Enterprise to which Black People are entitled	4	30%	25%
Economic Interest in the Enterprise to which Black Women are entitled	2	10%	10%
Economic Interest to which BDG's, EOS, BBOS and Co-op's are entitled	3	10%	3%
Economic Interest to which New Entrants are entitled	2	n/a	2%
A - Net Value	8	Graduation Factor	Graduation Factor
B - EI using Normal Flow Through		30%	25%

- Target on Revised Codes 25% compared to 30% Construction Code
- Black Groups and New Entrant bonus points incorporated into main scorecard
- Black New Entrant threshold moved from R20m to R50m
- “Must” apply Exclusion Principle to shareholding by Organ of State and Public Entities
- A Measured Entity applying the Modified Flow-Through Principle cannot benefit from the Mandated Investment Exclusion Principle
- **A Measured Entity applying the Exclusion Principle to Mandated Investments cannot benefit from the Modified Flow-Through (Code 100 p 3.7.5 p 20)**
- **Modified Flow Through can be applied ONLY ONCE in the ENTIRE OWNERSHIP STRUCTURE**
- Revised rules for recognising black ownership arising from a Private Equity Fund
- **Priority Element Threshold**
 - Must achieve 40% of the 8 net value points
 - **Non compliance = level discount**

- Continued Consequence still available
- Only South African Mandated Investments to be excluded? Definition of Mandated investment in Schedule 1 p 100 indicates also foreign Mandated Investments
- **Rules for Family Trusts specified as follows:**
 - Deed must define beneficiaries and proportion of entitlement;
 - Written record of names of beneficiaries or defined class;
 - Formula for calculating entitlement;
 - **Only Trustees must have discretion on above;**
 - On winding up/termination all accumulated EI to beneficiaries or similar entity



Management Control (incl. Employment Equity)



Management Control – Construction Code vs. Revised Codes incl. EE

Indicator	Points	Old Target	New Target
Management Control (incl Employment Equity)	19		
Board Participation [ACI EAP Targets NOT applicable]			
Exercisable Voting Rights of Black Board Members as a % of all Board Members	2	40%	50%
Exercisable Voting Rights of Black Female Board Members as a % of all Board Members	1	18%	25%
Black Executive Directors as a % of all Executive Directors	2	n/a	50%
Black Female Executive Directors as a % of all Executive Directors	1	n/a	25%
Other Executive Management [ACI EAP Targets NOT applicable]			
Black Executive Management as a percentage of all Executive Directors [Other Executive Management?]	2	40%	60%
Black Female Executive Management as a percentage of all Executive Directors [Other Executive Management?]	1	16%	30%
Senior Management [ACI EAP Targets applicable]			
Black Employees in Senior Management as a percentage of all Senior Management	2	60%	60%
Black Female Employees in Senior Management as a percentage of all Senior Management	1	24%	30%
Middle Management [ACI EAP Targets applicable]			
Black Employees in Middle Management as a percentage of all Middle Management	2	75%	75%
Black Female Employees in Middle Management as a percentage of all Middle Management	1	30%	38%
Junior Management [ACI EAP Targets applicable]			
Black Employees in Junior Management as a percentage of all Junior Management	1	80%	88%
Black Female Employees in Junior Management as a percentage of all Junior Management	1	33%	44%
Disabled Employees [ACI EAP Targets NOT applicable]			
Black Disabled Employees as a percentage of all employees	2	3%	3%

Management Control

- Senior Top Management now part of Top Management
- 3 Bonus points for EAP targets removed
- No more Adjusted Recognition for Gender; replaced by individual category measurements for Male and Female
- No more 40% sub-minimum

ACI Formula and Calculation

- Par 2.1 and 2.2 inserted: ACI EAP Targets:

“The compliance targets for the 2.3, 2.4 and 2.5 (SM, MM, JM) of the Management Control scorecard are based on the overall demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity Report as amended from time to time.”

“ In determining a Measured Entity’s score, the targets should be further broken down into specific criteria according to the different race sub groups within the definition of black in accordance with the EE Act on a equitable representation and weighted accordingly.”

The calculation of the Management Control indicators provided for in paragraphs, 2.3.1, 2.3.2, 2.4.1, 2.4.2, 2.5.1 and 2.5.2 is as follows:

$$A = \left(\frac{\frac{AM}{C} + \frac{CM}{C} + \frac{IM}{C} + \frac{AF}{C} + \frac{CF}{C} + \frac{IF}{C}}{6} \right)$$

ACI EAP Targets per Commission for Employment Equity Report for 2012 - 2013

Table 1: Profile of the national EAP by race and gender

Male			Female		
AM	African male	40.7%	AF	African female	34.2%
CM	Coloured male	5.8%	CF	Coloured female	5.0%
IM	Indian male	1.9%	IF	Indian female	1.1%
WM	White male	6.4%	WF	White female	4.9%
TOTAL		54.8%	TOTAL		45.2%

Source: Statistics South Africa, (QLFS 3 2012) (all percentages are rounded to one decimal point)

Table 2: Profile of the EAP by race and gender per province

Province	Male				Female				Total
	A	C	I	W	A	C	I	W	
Western Cape	17.8%	27.1%	0.2%	7.8%	16.1%	23.9%	0.1%	7.0%	100.0%
Eastern Cape	39.9%	7.7%	0.4%	5.7%	35.5%	5.5%	0.4%	4.8%	100.0%
Northern Cape	28.0%	20.7%	0.1%	4.9%	24.2%	19.0%	0.0%	3.0%	100.0%
Free State	47.1%	1.7%	0.2%	5.3%	40.4%	1.2%	0.1%	4.1%	100.0%
KwaZulu-Natal	42.3%	1.3%	7.3%	3.3%	38.3%	0.8%	4.4%	2.3%	100.0%
North West	52.2%	0.8%	0.2%	5.7%	37.7%	0.4%	0.0%	3.1%	100.0%
Gauteng	42.5%	1.9%	1.5%	9.8%	34.2%	1.9%	0.9%	7.2%	100.0%
Mpumalanga	47.8%	0.3%	0.5%	4.7%	42.9%	0.1%	0.1%	3.6%	100.0%
Limpopo	54.5%	0.2%	0.5%	1.8%	41.3%	0.1%	0.2%	1.5%	100.0%

Source: Statistics South Africa, (QLFS 3 2012) (all percentages are rounded to one decimal point)



Skills Development

Skills Development – Construction Code vs. Revised Codes

Indicator	Weighting Points	Old Target	New Target
Skills Development	20 + 5 bonus		
Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of Leivable Amount	8	1.25%	6%
Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people with disabilities as a % of Leivable Amount	4	n/a	0.3%
Number of Black People participating in Learnerships, Apprenticeships and Internships as a % of Total Employees	4	2.25%	2.5%
Number of Black Unemployed People participating in training specified in the learning programme matrix as a % of number of employees	4	n/a	2.5%
Bonus Points:			
Number of Black People absorbed by the Measured Entity and Industry Entity at the end of the Learnership Programme	5	n/a	100%

- No points for training of non black employees as per current Construction Sector Code
- No points for training of black management levels as per current Construction Sector Code
- No points for scholarship / bursary for black employees as per current Construction Sector Code
- No points for mentorship programme as per current Construction Sector Code
- Skills development spend target increases from 1.5% (of which 70% should be on black people) to 6% of leviabile amount
- **6% target includes skills development spend on unemployed black people**
- **Category B/C/D learners' salary still eligible under skills expenditure**
- Category F and G limited to 15% of total value of skills development expenditure
- Accommodation, catering and travelling limited to 15% as above
- Mandatory sectoral training such as Health and Safety not eligible

Skills Development

- Introduces “Unemployed” learnerships, apprenticeships and internships
- Introduces “absorption rate” bonus points
- No Adjusted Recognition for Gender
- No separate measurement category for Black Women
- “ACI” targets as per Management Control
- Revised General Principles, i.e. “PIVOTAL” report and training
(Professional, Vocational, Technical and Academic Learning) (critical needs)
- Replace Annex 400A, Learning Programme Matrix with Annex 300A. Includes some revision to category content
- **Priority element threshold requirement:**
 - Must achieve a minimum of 40% of the target (total points) set out in the skills development scorecard
 - **Non-Compliance = Level discounted**

Enterprise and Supplier Development



Enterprise and Supplier Development – Construction Codes vs. Revised Codes

Indicator	Weighting Points	Old Target	New Target
Enterprise and Supplier Development	40 + 4 bonus		
Preferential Procurement			
Weighted BBBEE Procurement spend from all Empowering Suppliers	5	70%	80%
Weighted BBBEE Procurement Expenditure from all QSE Empowering Suppliers	3	15%	15%
Weighted BBBEE Procurement Expenditure from all EME Suppliers [Empowering Suppliers by default]	4		15%
Weighted BBBEE Procurement Spend from Empowering Suppliers that are at least 51% black owned	9	12%	40%
Weighted BBBEE Procurement Spend from Empowering Suppliers that are at least 30% black women owned	4	8%	12%
Bonus: BBBEE Procurement Spend from Designated Group Suppliers that are at least 51% black owned	2		
Supplier Development			
Annual value of all Supplier Development Contributions made as a % of NPAT	10	3%	2%
Enterprise Development			
Annual value of Enterprise Development Contributions and Sector Specific Programmes as a % of NPAT	5		1%
Bonus Points:			
Graduation of 1 or more from Enterprise Development to Supplier Development beneficiary	1		
Creation of 1 or more jobs directly as a result of BBBEE Status Verification or development of BBBEE Advisory	1		31

- No points for Developing Organisations

- **Priority element threshold requirement:**

Must achieve a minimum of 40% of (each) of the targets (excl bonus points) for:

- Preferential Procurement; and
- Supplier Development; and
- Enterprise Development.

Non compliance = Level discounted

Preferential Procurement:

- Weighted points increase from 20 points to 25 +2 bonus points
- **Only “Empowering Suppliers”** qualify to contribute to the PP scorecard, notwithstanding their BBBEE level. EME’s and Start-ups automatically qualify as Empowering Supplier (Designated Group Suppliers?)
- Changes to enhanced recognition criteria:
 - 1.2 multiple if:
 - i) procure from a supplier that is a Supplier Development beneficiary with a minimum 3 year contract, or
 - ii) procure from a black owned QSE or EME that is NOT a Supplier Development beneficiary but has a minimum 3 year contract
 - iii) procure from a first time supplier

Preferential Procurement:

Empowering Suppliers:

1. BBBEE Compliant, i.e. level 8 or better;
2. Large entity must meet 3 of 4 criteria; QSE must meet 1 of 4 criteria:
 - i) At least 25% of cost of sales (excl labour & depn) procured from
 - Local producer in SA, or
 - Local supplier in SA(for service industry labour cost included but capped to 15%)
 - ii) 50% of jobs created [new jobs] are for black people and # of black employees since prior measurement is maintained;
 - iii) At least 25% transformation of raw material / beneficiation (includes local manufacturing and/or production/assembly and/or packaging
 - iv) spend at least 12 days p.a. of productivity deployed in assisting Black EME/QSE's to increase operational or financial capacity

Preferential Procurement:

Changes to Permissible Exclusions:

- Imported capital goods or components still excluded as per 2007 Codes;
- Imported Goods or Services ONLY IF:
 - Measured Entity has developed and implemented a Enterprise and Supplier Development Programme for such imported goods/services.

Plan should include:

- Clear objectives
- Priority interventions
- KPI's
- Concise Implementation Plan with clearly articulated milestones

Enterprise and Supplier Development

- Weighted points of 15 are split between 10 for Supplier Development and 5 for Non-Supplier (Enterprise) Development
- **Annual calculation method; however, programmes that span over multiple years = total contribution to date / # years to date**
- Only 51% or more black owned EME's and QSE's qualify as eligible SD / ED Beneficiaries (Revenue < R50m), Category B deleted
- Category A multiple of 1.25 falls away
- "Enterprise and Supplier Development Plan" encouraged;
- **Points available from shorter payment periods are limited to 1.5 points (in Supplier Development measurement category)**
- Shorter payment period points calculation changed (still confusing)
 - Contribution amount = Percentage x Invoice amount x 15%
 - Contribution amount = (15 – (pmt date – invoice date))% x invoice amt x 15%
 - Contribution amount = (15 – (24/10 – 23/10) x R1000 X 15%
 - Contribution amount = 14% x 15% x R1000 = R21

Enterprise and Supplier Development

- Benefit factor matrix adjusted downwards, i.e.
 - Overhead costs 70%
 - Interest free unsecured loan – 70%; Standard loan – 50%
 - Deployed human resources - 60%
- **No reference to “Turnover method” to calculate target, i.e. when in loss of profit less than ¼ of industry norm; THEREFORE ONLY NPAT METHOD, no profit then no target**



Socio Economic Development

Socio Economic Development – Construction Sector Code vs. Revised Codes

Indicator	Weighting Points	Old Target	New Target
Socio Economic Development	5		
Annual Value of all Socio-Economic Development Contributions as a % of NPAT	5	1%	1%

Socio Economic Development

- Weighted points remain at 5
- Annual calculation method only
- “Turnover method” remains, i.e. if loss then still target
- Contributions must be with the “specific objective of *facilitating income generating activities* for targeted beneficiaries” (conflicted by definition in Schedule 1 p 103-4)
- Contributions recognised proportionally, however if 75% black then recognise 100%; (conflicted by definition in Schedule 1 p 103-4)
- Benefit factors unchanged

Comparative Scenario

Example Company comparison between Construction Sector Code and Revised Codes.

Example Company Profile on Construction Sector Codes

Broad Based Black Economic Empowerment Score
Level 2 - 86.53%

Direct Empowerment
88.08%

Human Resource Development
75.63%

Indirect Empowerment
90.83%

Residual
100%

Ownership
96%

Employment Equity
59.74%

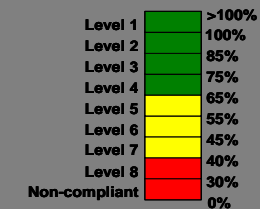
Preferential Procurement
94.01%

Socio-Economic Development
100%

Management Control
68.28%

Skills Development
86.23%

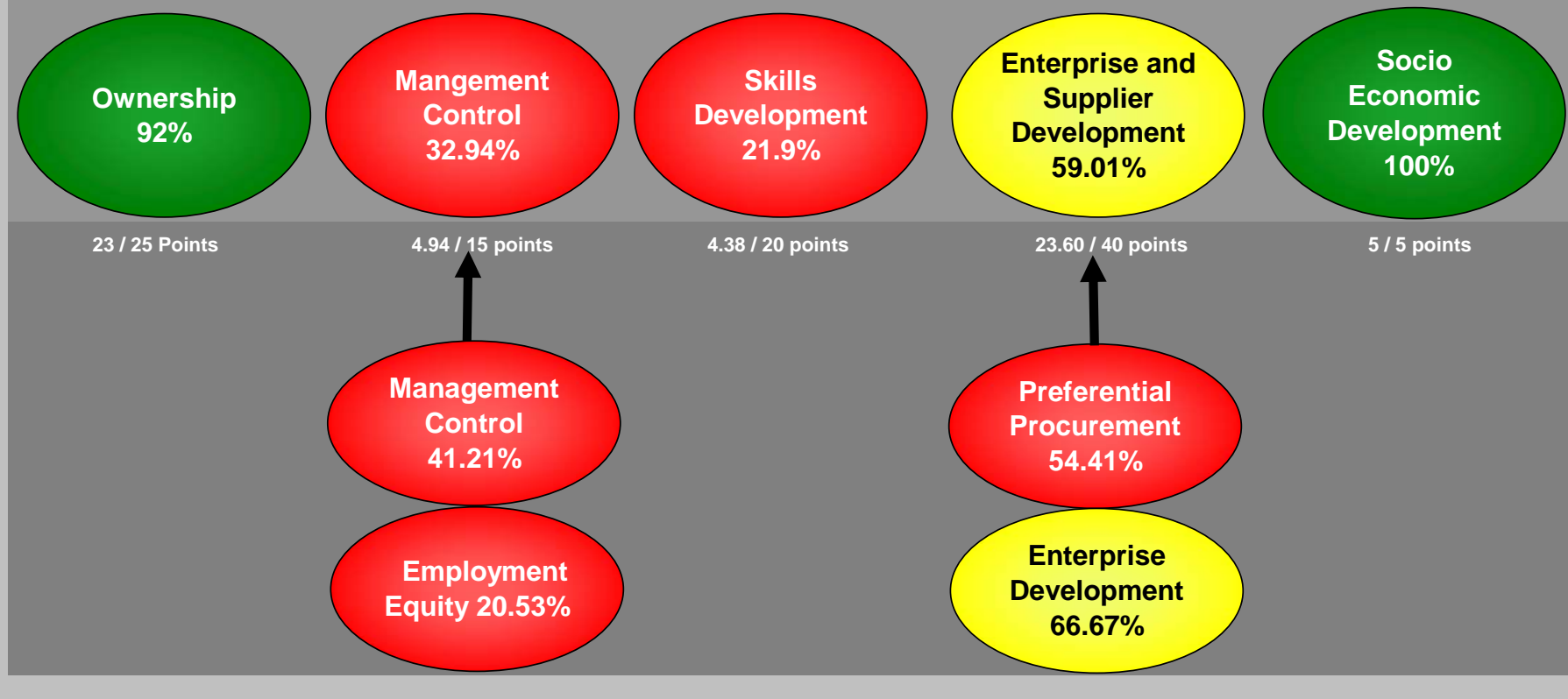
Enterprise Development
86.6%



Example Company Profile on Revised Codes

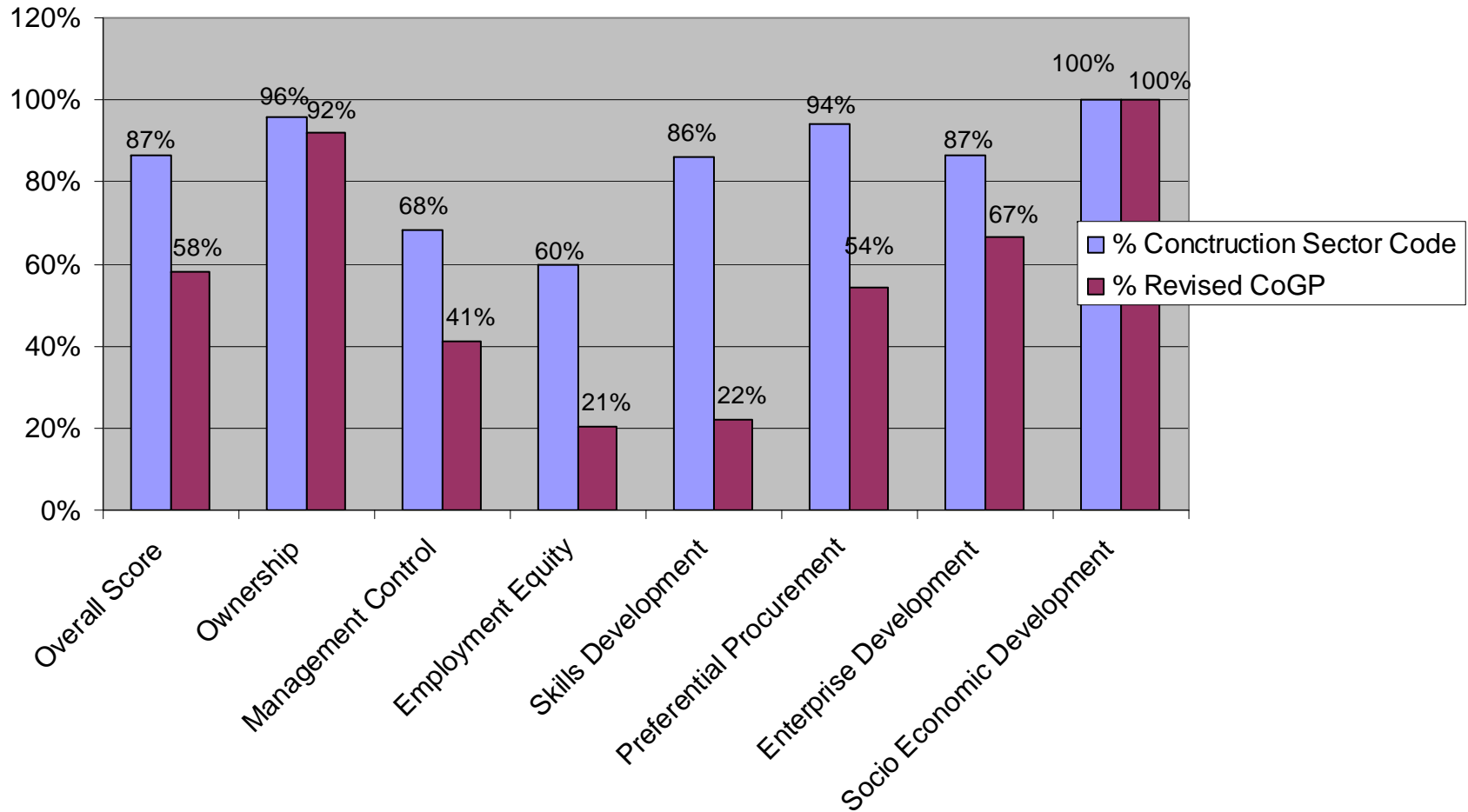
BBBEE Status Level - Level 8

BBBEE Status Level Pre Threshold Discount = Level 7 - 60.92 Points



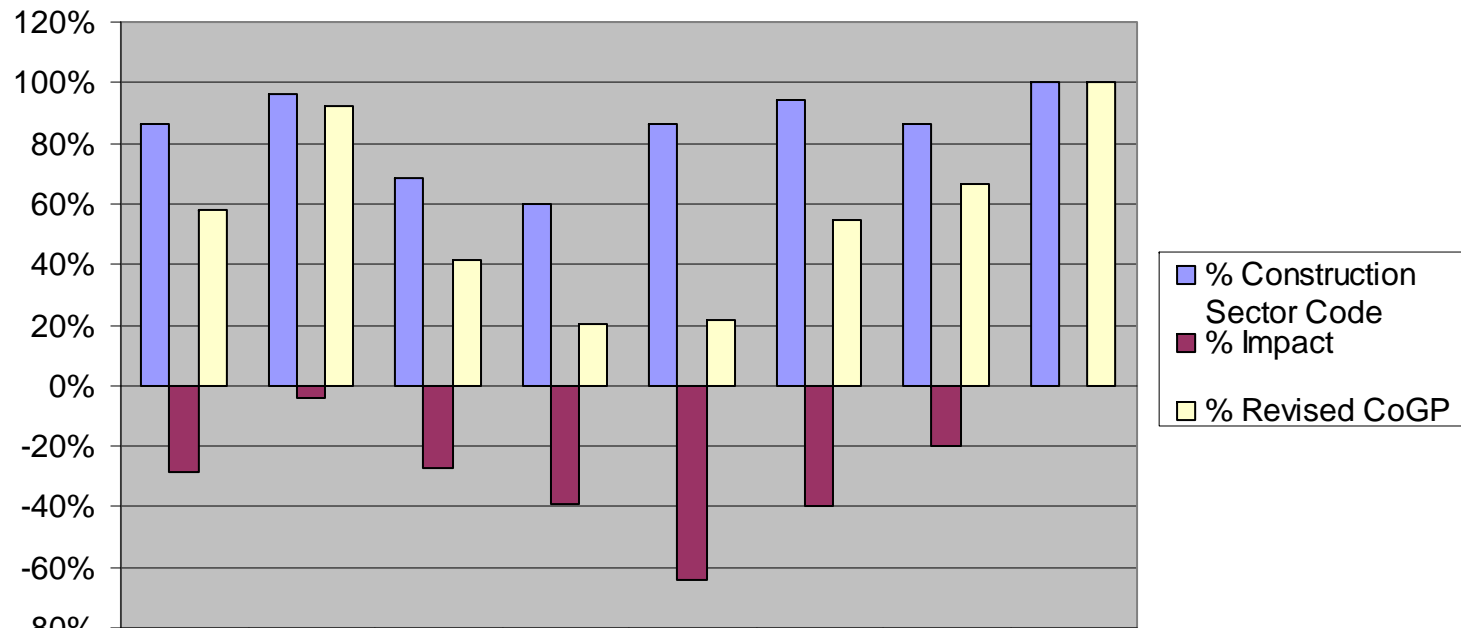
Comparison Graphs

Construction Sector Codes vs Revised BBEE Codes



Comparison Graphs

% Impact of Revised BBEE Codes



	Overall Score	Ownership	Management Control	Employment Equity	Skills Development	Preferential Procurement	Enterprise Development	Socio Economic Development
% Construction Sector Code	86.53%	96.00%	68.28%	59.74%	86.23%	94.01%	86.60%	100.00%
% Impact	-28.51%	-4.00%	-27.06%	-39.21%	-64.32%	-39.59%	-19.93%	0.00%
% Revised CoGP	58.02%	92.00%	41.21%	20.53%	21.90%	54.41%	66.67%	100.00%