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**THE IMPACT AND RELATED COSTS OF IMPLEMENTING CHANGES IN THE
BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BBBEE) CODES OF
GOOD PRACTICE ON COMPANIES LISTED ON THE JOHANNESBURG STOCK
EXCHANGE (JSE)**

By

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**A Research Report
submitted in partial fulfilment of the requirements for the degree
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in the Faculty of Commerce, Law and Management
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Professor Kurt Sartorius

ABSTRACT

Black Economic Empowerment (BEE) or Broad-Based Black Economic Empowerment (BBBEE) is an important means by which the South African government aims to address the social injustices of the past as well as eliminating inequalities between white capital and the black majority (Fauconnier and Mathur-Helm, 2008). The Department of Trade and Industry (DTI) has been tasked with overall responsibility for instituting and monitoring the laws that govern BEE. Since the introduction of the Broad-Based Black Economic Empowerment Act no. 53 of 2003 (Ferreira and Villiers, 2011) and the codes of good practice of 2007, a number of amendments were made in response to deficiencies identified, the most material being the Amended Codes of Good Practice of 2013, which were effective from 1 May 2015.

This research paper sought to investigate the impact and cost implications of the 2013 amendments to the BBBEE Codes of Good Practice (new codes) on companies within the industrial goods and services sector of the Johannesburg Stock Exchange (JSE). This was done relative to the 2007 BEE Codes of Good Practice (old codes). The main purpose of the study was to explore the impact and related costs of implementing the changes in the BBBEE codes on a sample of JSE listed companies obtained from the Empowerdex Top 100 2015 survey. The sample selected was those companies in the industrial goods and services sector.

The methodology used was an exploratory study using semi-structured, in-depth interviews with the executives responsible for BBBEE or transformation, as it sometimes called, in each company. While an interview questionnaire was used, the questions asked were fairly open-ended which allowed the subject to be explored fully in each setting. This enabled the researcher to also understand the practicalities of implementing the BBBEE codes within each company and each industry.

The results of the study indicated that most companies found it difficult to maintain their BBBEE ratings, with indicative ratings showing a likely overall average drop of three levels. In addition, further discounting in the rating may result from not meeting the sub-minimum levels of the three priority elements. These elements are; ownership, skills development as well as enterprise and supplier development (ESD). Overall, in terms of the impact and challenges in implementing the new codes, companies found that the new codes were onerous, complex in some instances, vague in others, with a potential for misinterpretation and possible manipulation. ESD was found to be the most challenging of the new elements to implement and likely to have the most impact on companies, whereas skills development, which has been doubled from 3% to 6% of the payroll leviable amount, had the biggest impact in terms of cost as assessed on the new codes.

Notwithstanding the perceived challenges, companies acknowledged that BBBEE was not only a moral imperative (Fauconnier and Mathur-Helm, 2008), but also a business imperative (Arya and Bassi, 2009) and a licence to trade in South Africa.

The study had four main limitations. Firstly, that companies investigated were selected from the Empowerdex Top 100 most empowered companies 2015 survey, completed in May 2015. Within those, only the ones in the industrial and services sector were included in the study. Secondly, that all companies interviewed, regardless of sector, responded to the questions with respect to the generic scorecard, as no sector charters were enacted at the date of writing the research report. Thirdly, the ability to secure the appropriate number of interviews was key, which may affect the quality of the responses and conclusions reached. Finally, because the new codes were implemented on 1 May 2015, which is less than a year from the date of this research report, there is a limitation that limited information is available on the new codes.

The effective implementation date of the new codes, means that very little research is likely to have been conducted on the new codes; or the likely impact they could have on companies; or the critical changes between the old codes (2007) and new codes (2013). The researcher hopes this study will enable greater understanding of the codes and assist listed and other companies in strategic decision-making (Horwitz and Jain, 2011) and implementation of transformation initiatives. Furthermore, issues raised as contentious, confusing or due for improvement can be further researched and possibly used by policy-makers as input to future changes in the codes.

Further research can also be conducted three to five years from now when the amended codes have been in place for a period that allows implementation by companies. This can either be conducted using a case study that tracks the BBBEE strategies, initiatives and ratings over that period within one company. Alternatively, the researcher can select any one of the five elements and investigate how it has been implemented in different companies over a specific period.

Key words: Broad-based Black Economic Empowerment (BBBEE), BEE, Codes, costs, Empowerdex, ESD, impact, JSE companies, ownership, skills development

DECLARATION

I, Neo Phakama Dongwana, declare that this research report is my own work except as indicated in the references and acknowledgements. It is submitted in partial fulfilment of the requirements for the degree of Master of Commerce in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

Neo Phakama Dongwana

Signed at Johannesburg on 9 September 2016.

DEDICATION

I dedicate this research report to my Father, Martin Thembisile Hani who fought for a free and democratic South Africa, and the principle that South Africa is for all those who live in it per the Freedom Charter.

I am ever grateful to my family for their unending love and patience, especially my husband Siviwe and my three blessings, Lukhanyo, Zukolwethu and Nantombi.

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Abbreviations

AFS	Annual financial statements
BBBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BMF	Black Management Forum
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COS	Cost of sales
CSI	Corporate social investment
CSR	Corporate social responsibility
CV	Curriculum vitae
DTI	Department of Trade and Industry
EAP	Economically active population
ED	Enterprise development
EE	Employment equity
EME	Exempted micro enterprise
ESD	Enterprise and supplier development
ESG	Environmental, social and governance
ESOP	Employee share option plan
HR	Human resources
JSE	Johannesburg Stock Exchange
MNC	Multi-national company
NED	Non-executive director
NDP	National Development Plan
NPAT	Net profit after taxation
OEM	Original equipment manufacturer
QSE	Qualifying small enterprise
SARS	South African Revenue Services
SD	Supplier development

SED	Socio-economic development
SETA	Sector of Education and Training Authority
SETCO	Social and ethics committee
SMME	Small, Medium and Micro- Enterprise
SRI	Socially Responsible Index
UN	United Nations
USA	United States of America

Definition of terms

BEE Act – the Broad-Based Black Economic Empowerment Act no. 53 of 2003.

Black people – this includes African, Coloured and Indian people as defined in the Employment Equity Act 55 of 1998.

Economically active population – those people between the ages of 15 and 64 who either work or are seeking jobs.

Employment Equity – refers to the recruitment and retention of Black people in the workplace, such that there is adequate representation in the workplace.

Empowering supplier – refers to a BBBEE compliant entity, which must meet at least three (if a large company) or if QSE (one) of the following criteria:

- a) At least 25% of COS excluding labour cost and depreciation must be procured locally (for service industry labour cost is included, capped to 15%).
- b) 50% of jobs created since the prior measured period are for Black people, provided the Black employee number is maintained.
- c) At least 25% transformation of raw material/ beneficiation which includes local manufacturing, production and/ or assembly, and/ or packaging.
- d) Skills transfer of 12 days/ annum of productivity deployed in assisting Black EME's and QSE's beneficiaries to increase their operation or financial capacity.

Enterprise and Supplier Development – requires a company to procure from empowered and Black suppliers.

Equity Ownership – relates to measurement of ownership, voting rights and economic interest of Black people in companies.

Exempted micro enterprise – any enterprise with an annual total revenue of R10 million or less.

Management Control – participation of Black people in both executive management, as well as representation at a board level within a company.

Mandated investments – any investment made by or through a third party regulated by legislation on behalf of the actual owner of the funds, pursuant to a mandate given by the owner to the third party which mandate is governed by the relevant legislation. This includes investments made by or for collective investment schemes, insurance funds, pension funds and medical schemes.

New codes – the Codes of Good practice published in Government notice 1019 in Government Gazette 36928 dated 11 October 2013 in terms of the BEE Act.

Old codes – the Codes of Good practice published in Government notice 112 in Government Gazette 29617 dated 9 February 2007 in terms of the BEE Act.

Qualifying small enterprise – any enterprise with an annual total revenue of between R10 million and R50 million.

Scorecard – the scorecard for measuring Black Economic Empowerment set out in code 000 of the codes.

Skills Development – refers to the training, learning programmes and apprenticeships afforded Black people by corporates.

Total measured spend – all goods and services procured by the entity, other than any portion specifically excluded in terms of Statement 400.

CHAPTER 1: INTRODUCTION

1.1 Introduction to BBBEE

Broad-Based Black Economic Empowerment (BBBEE) was introduced as the successor to Black Economic Empowerment (BEE), which came into effect in 1994 (Jack and Harris, 2007). Its main aim was to redress the economic imbalances created by apartheid legislation (Fauconnier and Mathur-Helm, 2008), that excluded black people from participating in the mainstream economy (Kim, 2010). Post the 1994 elections the new government, recognising the need to transform and correct previous economic imbalances (Balshaw and Goldberg, 2014), enacted the Broad-Based Black Economic Empowerment Act No. 53 of 2003 which introduced the Codes of Good Practice. Plaatjies (2014) indicates that various amendments were made, with the main amendments made in 2007, and again in 2011/2012.

On 15 May 2015, the Minister of Trade and Industry, the Honourable Rob Davies, announced the much anticipated effective date for the implementation of the amended 2013 BBBEE codes (de Wet, 2015a), which superseded the 2007 codes. Burger (2014) states that the recent changes, are seen as far-reaching and punitive for companies with an annual turnover of over R50 million. The number of elements that need to be measured have effectively reduced from seven to five (Hareeparsad, 2015). The Department of Trade and Industry (DTI) introduced new measures which made retaining a BBBEE rating level that much more difficult (Werksmans, 2014).

Measures introduced were viewed by business as government adopting “the big stick approach”. These included criminalising fronting (Hareeparsad, 2015), increasing the points attributable to the priority elements of ownership, skills development and enterprise and supplier development (ESD) (de Wet, 2015b). Companies are required to score a minimum of 40% on all three elements, otherwise they stand to have their rating discounted by one level (Balshaw and Goldberg, 2014). It is no longer enough to hire and train black people as there are now additional and specific requirements for women, the disabled and the unemployed, and this has to be done in a representative manner using the Economically Active Population (EAP). A table reflecting the national EAP by race and gender is included under Appendix 3. Accordingly, companies are concerned mainly on two fronts: compliance with the seemingly more stringent changes to the codes (Werksmans, 2014) and the anticipated higher costs of implementation (Kleynhans and Kruger, 2014).

1.2 Problem Statement

The 2007 BBBEE Codes of Good Practice (the old codes), which were introduced as one of the policy tools to redress the economic imbalances of the apartheid past (Acemoglu et al., 2007), have not been very successful (Burger, 2014) in achieving all its objectives (Kim, 2010), which led to their revision in 2013. Over the years their short-comings and some unintended consequences have been highlighted, and implementation challenges identified (Kleynhans and Kruger, 2014). In order to deal with this, the DTI amended the codes to deal with fraudulent empowerment credentials such as fronting (Plaatjies, 2014), and introduced BBBEE monitoring and compliance through the BBBEE Commission, as well more onerous requirements in order to drive a more concerted transformation effort (Werksmans, 2014). These amendments are considered complex in some areas, unclear in others and sometimes confusing to the rating agencies, who must interpret them in order to issue a rating. In addition, to achieve compliance, certain costs will increase (Burger, 2014). These issues were explored further to obtain a better understanding of the impact and costs of compliance when implementing the new codes.

This study used a grounded theory approach because of the limited nature of literature on the impact of BEE legislation in a South African context.

1.3 Purpose of the study

The purpose of this study is to understand how the changes required under the new codes will impact companies, including attendant costs of compliance to the amendments on implementation. Thus, the main purpose of the study is to explore the impact and related costs of implementing the changes in the Broad-Based Economic Empowerment (BBBEE) Codes of Good Practice on companies listed on the Johannesburg Stock Exchange (JSE).

1.4 Significance of the study

The 2013 codes only became effective on 1 May 2015, which is likely to mean that very little, if any, research has been undertaken on the critical changes in the codes between 2007 and 2013, or the likely impact they could have on companies on implementation. Previous research on BBBEE legislation has been based on the 2007 Codes and attendant amendments, approached from different perspectives including share performance (Mafohla, 2011) and funding structures (Plaatjies, 2014). From literature reviewed, it appears that much of the research was focused on ownership and how BBBEE deals impact on the share prices, or the effect of BEE ratings on share returns (Ferreira and Villiers, 2011).

The research is important in understanding how the changes impact on companies as well as evaluation of the costs of compliance. The benefits of the research are not only limited to listed companies but extend to all other companies, and may assist in strategic decision-making and the implementation of selected transformation initiatives (van der Nest, 2004). Furthermore, issues raised as contentious, confusing or due for improvement can be further researched and the results thereof considered in future amendments to the codes.

1.5 Research Questions

There are three research questions that will need to be answered, by this exploratory study into the changes that the BBBEE codes have on the JSE listed companies selected, in order to appreciate the likely impact and attendant compliance costs. These research questions will also answer the more general questions of what is working in the codes and what may not be working as well, such that it may inform future changes in BBBEE legislation:

- a) How will the new legislation /codes affect a company's new BBBEE rating?
- b) What are the likely implementation challenges envisaged in implementing BBBEE under the new codes?
- c) What are the cost implications of compliance with the amended codes?

1.6 Assumptions

In order to understand and appreciate the impact of the new codes on a company's BBBEE score, a critical assumption made in this research is that the executives selected and interviewed are experts on the subject of BBBEE and therefore sufficiently knowledgeable on the issues being explored, particularly within the companies in which they operate. In addition that the respondents will be prepared to openly and honestly share their views on BBBEE, such that the results will be valid and sufficient to enable analysis (Mbiza, 2007).

A further assumption is that all companies respond to changes in the amendments on the basis of the generic scorecard. This is because sector charters have not yet been promulgated and even when they are drafted, the basis thereof will always be the generic scorecard. As such all companies regardless of sector will consider the impact of amendments in the codes on their company, using the amended generic scorecard as the foundation of all sector charters.

1.7 Limitations and Delimitations

A delimitation of the study is that companies were investigated only if they were listed on the JSE in the industrial and services sector, and if they appeared in the Top 100 Most Empowered Companies survey, conducted by Empowerdex in May 2015, and based on the valid verified BBBEE certificates in 2014. Furthermore, only companies that had their head offices in Johannesburg were approached for interviewing purposes.

A limitation of the study is that all companies were required to use the generic scorecard, as no sector charters were enacted at the date of research proposal. A further limitation of this study results from the nature of the research tool used, which was an interview questionnaire. This means that the ability to secure the right number of interviews as well as the quality of responses, may have affected the conclusions. However, none of the research results from the sample used were generalised to the population from which it was chosen.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

The objective of the literature review is to explore the aim of BEE, the historical background that is relevant to it becoming a government imperative, the journey of BEE since inception when the Codes were enacted to date. This includes exploring each of the elements, in terms of their definitions, the challenges that have been encountered in their implementation that may have resulted in revision of the law as explored through existing literature. An understanding of each of the elements, being ownership, management control, skills development, as well as enterprise and supplier development and socio-economic development was also obtained through not only the old code and the new code, but various journals, books, articles and theses. Through these the researcher hopes to explore the impact the old codes have had on companies and hopefully gain insights into the reasons why the codes were changed in the manner that they have, with certain elements weightings in the generic scorecard increased, while others have decreased. Through this initial assessment one can be provided with a clue of the likely impact and cost of compliance on these companies as well as any unintended consequences.

2.2 Background / Context

Apartheid resulted in the economy being owned and run only by white people (Tangri and Southall, 2008), as black people were legally barred from owning natural resources, having access to education, jobs, and from having the right to own land (Kim, 2010). To reverse this, legislation requiring South African companies to comply with BBBEE principles, policies and practices to increase the participation of black people in owning, managing and controlling South African companies (Werksmans, 2014) was introduced. In addition, companies were encouraged to train and develop the skills of black people and to aim for their equitable representation across the different levels in organisations. Stakeholders also expected companies to behave like good corporate citizens and donate a percentage of their profits to projects or charities dedicated to the upliftment of the lives of black people (Balshaw and Goldberg, 2014).

For all this, companies are measured across five areas, which enables them to get a BBBEE rating, namely; ownership, management control, skills development, enterprise and supplier development as well as socio-economic development (Republic, of South Africa (2013)). In order to assess the level of compliance for each of the companies, a scoring system attached to all the BBBEE elements was introduced which through the use of indicators, allows an accredited verification agency, to annually verify and issue a certificate with points from 1 to 100 (plus some extra bonus points) indicating the empowerment level of each company (Hareeparsad, 2015). Appendix 1, shows the empowerment recognition levels, with Level 1 being the most empowered company, while level 8 is the lowest. However, there can also be a “non-compliant” company.

2.3 Overview of Broad-Based Black Economic Empowerment (BBBEE)

BBBEE is government's policy to ensure that its policies such as the National Development Plan (NDP) come to life, by requiring companies to promote supplier development, industrialisation, localisation, job creation and skills development (Hareeparsad, 2015). This is done to give preference to the previously marginalised black people, and by so doing begin to eliminate the inequality gap. Others may view it as reverse discrimination (Kim, 2010), this right is enshrined in the Constitution under Section 9 of the Bill of Rights which states (Horwitz and Jain, 2011) (p. 4):

"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken".

As such, BBBEE continues to be used as the driver of economic transformation, regardless of the criticism levelled against it by its detractors (Kim, 2010), some of whom view it as costly, a risk, and value-destroying (Jeffrey, 2014).

2.4 Ownership

Ownership, defined as the transfer of equity through voting rights and economic interest to black people, is the element that has historically received the most focus (Bowman Gilfillan, 2010) and would appear to also be the most emotive and controversial (Ferreira and Villiers, 2011). Under the old codes, ownership together with preferential procurement, were the highest scoring elements, at 20 points each. It can be argued that under the new codes, ownership has been somewhat de-emphasised, although increased to 25 points, while supplier and enterprise development which together account for 40 points, are the focal point (Balshaw and Goldberg, 2014). It is interesting to note that this recommendation was made by (Acemoglu et al., 2007) at (p. 2) when they stated:

"The weights in the BEE Codes should be changed to downgrade ownership and increase the importance of enterprise development and skills development".

However, it is one of the three priority elements, which if not met, results in a company's rating getting automatically discounted by one level. Fauconnier and Mathur-Helm (2008) showed that over the ten years from 1996 to 2006, the value of BEE deals increased exponentially, however the trend in those days was that of narrow-based BEE deals. To illustrate this point, they note that in 2003, two black businessmen were the beneficiaries of 60% of the total empowerment deals done in that year amounting to R25 billion. This type of empowerment that enriched the few influential individuals (Horwitz and Jain, 2011), did not change the lives of the poor majority disenfranchised blacks (Jeffrey, 2014). To address this, broad-based deals, which included employees, and/ or community-based groups, started being included in BEE deals. A 2015 survey by Intellidex on the 100 largest companies on the JSE indicated that the BEE deals conducted since 2000, have created over R317 billion worth of value for their beneficiaries (Intellidex, 2015). Of this amount 62% went to strategic investment partners, while 16% and 22% respectively went to staff and broad based communities. The deal value measured was after all debt and any other financial obligations had been taken into account, which is an indication that BEE deals can create value for all shareholders.

Since the announcement of the amended codes, the number of BBBEE deals has declined markedly, with those companies who do not have existing BEE deals in place, seemingly adopting a "wait and see" attitude (Moneyweb, 2013). However there have been a few companies announcing BEE deals, such as the one by PPC Limited in 2012. Other concerns raised include uncertainty around the principle of "once empowered, always empowered" (Moneyweb, 2013). Companies remain unclear about whether the principle, which would effectively allow companies to retain their ownership points after the BEE shareholders have divested, is in force or not. Jeffrey (2014) points out that the detractors of this principle worry that should it be implemented, then effectively BEE ownership deals would cease because white companies would hold onto their empowerment credentials into perpetuity.

In spite of the lull in BEE deals, the issue of ownership of resources for black people remains firmly on South Africa's agenda. Jackson III et al. (2005) state that companies that have done BEE equity deals are seen as "good corporate citizens" and as a result have received positive media attention. However, the ownership element remains the most hotly debated topic, such that there is not even consensus on definitions such as the percentage ownership by blacks of JSE shares, not to mention the definition of ownership by blacks of companies listed on the JSE. A 2013 study by the JSE reflected direct black ownership at 10%, with this number increasing by a further 13% when mandated investments were included (JSE, 2015). These figures were strongly disputed by the likes of Empowerdex, and the Black Management Forum (BMF), who indicated that once debt was considered the figure was only 1.8% (Jeffrey, 2014). In 2015 the President, Jacob Zuma, also weighed in on the debate saying that ownership by black people on the JSE was overstated, and only stood at only 3%. From this debate it is clear that ownership and its importance to all stakeholders cannot be over-emphasised.

Under the old codes, implementation of ownership schemes was seen as narrow, with deals largely circulating among the few politically connected individuals ((Acemoglu et al., 2007). With the amendments, government sought to broaden the base of beneficiaries by giving extra points for new entrants. In addition, there were issues of principle and those related to implementation. Under matters of principle, (Esser and Dekker, 2008) identified two schools of thought on directors fiduciary duties, the first being the "enlightened shareholder value" approach, which is aimed at maximising shareholder value. The second was identified as "the pluralist view", which saw shareholders as only one group of stakeholders, which included employees and suppliers. It further stated that directors should act in the interests of all these stakeholders. Esser and Dekker (2008) believe that balancing the interests of all stakeholders leads to company success and good corporate governance. This is in line with both the principles of The King Report on Governance for South Africa, 2009 (King III) and the requirements of BBBEE.

Jeffrey (2014) and Plaatjies (2014), among other authors, identify a number of implementation challenges relating to ownership under the old codes as:

1. **Accessing equity** – according to Jeffrey (2014), South African companies have long embraced divesting of a portion of their business, when it was still voluntary. This is however contradicted by (Balshaw and Goldberg, 2014) who indicate that many white-owned companies view this as giving away what they have built with their own sweat and tears, and are therefore reluctant. Another bone of contention is the discount which (Jackson III et al., 2005) estimated to be 10% to 15% (from prevailing market prices) given to black shareholders (Acemoglu et al., 2007), as that means a dilution to other shareholders, and also entails a cost (Kleynhans and Kruger, 2014). Most deals involved a 25% stake spread across certain individuals and various groups, which called into question when and if they would effectively own the shares, considering that markets move up and down, and some deals, even after 10 years, ended up under water (Intellidex, 2015). That said, it also meant that the companies needed to declare dividends in order to enable the new black shareholders to service the interest and capital on their loans. Finally, the length of the lock-in periods was sometimes identified as too long and unfair. However, it was in the interests of the company to want to retain its black empowered status for as long as possible, while the black shareholders may want to liquidate their shareholding and realise the funds. This created conflicting interests amongst the different parties.
2. **Accessing finance** – Plaatjies (2014) in his research identified BEE funding, as a limiting factor to making the ownership element a reality. Very few black shareholders, especially in the early 1990's had the kind of capital or balance sheets to fund BEE deals running into hundreds of millions or billions of Rands. This meant that banks had to play a huge role in funding these deals, often with the underlying shares used as security for the transaction. Later after the learnings from previous structures and the 2008 crash, more sophisticated and complex funding structures involving debt and equity were used. Notwithstanding the involvement of banks, funding still remains the single biggest limiting factor to BEE and particularly to effect the ownership element.

2.5 Management Control

Management control encompasses board participation and employment equity, which speaks to the representation of black people at management level (Kleynhans and Kruger, 2014).

This encourages participation of black people and particularly black women to have meaningful roles with respect to decision-making within businesses. Employment equity (EE) is akin to affirmative action that has been used as a tool for economic imbalance redress around the world (Acemoglu et al., 2007). A lot has been written about affirmative action particularly in the United States of America (USA), where discrimination against black people was also rife and legislated (Horwitz and Jain, 2011). The difference between the USA and South Africa, is that in South Africa blacks are in the majority, at 80% of the population but account for 17% of the wealth/ income (Cohen, 2012), whereas in the USA blacks only account for 13% of the total population as at July 2014 (Bureau, 2014).

Under the new codes management control accounts for 25 points, which is unchanged from the old codes when management control was 10 points and employment equity was 15 points (Republic, of South Africa (2007)). The two elements were just combined under the new codes (Balshaw and Goldberg, 2014). This element recognises that board participation of blacks (Arya and Bassi, 2009) and particularly black women, at both executive and non-executive director levels is important. Jeffrey (2014) suggests that this has created great demand for experienced black directors, as well as women executive directors, black executive directors and black management at all levels. This is evident in professions like chartered accountancy, where in particular black female chartered accountants are well sought after for executive positions or as non-executive directors (SAICA, 2014b) and members of company audit committees.

While the number of black directors on the JSE have increased in the last 25 years, they still remain under-represented at 1,046 in 2012 (Empowerdex, 2012). Of that 1,046, only 344 or 33% were black women directors. Nonetheless this is a huge improvement from the 15 black directors of JSE listed companies in 1992. However, a closer examination of the results shows that the growth of black directors is in the non-executive director (NED) levels (83%) as opposed to executive positions of 17%, which explains why the new codes have increased the points attributable to different levels of executive management and removed the bonus points for NED's. This is corroborated by (Horwitz and Jain, 2011) who observes that there is tendency for companies to appoint black people to NED rather than executive roles.

Arya and Bassi (2009) state that employment equity focuses on the elimination of unfair discrimination in the workplace and therefore equitable representation of executive management, being senior, middle and junior management, and specifically also encourages the hiring of women in all these positions. Jackson III et al. (2005) believe that even though there is an increase in the number of black professionals, there still prevails a perception that black talent is scarce. This will inevitably affect the ability to recruit at the right levels and achieve the goals of EE, management control and therefore BEE. Nonetheless South Africa has a plethora of legislation that governs employer and employee relationships, with the specific purpose of addressing imbalances of the past and inequality in the workplace.

Booyesen (2007) (p. 47) states:

"These include the Labour Relations Act of 1995, which took effect in 1996, the Constitution of South Africa of 1996, and the Basic Conditions of Employment Act of 1997. Next came the Employment Equity (EE) Act of 1999 (amended in 2004), which contained anti-discriminatory provisions, the Skills Development Act of 1998, and the Skills Development Levies Act of 1999. Finally came the BEE Act and codes of good practice".

These laws, while promoting representivity of black people within companies, fail to effectively address two major factors, the first being to recruit black people, particularly at the more senior levels and secondly to retain them within these companies (Booyesen, 2007). The Commission for Employment Equity (CEE) Chairperson made a number of concerning observations in the 2014/2015 EE submissions, amongst which were (Labour, 2014) (p. 7):

- a) “Deep whole syndrome” – where the employee profile becomes darker as one goes lower within an organisation.
- b) “Missing women phenomenon” – described as the lack of representivity of women relative to men, in senior and middle management roles, relative to the EAP or even country demographics.
- c) “Some groups being more designated than others” – where Indians and white women are over-represented at senior and middle management levels relative to the EAP.

Companies believe that it is expensive to hire qualified black people and that since they are relatively few, the recruitment costs are high and that they demand high salaries.

Furthermore, they are accused of a phenomenon called “job-hopping”, which means that an employee keeps leaving a job for ever-increasing salaries. There is, however, a different view of why there are high attrition rates of black employees. A study by (Booyesen, 2007) identified the following reasons:

1. Organisational cultures that do not value diversity.
2. Leadership of the organisation pays lip service to EE and therefore demonstrates low commitment to EE.
3. Corporates generally being white male dominated, often act to the exclusion of other cultures, whether knowingly or unknowingly.
4. Absence of cultural sensitivity, such that new recruits are expected to assimilate into the pre-existing organisational culture.
5. Slow EE progress at management level and inconsistent progress across the rest of the organisation.
6. Ineffective consultation and communication around EE progress and implementation.
7. Organisations where black people may be given token positions, without the attendant responsibilities, which then plays to the stereotype.
8. Black staff are not adequately trained and developed.
9. Absence of black role models or mentors available.

From the findings above it is clear that work needs to be done in the workplace to make it conducive to not only attracting black people, but to be able to also effectively retain them.

2.6 Skills development

Under the apartheid government, the education system particularly for black people was deliberately underfunded and of a poor quality (Erasmus and Breier, 2009). This has had long-ranging consequences, as not only has it entrenched a cycle of poverty among black people in general, but that the education system is still struggling to overcome the years of neglect and dysfunction. This is the main reason for the skills shortage in South Africa (Arya and Bassi, 2009), whether at artisan or professional level. There just have not been enough resources to go around to manage and improve the education levels of the majority of South Africans, the bulk of who are black. This has a direct impact on the unemployment rate currently measured by Statistics SA at 24.5% (Statistics SA, 2016), as certain vacancies are unable to be filled. Basic literacy and numeracy remain a hindrance to SA's projected economic growth rates, which are very low.

Under the old codes skills development counted for 15 points, and targeted spend on black staff was pegged at 3% of total payroll. With the advent of the new codes, skills development now accounts for 20 points, plus a further potential 5 bonus points for placing unemployed people in jobs. Additionally, the targeted spend has doubled to 6% of total payroll, all of which is over and above the existing skills development levy, which, legislated by the Skills Development Act 97 of 1998, already set at 1% of payroll (Jeffrey, 2014). This is the most obvious increased cost in BBBEE compliance when comparing the old codes to the new codes, particularly for labour intensive industries, such as those that fall within the industrial goods and services category. Furthermore, skills development is a priority area, as identified by government, and if the 40% sub-minimum is not met, the company's BBBEE rating will be discounted by a level.

The poor quality of matriculants, particularly black ones, means that few enter the tertiary system and even less graduate (Horwitz and Jain, 2011). This means that the potential pool of qualified employees is limited, resulting in fewer positions, especially at management level, being occupied by black people. This will continue to be a hindrance to both employment equity, management control and skills development for some time to come, because in order to train black staff, they first need to be hired.

Werksmans (2014) states that the new codes appear stringent, prescriptive and at times confusing in terms of their requirements. Not only has the absolute spend increased, but the monitoring and reporting appears onerous. This is because the training must now be conducted only on recognised and accredited programmes, and each company must train and measure according to the EAP (economically active population) statistics, per race and gender (Balshaw and Goldberg, 2014). The EAP national statistics which are disclosed in Appendix 3, indicate that more training needs to happen for the African population, as they represent over 75% of the EAP, which may be hindered by whether the company actually has 75% of their employees as African. In addition, the learnerships and training must be accredited, which means most require a formal assessment upon conclusion. Companies who must already pay the 1% of payroll to the sector education and training authorities (SETA), complain that these institutions are not functioning effectively (Horwitz and Jain, 2011) and they view this as a levy or tax. Now, with the increased requirement on spending it feels like double taxation.

On the other hand, it is fair to state that companies recognise the dire need to train. However, they want to direct their efforts and spend in the strategic direction that makes business sense for each organisation and employee. There are realities and practicalities around training, especially around employees who must want to be trained, as well as the economics of the training costs versus the benefits of spending the money, not just to score points but to develop meaningful skills.

2.7 Enterprise and Supplier Development (ESD)

Government recognises that the gargantuan problem of unemployment in SA, particularly of the youth, can only be resolved by job creation in the small and micro enterprise (SMME) sector (Rogerson, 2013). Statistics SA indicate that unemployment is currently at 24,5%, while black youth unemployment is the highest among the 15 to 24 and 25 to 34 age group, regardless of qualification (Statistics SA, 2016). Others believe the statistics conveyed by Statistics SA represent a conservative view that depends on their definition of the term “unemployed”. Government and big business realise that they cannot resolve the unemployment challenge alone, as there are limited unoccupied positions in both sectors. Much has been written about the hope of job creation coming from the SMME sector (Horwitz and Jain, 2011), with statistics such as up to 80% of jobs being likely or expected to come from this sector.

To facilitate this process, the DTI under the old codes introduced supplier development, which was referred to as “preferential procurement”, where a company was encouraged to buy from black-owned companies, which in turn stood to increase their BEE scores. This was not without its challenges, as issues of poor quality of service, lack of capacity to deal with big orders, and over-pricing of goods and services were identified as issues that crept up in dealing with these smaller black-owned companies (Jeffrey, 2014). The issues identified resulted from, amongst others, lack of experience in the particular field, resulting in quality control issues. Inadequate funding or capital to fund working capital to deliver on contracts, which then translated into capacity issues in delivering large orders and sometimes increasing margins, as the black company may have resold particular goods which were sourced elsewhere and then on-sell them at their own mark-up in order to generate a profit.

Enterprise development (ED) under the old codes sought to encourage companies to fund the growth and development of small enterprises by investing 3% of their NPAT into them as well as and providing them with other business support. A number of these businesses which needed to be at least 51% black owned were start-ups and as research shows, 90% of them fail in their first year of operation, hence the need for incubation. While the majority of these investee companies failed, it meant that the companies lost the funds invested – but still managed to score the attributable points as the loan(s) remained outstanding. There was also ambiguity in the past as some companies spent 3% annually on ED, while others spent and were thus measured on spending the 3% cumulatively.

The new codes combine enterprise development (ED) and Supplier Development (SD) under SED and allocate 40 points to it, which is the single biggest element and is also one of the priority elements, which if not met, results in the overall BBBEE score being discounted by 1 level. It is clear that there is an overriding requirement to create black industrialists and create a market for black-owned businesses (Rogerson, 2013), by encouraging businesses to manufacture and procure locally. In this regard, the import exclusion, which allowed companies that imported goods to have those specifically excluded from total measured spend or total procurement spend, are now limited to goods that are not available locally or that carry a third party brand (in bound MNC). Even with the allowable exclusions companies must still present an ESD plan to “localise” the imports in some way. The only permissible exclusions currently are: taxation, which includes levies and rates paid to a municipality, salaries and wages and agent/ consignment stock recorded in the other party’s annual financial statements (AFS) but not in the measured entity’s AFS (Balshaw and Goldberg, 2014).

It appears that companies had mastered ED more than preferential procurement and now that there are specific requirements to spend an overall 3% of NPAT on QSE and EME, the first step is to identify them and conduct a due diligence on whether a potential black investee meets the company's set criteria before any work can commence. This in itself is a process that is likely to be time-consuming and challenging in industries where no local black suppliers exist. It requires companies to be innovative and think differently on how to create companies from whom they will procure and that will, more importantly, be sustainable in future.

2.8 Socio-economic Development

Wolmarans and Sartorius (2009) state that one of the ways in which BBBEE can be viewed is a form of corporate social responsibility (CSR). This works where white individuals and white companies acknowledge that the apartheid system that was entrenched in all facets of South African life, benefited them at the cost of black people (Jack and Harris, 2007). As such, BBBEE is a much-needed wealth redistribution mechanism and "the right thing to do" from a social conscience or CSR point of view (Arya and Bassi, 2009). This seems to be congruent with the definition of CSR according to (Esser and Dekker, 2008), who believe CSR results when companies are willing to expend resources voluntarily towards a cause with no immediate economic interests.

The issue is whether this is done voluntarily as stated above, or as a result of legislation such as BEE or guidelines such as King III, which promote the triple bottom line, sustainability and being a good corporate citizen. Some have argued that ultimately, whether CSR or CSI is done voluntarily or using some compulsory measure, in the long term the company benefits. It appears that both management and directors as custodians of each company's future sustainability recognise that it cannot exist without due consideration of social, health and safety as well as environmental factors. Further, that companies do not exist in isolation and therefore whatever their values with respect to the aforesaid, they must be extended to companies with whom they associate themselves. Additionally, the principle that the responsibility of ensuring profitability and sustainability of the company must be primarily for shareholders and not extended to other stakeholders such as employees, suppliers, customers and communities, is outdated. Companies therefore need to identify and constantly engage with their stakeholders, which serves as a risk management tool as well.

Companies listed on the JSE, are required to comply with Chapter 1, principle 1.2 of King III which have now been incorporated in the JSE listing requirements. This has led to a number of companies who prefer to use the gap of "explaining" instead of complying with King III, declining over time. In addition, Section 72 of the Companies Act 71 of 2008 introduced the requirement that every listed company must have a social and ethics committee (SETCO). The mandate of the social and ethics committee is to amongst other issues oversee key environmental, social and governance (ESG) issues. (Herringer et al., 2009) identify the key ESG issues in South Africa as amongst others corporate governance, sustainability, employee and gender relations issues, as well as BEE. In addition, most companies, through their SETCO terms of reference, adhere voluntarily to the principles of the United Nations (UN) Global Compact and the JSE Socially Responsible Index (SRI). As JSE listed companies are required to be assessed on the SRI, which has BEE as one its core areas of assessment. From a reputational perspective, compliance with the above guidelines and regulations contribute to how a company is viewed by all stakeholders.

Jeffrey (2014) maintains that companies in South Africa have historically (even before 1994) been good at corporate giving/ supporting good causes. In that respect all the old codes did was introduce a monetary amount equal to 1% of net profit after taxation (NPAT) to initiatives benefiting black people. Jeffrey (2014) also maintains that CSI spending in SA is much higher than in the East or Europe. The new codes have been unchanged in this regard. According to research conducted by KPMG and Trialogue, companies are more than happy to do CSI, as they see the amounts spent as a moral imperative and the easiest of the elements to score (usually the maximum 5 points), as such compliance with BEE is seen as a bonus. Finally, South Africa with its historic legacy provides companies with many opportunities to make a difference, which in turn gives those companies a good reputation to all its stakeholders and positive publicity. Horwitz and Jain (2011) indicate that a number of companies typically choose to support initiatives, amongst which education takes centre stage.

2.9 Analysis of the major changes in the codes and underlying reasons driving the change.

The most effective way to appreciate the changes in the generic scorecards is to place them in a comparative tabular form, as in Table 1:

Table 1: Generic Scorecard

ELEMENT	WEIGHTING		CHANGE	NOTES
	2007	2013		
Ownership	20	25	+5	a
Management Control	10	15	+5	
Employment Equity	15	-	-15	b
Skills Development	15	20	+5	a
Preferential Procurement	15	-	-15	c
Enterprise Development	15	-	-15	c
Enterprise and Supplier Development	-	40	+40	a
Socio-Economic Development	5	5	-	
Total minimum points	100	105	+5	
Bonus points	7	13	+6	
<i>Ownership</i>	3	-	-3	
<i>Management control</i>	1	4	+3	
<i>Employment equity</i>	3	-	-3	
<i>Skills development</i>	-	5	+5	
<i>Enterprise and supplier development</i>	-	4	+4	
TOTAL POINTS	107	118	+11	

Source: (Werksmans, 2014)

Notes:

- a. These are priority elements
- b. Employment equity was subsumed into Management control
- c. Preferential procurement and Enterprise development were combined into Enterprise and supplier development (ESD)

The points attributable to the ownership element have increased by 5 points, which would imply that the DTI wants continued focus on this element. However, the indicators remain largely the same. Economist et al. (2015) state that management control under the new codes is now combined with the old employment equity element (Balshaw and Goldberg, 2014), as it now seeks to measure representation of black employees, those in executive management, and black directors. Skills development is seen as a priority element by the DTI as is evident from the increased points, also by 5 points. In addition, companies are rewarded for training unemployed people and receive bonus points for employing them.

Enterprise and Supplier Development (ESD) is considered to be the most important measure as it now accounts for 40 of the total attributable 105 points. This is the element that seeks to create black industrialists, by driving a combination of enterprise development (ED), supplier development (Hareeparsad, 2015) and preferential procurement. A company that does not get this element right invites serious consequences, as this is the element that defines empowering suppliers. Should any company not be an empowering supplier, it stands to significantly undermine its BBBEE rating.

2.10 Perspectives on the changes, including expected impact and cost of compliance for companies.

The amended Codes of Good Practice effective from 01 May 2015, measure companies on a changed Generic Scorecard (de Wet, 2015). Companies are worried about the new requirements as they appear more onerous and difficult to meet (Hareeparsad, 2015). An example is that previously a company only needed to score between 65 and 75 points to get a Level 4 rating, but in the amended codes the company would have to score at least 80 points in order to maintain the same level. (This is demonstrated in Appendix 1, showing the changes in the BBBEE recognition levels).

Hareeparsad (2015) indicates that the new BBBEE scorecard elements to be measured have reduced from 7 to 5 for the Generic Scorecard being, equity ownership; management control; enterprise, ESD; and socio-economic development. More points have been allocated to ESD at 40 points (previously 25 points when combining ED and preferential procurement). Both ownership and skills development have increased by 5 points each. In addition, the indicators which allocate the scoring within each element have changed, in some instances quite significantly. However, the bottom line is that companies will really need to understand the new codes in order to implement them, as new requirements have been introduced that limit scoring where certain sub-minimum thresholds have not been met (Hareeparsad, 2015). These have serious consequences for scoring points at all within an element and could even result in dropping a rating immediately if these sub-minimums are not met. The three elements termed “priority elements” where this is applicable, are ownership, skills development and ESD.

Empowerdex (2014) states that evidence from a number of companies shows that they stand to drop by at least three levels were they to be verified against the new codes today without changing their strategy, policies and procedures. While this may have more dire consequences for some companies, it also has introduced an air of despair to others who maintain that the new codes are too stringent, confusing in certain instances, costly to implement and frankly not worth the effort (Burger, 2014). There are those companies that view this type of outlook as short-sighted in the context of a need to transform the economy and remain dedicated to implementing the new codes as best they can, given their competing demands for resources, including human resources, time and other resources (SAICA, 2014a). According to de Wet (2015a) the transformation agenda and ultimate BBBEE strategy is followed by any company is a board responsibility. The implementation thereof can be delegated to management and staff, but must be directed and monitored from the top.

2.11 Unintended consequences of BBBEE

The BBBEE codes have also resulted in some unintended consequences, which may have been exacerbated by some of the amendments. While BBBEE was introduced to address among other issues the income inequality (Hareeparsad, 2015), as statistics shown by the Gini coefficient that the gap has widened between the rich, mainly white and poor, who are still predominantly black. Fauconnier and Mathur-Helm (2008), (Wolmarans and Sartorius, 2009), and (Kim, 2010) point out that BBBEE has enriched the politically connected few, while the intention to spread the wealth to a wider base of people has not happened (Balshaw and Goldberg, 2014). There is also the balance of social and commercial requirements that businesses struggle with in pursuing their profit motive (Wolmarans and Sartorius, 2009). The one area where this will become even more of an issue is on skills development, where not only the amount that companies must spend has doubled from 3% to 6% of the leviable payroll amount (Balshaw and Goldberg, 2014), but that there are also additional requirements to train unemployed people and bonus points to then employ them. This is challenging in an economy that is projected to continually decline.

The recruitment using the EAP formulae with reference to representivity, can also lead to situations where people are hired to maximise scores as opposed to effect true empowerment, especially in the lower rungs of management where black people are likely to be over-represented (Balshaw and Goldberg, 2014). A general unintended consequence relates to corporate fatigue from the ongoing changes and a sense that the cost of compliance with BBBEE outweighs the benefits (Burger, 2014). Balshaw and Goldberg (2014) suggest that compliance gives companies the licence to trade with all other customers and suppliers, while (Hareeparsad, 2015) identifies the ability to access government spend, incentives on offer, licences and concessions as a benefit of compliance. Stakeholders generally view an empowered company as a good corporate citizen and contributes to increasing shareholder wealth (Wolmarans and Sartorius, 2009). Despite all this, BBBEE is a reality (Kim, 2010), and a business imperative in South Africa; each company's board and management must decide on the strategy to be adopted, while understanding the challenges, costs and initiatives required to achieve a desired rating (de Wet, 2015b).

2.12 Conclusion of the Literature Review Chapter

The review of the literature showed that while there are some books, journals, articles and other reference sources that the researcher found, reference materials on the topic of BEE are not as freely available, as it not as well researched a subject as others. The reason for this is mainly two-fold, 1 – BEE in its form is unique to South Africa; 2 – The BEE Act was only introduced in 2007, even though many argue that different forms of BEE were already being practiced as far back as 1994. Either way this topic is relatively new, especially when one considers comparison of the new codes to the old codes and the likely impact on companies and attendant costs. BEE remains government's main tool to redress the imbalances caused by the Apartheid laws. It aims to continue to bring black people into the mainstream of the economy, through equity ownership of companies, despite challenges of funding and the decline in new BEE deals. Management control focuses on equitable representation of black people in both executive and non-executive roles.

The development of skills of blacks through training and mentorship has become more of a focus area, with spend doubling. Enterprise Development (ED) and Supplier Development (SD) have been merged to become Enterprise and Supplier Development (ESD) which now counts for the highest points at 40 points. Socio-Economic Development (SED) which is akin to CSI is well accepted and entrenched within corporates. Most companies score maximum points on this, as not only is it reputationally beneficial, but is now monitored by Board committees such as the Social and Ethics Committee. These changes in the elements from 7 to 5 and attendant attributable point changes, give clues as to some of the reasons for changing the codes. The changes in the codes per element were explored and indications are that most companies are likely to drop their ratings. In addition, there are sub-minimum elements, which if not met will result in discounting of the company BEE rating by one further level.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Introduction and overview of Methodology

The research involved assessing the major differences between the old codes (2007) and the new codes (2013); the impact, if any, of the amendments on a sample of listed companies; examining any implementation challenges and where possible, assessing the likely costs of compliance with the amended codes. The research method used was a qualitative study, exploratory in nature, done by conducting interviews using a semi-structured questionnaire that mainly consisted of open-ended questions. This enabled the researcher to delve deeper into any issues and themes identified during the interviews. The researcher devised the interview questions from the literature that was reviewed. The literature was read, interpreted and analysed together with the respective gazetted 2007 and 2013 codes, which were also examined.

Mbiza (2007) (p. 14) who also used semi-structured in-depth interviews in conducting his qualitative research states:

“According to Leedy and Ormrod (2001) the purpose of qualitative research is to answer complex phenomena, this is often done with the purpose of getting an understanding of such phenomena from the respondents’ perspective...”

Leedy and Ormrod (2013) (p. 140) state further that qualitative research studies may achieve one or more of the following objectives:

1. *Describing* the multi-faceted nature of certain situations, settings, processes and relationships.
2. *Interpretation* brought about by enabling the researcher to gain new insights, develop new concepts/ theories or discover problems about a particular phenomenon.
3. *Verification* brought about by permitting the researcher to test the validity of certain assumptions, theories or generalizations within a real-world setting.
4. *Evaluation* of the effectiveness of particular policies, practices or theories.

The reason a qualitative research method was chosen was that the researcher, having reviewed the available literature, recognised that BEE legislation had recently changed and was a developing subject. Furthermore, BEE is a complex social phenomenon influenced by a number of factors and the quantitative research method allowed the researcher to explore in real-life, how the people that implement it on a daily basis in corporates, deal with its implementation challenges. The researcher, as an active listener would share the story as it unfolded and by sharing the experiences of others in the same field, hopefully add to the understanding of the topic.

3.2 Population and Study Sample

Empowerdex, which is regarded as South Africa's leading verification agency (Ferreira and Villiers, 2011) and barometer of black empowerment among JSE-listed companies, has undertaken an annual assessment of the businesses' success in meeting BEE scores for the last 14 years. Empowerdex (sometimes in partnership with other companies) has researched and published a list of the JSE's "Top 100 most empowered companies". The 2015 research was conducted in conjunction with specialist research firm Intellidex, who produced the editorial and analytical reports for the 2015 results. The 2015 list was the last set of rankings based on the 2007 Codes of Good Practice. Next year's survey will measure companies in line with the new codes. It therefore made sense to use the Empowerdex 2015 rankings of JSE listed companies as the population for purposes of conducting this study. According to this survey each company is ranked according to its most recent verified BEE score. The research was completed in May 2015, with the results initially due for release in June 2015, but were ultimately released in September 2015.

3.2.1 The Population

The population as defined, was data obtained from the 2015 Empowerdex Top 100 survey of the most empowered companies listed on the JSE. The rankings were based on the 2007 codes and the BBBEE score for each company, which ultimately determines the BBBEE status. These companies were also the most empowered companies on the JSE and were more likely to have a turnover of over R50 million, which meant they had to go through an onerous BBBEE verification process (Burger, 2014). (Balshaw and Goldberg, 2014) state that Qualifying Small Enterprises (QSEs), which have a turnover below R50 million, and Exempt Micro Enterprises (EMEs) with a turnover below R10 million, automatically qualify for a Level 4 rating or Level 2 rating, without going through any verification process. In addition, companies with a relatively higher BBBEE rating are more likely to have BBBEE as a strategic focus, which added to the quality of the research.

3.2.2 The Sample

The sample was selected from only those companies within the Top 100 most empowered companies who are listed under the: industrial goods and services sector of the JSE. The sample consisted of eighteen companies as reflected in Appendix 2. This JSE sector was selected as the majority of companies in this sector represent various industries, which are likely to be affected in different ways and therefore this is similar to choosing a sample represented by diverse industries. In a minority of cases (4 out of the sample of 18 companies), the company that was listed in the Top 100 list of empowered companies, was itself not the listed vehicle, but one of the trading companies within a listed group of companies. In all these cases, the researcher assumed that the BEE strategy, decisions and implementation was controlled by the listed holding company and that was where the interview was requested and conducted. This was further confirmed with the relevant executive when the interview was conducted.

3.3 Data Access and Data Source

The method used to secure interviews was via requests through the researcher's own network of the non-executive directors of the companies selected for evaluation, their auditors, or through direct requests by the researcher where people within those companies were known. Once introductions had been made and the contact details of the executive in charge of BEE or transformation, or the relevant responsible executive within each company was obtained, an introductory e-mail was sent to that individual, accompanied by the interview questionnaire and the researcher's brief curriculum vitae (CV). The purpose of the e-mail was to formally introduce the researcher, explain briefly what the research objectives were and request an interview. This is included under Appendix 5.

3.3.1 Data and data source

The companies making up the sample selection were obtained from the database of JSE listed companies, ranked as the Top 100 most empowered companies of 2015. To obtain the population, the Empowerdex website (at www.empowerdex.com) was accessed and under a section titled "News Room" the most empowered companies report was downloaded. The downloaded Top 100 companies showed the 2015 ranking, the company name, together with the BEE score and BEE status/ level, as well the JSE sector. These were sorted by JSE sector, using a spreadsheet (Excel), to identify those companies listed under the industrial goods and services sector of the JSE. This was further verified by referring to both the data collected from the interviews and obtaining a copy of their latest BBBEE certificate, most of which were publicly available on each company's website.

The data for the exploratory study was obtained primarily from interviewing the executive responsible for BEE or transformation, or the designated individual from each of the companies selected, and their teams where necessary. This included other BEE experts outside the companies, as well as from publicly available information such as their annual integrated reports, company and other websites. The interview questionnaire was sent to the company executive responsible for BEE, or to the Chief Financial Officer (CFO) who was deemed to have the knowledge and authority to decide on the person best placed within their company to answer the questions. The interview questionnaire was then e-mailed and subsequently discussed face-to-face with the relevant person. (An interview questionnaire was prepared for this purpose and is attached as Appendix 4). An ethics clearance was obtained in order to enable interviews to be conducted.

3.3.2 Instrumentation

The instrumentation was in the form of an interview questionnaire comprising semi-structured questions. There were introductory questions to obtain background information on the company and the respondent, some of which was obtained prior to the interview, as it was within the public domain. This information was confirmed during the course of the interview. The interview questionnaire (Appendix 4), which was developed by the researcher, from themes identified in the literature review was deemed appropriate as such a study, had not been done before. It comprised of open-ended questions, which encouraged the interviewer to explore the subject with follow-up questions and thus discuss the subject in-depth. The interview questionnaire was e-mailed to the interviewee in advance of the meeting, to allow them to familiarise themselves with the questions, but they were requested not to complete it. These were accompanied by a brief CV of the researcher as well as an introductory letter (attached in Appendix 5), setting out the purpose of the research and a brief overview of the methodology (See Appendix 4).

3.3.3 Collection of data

In order to gain access to the busy diaries of the executives to be interviewed, the researcher, through perusing publicly available information such as the company's website, identified people within her networks who were either non-executive or executive directors, the company's auditors, or through enquiries with other people who were able to introduce her to the relevant executive within each company. After the initial introduction and contact details of the respondents were obtained, the respondents were contacted telephonically, followed by an e-mail as appropriate. Information obtained from the public domain such as the company's website and integrated reports was reviewed prior to each meeting. Thereafter, a semi-structured in-depth interview was conducted, mostly at the company premises but occasionally at a practical venue that suited the respondent. In conducting the interview, the researcher took care not to pose the questions in such a way that could be construed as unduly influencing the respondent's answers. The data was collected using a semi-structured, open-ended and in-depth interview method to enable the questions to be appropriately answered. (Yin, 2011) identifies five key success factors in conducting a qualitative interview, which are:

1. Speaking in modest amounts – this allows the researcher to listen better and ask more probing questions, which is relevant when exploring the BEE subject.
2. Being non-directive – this allows the participant latitude to guide the conversation, while still achieving one's objectives.
3. Staying neutral – this means the researcher must avoid biases in tone or manner that may influence the respondent's answers.
4. Maintaining rapport – establishing an amicable relationship during the interview.
5. Using an interview protocol – questions or topics to guide the interview.
6. Analysing when interviewing – more revelations may arise when interviewing, requiring one to change the agenda.

3.3.4. Procedure and time-frame

Once the Empowerdex Top 100 2015 company survey results had been published and were available on the Empowerdex website, the document identifying the companies was downloaded. From there the companies were sorted by JSE sector, such that the industrial goods and services companies could be identified. Once the sample of companies had been selected, the process of identifying people who could potentially make introductions was done by perusing the companies' integrated reports or company websites. In total twenty-three people were identified, some of whom had cross directorships and could potentially do more than one introduction. In some cases, two people were identified from one company which increased the chances of securing an interview. These were all recorded on a spreadsheet, including the likely person to be interviewed and contact details of the company.

Once the researcher had been introduced to the relevant company executive responsible for BEE and their name and contact details were confirmed, in certain instances a telephone call was made first to seek an appointment for an interview and/or where requested an introductory e-mail was sent to the respective executive or their personal assistant to request a meeting. This was accompanied by the interview questionnaire together with the researcher's brief CV, which identified the researcher, the institution they represent, the purpose of the research study, and hence the request for the interview. Follow-up calls and/or e-mails were sent to the company executives, their personal assistants or company secretaries if responses to the interview request were not received after a week. Follow-up communication was done unless a request for an interview was rejected or could not be secured due to unavailability of the appropriate executive or where there was just no response to a request for an interview, despite numerous requests.

On completion of each interview, the interview recorded was listened to and transcribed. The interview times are included in Table 2. Results were analysed in order to find themes, verify answers to the questions and if new questions had arisen, to understand if indeed there were challenges as anticipated. Assistance in transcribing was sought from a legal secretary. Where clarification was required, it was sought from the respondents either via e-mail or telephonically. This was done during transcription or writing of the research report, if anything was unclear. All follow-ups done were responded to by the company executives to either confirm the answer or provide the relevant response. Interviews happened over a period of two months, while the overall process of initiating, interviewing and ultimately documenting the results took three months. Thirteen interviews were conducted overall, for the sample of twelve companies with only one instance where two people were interviewed from one company as indicated in Table 2.

3.3.5 Data Management

The data collected from the interviews was recorded on an Olympus Dictaphone and later transcribed using Dragon software. This process of automatic transcription from the voice recording to a word document did not yield satisfactory results, such that all interviews were then subsequently transcribed by the researcher, and the majority by a legal secretary. Backups were made on Microsoft Word as well as on a memory card. The recording device enabled better attention to be paid during the interview, even though some notes were also taken on the printed interview questionnaire, where a space was left under each question to record the answers provided during each interview (Creswell and Plano Clark, 2011). The researcher kept a control schedule on Microsoft Excel of all the company names, contact names, positions held, telephone numbers, e-mail addresses, dates personnel were contacted, dates interview questions were sent, response dates and where necessary, follow-up dates. Meeting dates were also recorded on this control schedule. Since the research was qualitative in nature, at the time of the interviews some notes were made and a request to record the interview agreed to by all respondents. These notes were later transcribed, in order to accurately reflect the responses (Leedy and Ormrod, 2013).

3.3.6 Data analysis

After the completion of each interview, all the answers to the interview questions around the impact, challenges and the costs of amendments to the Codes were collected, summarised and collated in order to identify the major themes, as transcribed from the interview recordings. This was done for each company and after each interview. As the number of interviews completed increased, themes emerged under each heading; impact, challenges and costs were listed with attendant explanations and details to enable interpretation and analysis, including any common trends as well as anomalies that required further follow-up. All of these are included in the Results Section of the report. Where applicable, tables, graphs and pie charts have been used to present some of the interview results. Narration of the common themes and other matters are dealt with in the Results and Recommendations section of the report.

The results were categorised under five main themes, the first being collation of information regarding the company and the respondent, the next three themes relate directly to the research questions and the final one emerged during the process of the interviews, as one respondent termed them “*recommendations for Rob*”, the Minister in the DTI. Themes were:

- a) **Relevant details on the company, including the executive being interviewed.**

Information/ data collected included the name of the company, its financial year-end, the position of the respondent, the score-card used by the company, its last BEE rating and the resultant score and expiry of the current BEE certificate. The researcher checked which verification agency they used and whether they would qualify as an empowering supplier as defined.

b) **How the new legislation/ Codes will affect the company's BEE rating.**

Under this theme the researcher collated all the answers to the question that was asked on the questionnaire with respect to what each company's overall/ overarching views were, when the codes were amended. In addition, companies were asked to identify which of the three priority elements, being ownership, skills development as well as enterprise and supplier development were likely to result in their overall BBBEE rating being discounted, due to not meeting the sub-minimum thresholds.

c) **Likely implementation challenges due to the amended Codes.**

Here each company was asked to identify one element on the revised scorecard that would pose the greatest challenge to implement and therefore have the greatest impact on each company. They were also asked to consider which of the five new elements of the scorecard, would be the easiest to implement and therefore have the least impact, when comparing the old codes to the new codes. Reasons given were also analysed.

d) **Likely cost implications of implementing the amended Codes.**

The responses to the questions on the scorecard element likely to be the most costly to implement, with attendant reasons and the one likely to be least costly, were also assessed. In addition, there were two more questions that dealt with envisaged overall BEE compliance costs, and resources, including personnel responsible for implementing BEE.

e) **Areas where Codes can be clarified, improved or amended further.**

As the interviews progressed, increasingly the researcher became aware that most respondents had areas that they felt had not been properly addressed or clarified. In some cases, respondents expressed opinions of what changes they would like to see in the Codes. It was at that stage that the researcher thought it worthwhile asking the same question to all the other respondents. These views were largely presented as told to the researcher.

3.4 Validity and Reliability

3.4.1 External validity

External validity determines the extent to which the research results can be applied to the population or, as (Ryan et al., 2002) state, it *“reflects a true reflection of the real world”*.

Although the sample being tested relates to a sample of companies within the Empowerdex Top 100 JSE most empowered companies, the research has met external validity as it has been conducted based on real life, and not on a laboratory experiment (Makiza, 2013). The people that were interviewed were the executives who deal with all BEE related matters on a daily basis and can indicate clearly what works and what does not, within the companies, industries and economies they operate in. That said, the researcher's objective in using qualitative research was to explore the topic espoused and not necessarily to project the results of the sample over the entire population.

External validity also refers to the extent to which the research results can be applied to a similar study outside of the study itself (Ryan et al., 2002). For qualitative research of this nature, this is generally expected because this was conducted in a real-life setting, as such similar interviews can be conducted with a different set of individuals in the same companies with expertise in BEE or executives in charge of BEE within a different industry, such that the companies chosen are different.

3.4.2 Internal validity

Leedy and Ormrod (2013) explain internal validity as the extent to which the study has mechanisms to ensure that conclusions made are a true reflection of the data. One way in which the researcher ensured confidence that the data collected resulted in the conclusions reached and outcomes obtained, was by first conducting initial interviews and a pilot test. In August 2015 a meeting was held with the Chief Executive Officer of Empowerdex and the Head of transformation of one of the companies selected in the study. The meeting enabled the researcher the opportunity to clarify certain issues and discuss potential questions with experts in the field of BEE, even before submitting a research proposal. In addition, a pilot was conducted with another JSE listed company, which was not in the sample of companies selected. In this instance a list of questions was e-mailed to the BEE analyst at the end of August 2015, who is responsible for BEE implementation in that company. The researcher was requested to review the interview questionnaire and check if it was clear, and therefore would be well understood and would answer the questions of the study. The response which came from the BEE analyst was:

“I looked at the questions and I found them clearly phrased and easy to understand. The only comment I can make is that in my opinion, the 2 categories that have been affected the most are skills development and enterprise development. I am not sure how much detail you want to go into, but in light of this I might suggest the following 2 questions:....”

This pilot study resulted in a greater appreciation of the new codes and amending of the draft interview questions.

The other consideration in conducting a potentially contentious and/ or emotive interview of this nature, would be to ensure that the results are presented as factually as possible, so as to avoid any inherent bias the researcher may have. In this regard the researcher was committed to documenting the answers and comments advanced by the respondents, regardless of how divergent they may be from the researchers own personal views. Further whether or not the researcher agreed or disagreed with the sentiments expressed, theirs was to reflect the views expressed. What assisted greatly in this process, was obtaining an independent party to transcribe the recording, then the researcher listening to the interviews again and reading the transcripts, which captured the interviews verbatim and allowed the researcher to be able to quote a respondent directly and correctly. Where any matters were unclear, then the researcher verified the details in writing or telephonically with the respondent.

3.4.3 Reliability

Creswell and Plano Clark (2011) maintain that reliability ought to be considered in assessing research results, to test whether the work done can be trusted and is credible; however, they believe that reliability plays a minor role relative to validity in qualitative research. Having used an interview questionnaire which was used for all companies tested, the researcher was able to fully document the research methods and procedures followed, evidence gathered and the results. This audit trail provides evidence for procedural reliability (Ryan et al., 2002).

Consistency is achieved through the measuring instruments, as the companies were asked the same basic questions (Makiza, 2013).

3.5 Conclusion on the Research Methodology

The research methodology used was appropriate under the circumstances taking into account that the topic was being explored and relatively new, therefore a semi-structured questionnaire devised from analysis of the literature review, whilst simultaneously keeping the objective of the research in mind and asking open-ended questions during each interview. The population was easily obtained from the Top100 most empowered companies listed on the JSE, while the sample consisted of those listed under the: industrial goods and services sector of the JSE. The data required was sourced from respondents who were all executives responsible for BEE in the respective companies in the sample. Securing the interviews was done via a network of either the researcher's direct or indirect relationships with the respondents. Once the interviews were secured, the data was recorded on a Dictaphone and later transcribed for ease of reference and documenting results. Themes were identified from the interviews in line with the research questions for data analysis. Validity of the research methodology was achieved through both conducting a pilot study and interviewing respondents who deal with BEE related matters in the real world on a daily basis, as such the study can be replicated, while reliability was clear from the audit trail and consistency of measuring instruments.

CHAPTER 4: RESULTS

4.1. Introduction

This chapter aims to set out the results of the interviews conducted with individual executives responsible for BEE within the companies where interviews were secured. The chapter proceeds as follows: Section 4.1 introduces the demographics and other information to contextualise the results. Section 4.2 presents the results of the impact of the new codes on a company's BBBEE rating which addresses research question one. Section 4.3 identifies the elements in the scorecard posing the greatest challenges in terms of their impact on the company which addresses research question two. Finally, Section 4.4 deals with the likely costs of implementing the new codes which addresses research question three.

4.2. Description of the sample interviewed

From the total of eighteen potential companies that were in the sample to be interviewed (refer to Appendix 2), twelve interviews were secured in total. One company specifically stated their discomfort with the interview, as they were of the opinion that the information sought was price sensitive and they therefore did not participate. Time and cost considerations played a role in not requesting one other company interview, as the head office is in Cape Town. Attempts were made to secure interviews with the remaining four companies via telephone calls by the researcher or through third parties with relationships within those companies. Telephone calls to either the company secretary of the companies, or alternatively an alternative company contact person were made, sometimes accompanied by follow-up emails were sent. However, when repeated attempts did not secure interviews then the researcher accepted the chance of securing those interviews was limited, with reference to the time and effort it was taking.

Table 2 shows the companies that were interviewed, the JSE sector classification, the title of the executive interviewed, as well as the length of time the interviews took. They were recorded and therefore the time was obtained from the recordings. The titles of the executives were one of the interview questions. This was sometimes verified by obtaining the individual's business card or on the company's website or integrated report. All companies fall under the JSE's general industrial goods and services sector.

Table 2: Companies interviewed

NO.	COMPANY IDENTITY	RESPONDENT	LENGTH OF INTERVIEW	JSE SECTOR
1.	Respondent A	Executive Director: Business Development & Corporate Affairs	1 hour 31 minutes	Business training & employment agencies
2.	Respondent B	Head of Corporate Affairs, Human Resources and Strategy	49 minutes 31 seconds	Electrical components & equipment
3.	Respondent C	Group Managing Director and Chief Financial Officer	42 minutes 26 seconds	Containers & Packaging
4a*.	Respondent D*	Group Executive: Human Resources, Strategy & Sustainability	33 minutes 29 seconds	Diversified industrials
4b*.	Respondent D*	Executive: Empowerment and Transformation	1 hour 20 minutes	Diversified industrials
5.	Respondent E	Group Human Resources and Transformation Executive	30 minutes 7 seconds	Industrial machinery
6.	Respondent F	Head of Human Resources	57 minutes 32 seconds	Waste & disposal services
7.	Respondent G	Head of Human Resources	1 hour 11 minutes 33 seconds	Electrical components & equipment
8.	Respondent H	Human Resources: Director	43 minutes 49 seconds	Business support services

NO.	COMPANY IDENTITY	RESPONDENT	LENGTH OF INTERVIEW	JSE SECTOR
9.	Respondent I	Executive Director: Group Human Resources	40 minutes	Containers & Packaging
10.	Respondent J	Financial Director	1 hour 7 minutes 4 seconds	Transportation services
11.	Respondent K	Chief Financial Officer	32 minutes 14 seconds	Transportation services
12.	Respondent L	Executive Director: Corporate Affairs	54 minutes 10 seconds	Diversified industrials

*With respect to respondent D, 2 individuals were interviewed for the same company.

Ten of the twelve companies interviewed had used Empowerdex as their verification agency. The companies selected were classified as “industrial goods and services” in terms of the Empowerdex survey results. Classification according to the JSE specific sectors showed that the twelve companies interviewed were from different industries within the general industrial space. All the people interviewed were members of the companies’ executive committees, which is typically the highest level of management within a company, consisting of individuals with the most influence and decision-making capacity in the companies. The majority of the executives who were responsible for BEE and transformation within the companies were Human Resources executives (seven out of twelve). BEE and transformation fell under the ambit of the company CFO in very few instances (three out of twelve).

Of the executives interviewed above, eight were black and four were white, while nine were male and three were female. Interviews conducted lasted an average of about 60 minutes and in total took twelve hours and fourteen seconds.

4.3 Research Question 1: The impact of the new codes on a company's BBEE rating

Although the 2013 amended codes (new codes) became effective on 1 May 2015, the announcement thereof had happened earlier. As such, companies were decrying the stringency of the codes (Werksmans, 2014) and the likely increased costs (Kleynhans and Kruger, 2014). For the intervening period, there was a 12-month comment period and much lobbying by industry players and other stakeholders to get the final published codes to satisfy their interests. While the changes between the 2007 codes and 2013 codes are significant, the changes between what was initially issued and the final codes were not materially different (Jeffrey, 2014). It was in light of this background that companies' views were sought.

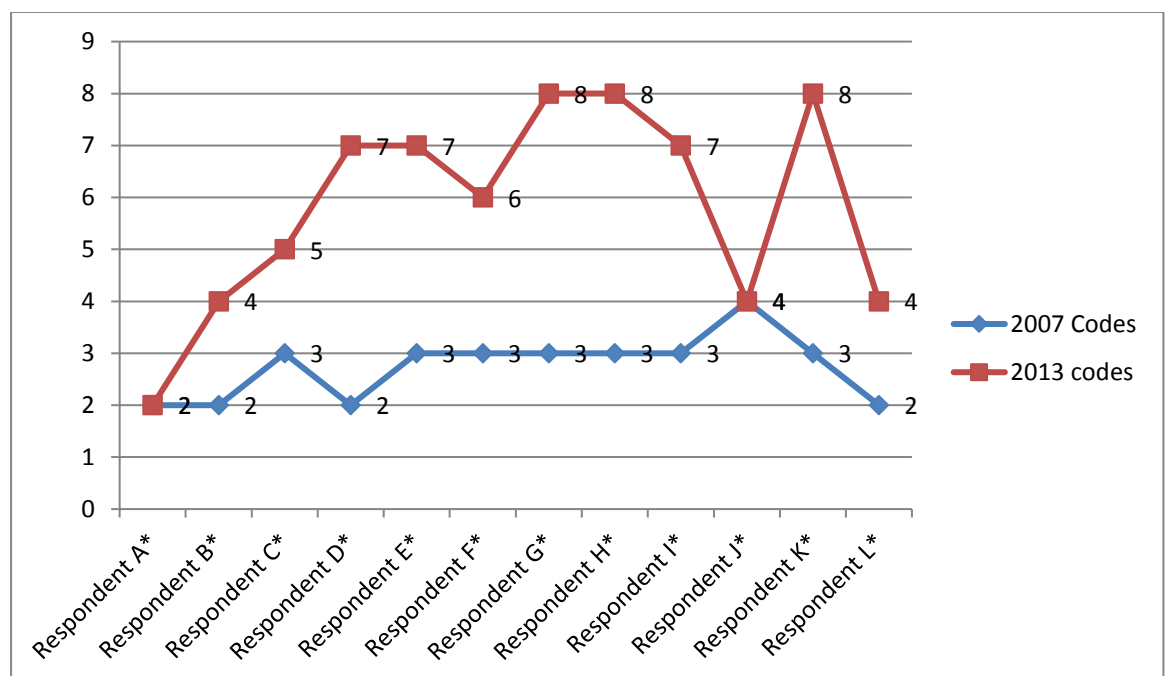
4.3.1 Comparison of company BBBEE rating on new codes versus old codes

In Figure 1, the graph shows the potential impact of the changes in the codes, by plotting the BBBEE rating of each of the companies interviewed as at the 30 April 2015, which is effectively the last day the 2007 codes could be used. The new codes were effective from 1 May 2015, so any company rating from then had to use the new codes. The blue line effectively depicts the last BBBEE rating each of the companies had on the 2007 “old codes”. These would have been the same BEE ratings as reflected on the Empowerdex 2015 Top 100 most empowered JSE listed company survey. Companies performing BEE ratings for financial year beginning on or after 1 May 2015 needed to be measured on the 2013 amended codes (new codes). This is depicted by the red line, which either shows the expected or indicative rating under the new codes or where the rating has been completed, then it reflects the actual rating done, by the company’s verification agency. An asterisk (*) is used next to each company to depict those companies that have as yet not had an actual rating performed by their verification agency but who have estimated the likely impact and therefore are aware given the new codes, where their rating on the new codes is likely to be.

The x-axis on Figure 1 identifies each individual company by respondent, while the y-axis depicts each company’s BBBEE status based on the generic score-card, which can be level one to level eight per Appendix 1. The majority of companies (eleven out of twelve) had not yet done an actual rating based on the new codes, as most had their BEE certificates expiring in April 2016 (six out of twelve companies). These six companies were already in the process of performing a rating based on the new codes. The remaining five companies had their BEE certificates expiring during the course of remainder of 2016. Only one company had actually completed an actual rating on the new codes as their certificate expired in November 2015. Respondent G stated that a level three was obtained on the old codes, and based on their indicative rating they had estimated they would drop to a level eight. However, on actual assessment, they were rated a level five. This they attributed to various interventions put in place after the indicative rating was performed and a gap analysis identified areas of improvement. One of this was skills development, which they actively worked on.

To obtain the indicative BEE ratings, some companies asked their verification agencies to conduct a verification process based on the new generic codes or they did the process themselves, so as to get an indication or estimate of the likely impact of the new codes. One company said they had software they used to calculate their BEE rating internally and this is what was used to obtain an indicative rating. This means every single of the five new elements would have been assessed together with their individual indicators to be able to provide scores per element. Most companies have either a transformation manager and or/ a team that have a sufficient understanding of BBBEE to calculate an indicative score. Therefore, based on the indicative scores on ownership, management control, skills development, ESD and SED a company was able to arrive at a score that indicated the indicative level. In addition, this process allowed companies to identify areas where they were most weak as they scored the least on those and those that they were doing well in and therefore would require the least interventions. That is what the red line in Figure 1 represents.

Figure 1: Impact of Amended codes on company BBBEE scores



Source: Self

*Indicative BBBEE rating for companies based on new codes

The results show that to date only one company has actually done ratings on the new codes, which yielded better than expected results. The initial indicative rating was a level 8, but on actual verification the score came out at level 5. Half the companies are currently in the process of obtaining a new rating, while the majority have given an indicative or illustrative rating based on the new codes. On average the companies are expecting to drop from their current rating by at least 3 levels, with the worst declines being by 5 levels, from level 2 to a level 7, or level 3 to a level 8. For the companies that have done an actual rating, the reason there is a better than expected rating is due to initiatives that were put in place to address gaps seen as “quick wins” identified in the elements. Most companies while anticipating significant drops in their BEE rating, are currently at different phases of understanding the requirements of the new codes and identifying areas that require new strategies, and where possible have commenced in addressing them. Two companies indicated that their scores would remain largely unaffected by the new codes as they had used the old sector charters, since their new sector charters were not yet gazetted. They were going to use the new sector charters to perform the next rating, if they were in place. They were, however, cognisant of the fact that the sector charters would be very aligned to the new generic codes and were therefore relevant for them in considering their future strategy around BEE.

4.3.2. Impact of Priority Element sub-minimums on company BBBEE scores

The amended codes require that for the priority elements a sub-minimum score be met, failing which a company's BEE rating would be discounted by a level. Consequently, a question was asked so as to determine which of three priority elements – being ownership, skills development, enterprise and supplier development – was each company not likely to meet, as this would result in immediate discounting of the overall BEE score by one level for each sub-minimum not met. Table 3 lists the three priority elements and for each company, the question asked was whether the sub-minimum score of 40% in each element will be met. An answer of “yes” indicates that yes it will at least meet the sub-minimum score and therefore that element will not result in a discounting. However, where the answer is “no”, this means the 40% sub-minimum threshold will not be met for that element and therefore the company is

likely to have its BEE score discounted for that particular element. The codes indicate that each priority element carries its own weight and therefore failure to meet the sub-minimum levels in any of the priority elements, results in the company BBEE rating being discounted by a maximum of one level. That is what is shown in the last column – the overall likely discounting impact. The results from the interviews are set out in Table 3:

Table 3: Potential impact of priority elements on discounting BBEE scores of companies

NO.	RESPONDENT IDENTITY	OWNERSHIP	SKILLS DEVELOPMENT	ENTERPRISE AND SUPPLIER DEVELOPMENT	BEE RATING LIKELY TO BE DISCOUNTED BY:
		Are you likely to meet the 40% sub-minimum threshold? If discounting is expected (NO answer) what are the reasons?			
1.	Respondent A	NO – while have BEE deal, worried about net (of debt) value	YES – a training organisation	NO – busy with ESD initiatives	1 level
2.	Respondent B	YES – We have a BEE deal in place	YES – do not have workforce in line with EAP to train, but good training opportunities	NO – imports and our developing of black suppliers does not count now	1 level
3.	Respondent C	YES – BEE deal in place	YES – we realised skills are important and are investing	NO – cannot meet ESD requirements now	1 level
4.	Respondent D	NO – BEE deal just unwound	NO – still investigating how and where to spend 6% of payroll	YES – started ESD long before other companies	1 level
5.	Respondent E	YES – We have a BEE deal in place	YES – just need to throw money at it	NO – this is because we import a lot of our products	1 level
6	Respondent F	NO – no BEE equity deal in place	NO – still investigating best way, but costly	NO - previous initiatives did not yield good results	1 level

NO.	RESPONDENT IDENTITY	OWNERSHIP	SKILLS DEVELOPMENT	ENTERPRISE AND SUPPLIER DEVELOPMENT	BEE RATING LIKELY TO BE DISCOUNTED BY:
		Are you likely to meet the 40% sub-minimum threshold? If discounting is expected (NO answer) what are the reasons?			
				but planning new initiatives	
7.	Respondent G	YES – strong black ownership at 62%	NO – difficult to meet IT training of blacks as employ white technicians	NO – must still identify black companies in IT space to do ESD	1 level
8.	Respondent H	YES – We have a BEE deal in place	NO – working on a plan on skills development	YES – had some initiatives but re-looking now	1 level
9.	Respondent I	YES - BEE deal just unwound but still have employee scheme	NO - still investigating how, if and where to spend 6% of payroll	NO – still in planning phases of identifying potential black businesses.	1 level
10.	Respondent J	YES – just completed BEE deal	YES – already started conducting training programmes	YES – have ESD programme in place	None
11.	Respondent K	YES – We have Employee BEE deal in place	YES – throw money at skills development	NO – import problem of cars	1 level
12.	Respondent L	YES – have BEE partners in place	YES – training initiatives in place	NO – still planning	1 level

Key: **Yes** - minimum threshold will be met, no discounting likely. **No** - discounting likely.

The results show that almost all of the companies interviewed were likely to have their BEE scores discounted by at least one level, with only one company of the opinion that they would not be subject to any discounting, meaning that they were likely to meet the minimum thresholds of 40% for all three of the priority elements. Most companies (11 out of 12) had some form of ownership equity deal in place, whether with employees or outside shareholders, hence it would not result in companies' having their ratings discounted. Two of the companies interviewed had no ownership deals in place and therefore would have their rating discounted. On skills development, most companies indicated that they would spend the money and get the points, so as not to get discounted. A minority recognised they would be discounted if they didn't spend the minimum amount, but were prepared to live with the outcome. The majority of companies were going to have their ratings discounted mainly because of ESD, as they indicated the amount of effort, resources and the cost of complying immediately were difficult, but that they would put initiatives in place to comply over a period of time.

4.3.3 Companies' overall views on the new BBEE codes

The results from the interviews on the companies' overall views on the amended codes are presented by theme identified. Where a respondent's view was expressed that wasn't shared by others, it is stated. This is done in a tabular form with the most common assertion noted first, together with the percentage of companies that identified the issue.

Table 4: Company overall views on amendments in Codes of Good Practice

NO.	COMPANY RESPONDENT COMMENT	AS % OF TOTAL	RAISED BY RESPONDENTS
1.	- Incredibly difficult to maintain one's rating. - Not just stretch target but impossible.	67%	Respondents A, B, C, D, F, G, H and K. 8 companies.
2.	- Disappointed that all the hard work to increase the company empowerment rating under the old codes did not count for much. - This therefore meant that had to go back and start again.	58%	Respondents B, D, F, H, I, K and L. 7 companies.
3.	- Recognise that compliance with BBBEE codes is a licence to trade in South Africa. - Companies have to comply.	58%	Respondents C, D, F, H, I, J and L. 7 companies.
4.	Adds cost to doing business.	50%	Respondents A, B, C, E, F and I. 6 companies.
5.	Horried with the onerous new codes.	50%	Respondents B, C, H, I, K and L. 6 companies.
6.	- Not practical and too complex to understand and therefore implement, making the new codes open to interpretation and therefore susceptible to manipulation. - Business is confused about what government wants. - Uncertainty and vagueness permeate the new codes.	50%	Respondents A, C, F, I, J and L. 6 companies.
7.	- Government gave no consideration for organisations with cash flow issues. - Revenue or net profit after tax (NPAT) does not equate to cash available to spend. - A form of double taxation. - Too expensive to implement.	42%	Respondents B, C, F, J and K. 5 companies.
8.	Specific industry challenges (such as companies importing majority of inputs) and economic challenges were never considered in drafting the new codes.	33%	Respondents B, C, D and K. 4 companies.
9.	- Unless have business with government, there is less requirement for a high empowerment rating. - Acknowledge some pressure comes from suppliers and customers.	25%	Respondents A, I and K. 3 companies.

NO.	COMPANY RESPONDENT COMMENT	AS % OF TOTAL	RAISED BY RESPONDENTS
10.	The scorecards have created a tick-box approach to BBBEE	25%	Respondents F, H and L. 3 companies.
11.	Proactively planned and were ready for the changes in the codes.	17%	Respondents D and E. 2 companies.
12.	New codes are clear about the areas of priority and therefore areas to focus on.	17%	Respondents D and G. 2 companies.
13.	- Government has been unable to monitor a plethora of existing legislation, the new codes are no exception - They have no capacity to enforce compliance.	8%	Respondent I. 1 company.

The majority of companies stated that in general they found the amended codes to be onerous, stringent and largely prescriptive. One executive expressed the following view:

“The over-arching view is that it is onerous. It’s an onerous measure that’s going to add complexity, cost to doing business. I do understand the rationale....I understand the question about the rationale, the moral imperative and the business imperative, however this could’ve been done much differently...its onerous. It scares a lot of people in this building”.
Respondent I

Even those companies that were positive/constructive and understanding about the national imperative of both the existence and amendment of the codes still expressed a view that said:

“Government or policy-makers sat in Pretoria and made laws in a box that were not practical to implement in the real world”. Respondent L

It was generally acknowledged that almost every company’s BEE rating would drop by a few levels, but the executives interviewed appeared comforted by the idea/principle that their peers and competitors would suffer a similar fate. Others saw this as an opportunity to do things differently, thereby increasing their rating over time, while others had a distinct air of despondency. They said this was based on the BEE road they had travelled thus far, efforts made on achieving their current BEE status, battles won and progress made to date. They expressed a level of frustration that firstly all previous efforts made to comply with BEE appeared not to be recognised by the DTI and that they would largely have to start again. One respondent summed it up as follows:

“There wasn’t a lot of optimism that we’d be able to work with the new codes. We were used to the old codes and we understood and were used to them and our strategies and plans were all aimed at making sure that we could show progression under the old codes and we’d managed to close a lot of the gaps over time, so each year we could see our score improve. We were happy, our board, clients and suppliers were happy. We were kind of in a place where we were working with the codes. Then it felt like the whole landscape had changed overnight and suddenly the old plans are not going work, the codes are very different, the focus is different, the priority elements are different and a lot of the initiatives we’d been running were not going to result in us improving our BEE rating any more. It was kind of - we put so much time & effort into it – how on earth can they do this to us. This is not just a stretch target; it was an impossible target”. Respondent H

They were further disappointed that none of the suggestions and inputs they made on the draft codes made their way into the final codes, and therefore felt that the DTI did not want to listen to their inputs. A few went as far as to state:

“We will restructure our businesses to ensure that Government facing entities are in one business where all our efforts to increase our BEE ratings will be, while the rest (of the entities that don’t deal with Government) would do the bare minimum”. Respondent K

Others were unequivocal in their support of BEE and even berated government for making it unnecessarily complicated by introducing scorecards, measurement tools and formulae that were cumbersome and difficult to monitor. One executive felt that there should be no scorecard with many elements, and that the only focus should be on ownership alone. The respondent said:

“Business is confused as to what government wants, they think getting these points is the best that they can do. Like the way we pay tax it is very clear and not negotiable, it is either one complies or not. It makes it easy”. Respondent A

The same respondent went further to say:

“Let us look at Zimbabwe, there is no employment equity, the law simply says you indigenise and this is the percentage that you should indigenize by. You comply first time you come in. They don’t have employment equity where they measure who is where and how. It is very simple and clear. In most countries for example China and other countries it is just called localization”.

There was consensus that the scorecards were unnecessarily complicated, unclear in certain instances, opening them up to interpretation, which could promote manipulation and even fronting. The use of a scorecard for BEE measurement and compliance was thought to promote the use of a “tick-box exercise” by companies and was seen as encouraging companies to do BEE because it was the right thing and afforded one a licence to trade. As one of the executives put it:

“For me, I obviously have views around the codes itself and implementation, that I just feel that I don’t think there’s anybody that disagrees fundamentally with the principles around black economic empowerment and the objectives around it, but the implementation leaves much to be desired. We need something to measure as far as how we’re progressing, but I believe the scorecard in general has also created a bit of a tick box approach, where companies are doing it for the sake of being able to tick that box as opposed to really employing quality and meaningful initiatives that’s really going to make an impact”.
Respondent L

Businesses felt that the prevailing economic conditions with very low growth rates, depressed margins and the resultant impact on low profits were not considered as a possible scenario when drafting the codes. As such, companies in industries feeling the economic pinch felt that in drafting the new codes, there was no consideration of industry peculiarities where although turnover may be high, actual profit after tax and attendant cash-flows may be small. As such, to define companies which need to comply with the generic scorecard according to the R50 million turnover, may be too small. Furthermore, and where these companies felt the amended codes were more punitive was where NPAT was used as a compliance measure, for example in enterprise and supplier development.

Others expressed a view that it was unrealistic to spend 3% of say R10 billion (their total measured spend) on black QSEs and EMEs. Concerns were highlighted about how realistic it was to find the right black-owned or black women-owned businesses that were in the value chain of the companies, or even those that were not and the overall process of getting those businesses producing quality products on time and price-competitive. There were differing views on how costly implementing the amendments would be, but all agreed that their budget to ensure BEE compliance needed to be increased. Some felt that in the face of competing business demands, the BEE initiatives would have to wait, while others who did direct government or government regulated work such as mining, recognised that this was a cost of doing business and a licence to trade. One company executive appeared unfazed by the new codes:

“We were ready for the new codes to be honest with you, we’ve been talking about them for quite some time - it was not shocking. In our executive committee meetings, we spoke about them. All the meetings that we had we had to highlight the codes, this is the direction they are going and this is the impact to the group. So we received them, we are implementing them, we have an action plan in place and we know where our shortfalls are”. Respondent E

While another expressed a similar, but very simple view:

“We play in a space where our customer and our (company) profile are such that we have to comply with the law of the land”. Respondent J

4.4 Research Question 2: Likely implementation challenges of BBBEE under the new codes

In order to understand the impact that new codes would have on each company, questions were asked about which element the respondents believed would be the most onerous or challenging to implement, and why. In addition, company executives were asked to consider which element would have the greatest impact (most challenging to implement) and least impact (least challenging to implement) and why that was the case.

Table 5: BBBEE element identified as most and least challenging to implement

NO.	RESPONDENT IDENTITY	ELEMENT MOST CHALLENGING TO IMPLEMENT	ELEMENT LEAST CHALLENGING TO IMPLEMENT
1.	Respondent A	Ownership	SED
2.	Respondent B	ESD	SED
3.	Respondent C	ESD	SED
4.	Respondent D	Skills development	SED
5.	Respondent E	ESD	SED
6.	Respondent F	Ownership	SED
7.	Respondent G	ESD	Ownership
8.	Respondent H	ESD	SED
9.	Respondent I	Ownership	SED
10.	Respondent J	Skills development	SED
11.	Respondent K	ESD	Ownership
12.	Respondent L	Skills development	SED

The element identified by half of the companies as the most challenging to implement was enterprise and supplier development (ESD). The remaining companies were split 50/50 between skills development and ownership. ESD accounts for the bulk of points at 40 points on the scorecard and was also a priority element, which seemed to cause the most anxiety among executives. ESD consists of preferential procurement, which attracted 25 points, with points attributable to supplier development equal to 10 points. Enterprise development (ED) accounted for only 5 of the 40 points. Companies were less perturbed about the SD and ED portion of the score, as this was measured in the same way as it was under the old codes that is 2% of NPAT for supplier development and 1% of ED. Under the old codes ED was just 3% of NPAT, so ultimately the cost could be the same.

Concerns were mostly raised by companies that either imported raw materials or were agents for goods or services that were not locally manufactured. Under the old codes it was clear that any imported goods were excluded from total measured spend. From the various interviews conducted, it appeared that under the new codes there was some uncertainty about import exclusions. Some believed that imports were not excluded from total measured spend, which automatically prejudiced companies importing a significant amount from scoring, as they cannot procure or manufacture locally and therefore their ability to score points on preferential procurement would be significantly limited. Others believed that as long as one engaged the DTI to demonstrate that in the next three years, some localisation would be done, then the import exclusion would apply. In addition, generally only BEE procurement spend from an empowering supplier is recognised for preferential procurement. Some companies outlined their procurement challenges, which affected compliance with the new BEE codes as follows:

- The majority of the goods were imported, as they are unavailable locally.
- Having pre-existing procurement contracts that still needed to run their course (for example three years) with predominantly white suppliers, thus making changes to suppliers would not be immediately viable.
- Some white-owned companies that were suppliers refused to implement BBBEE, ultimately affecting the BBBEE rating of the company they were supplying to.

- Inability to identify and find black and/ or black-owned businesses from which product could be procured.
- Where black suppliers existed, there was a sense that they generally supplied “peripheral items” such as stationery, which were not items core to the business.
- Where there were black suppliers that could supply the items deemed core, views were expressed that there were generally quality control issues, lack of timely delivery of goods or services, and higher prices, sometimes due to lack of capacity.
- Some government tenders had a standing condition in their contracts that the BBBEE rating needed to be maintained, otherwise penalties would kick in.
- Where a company’s major customer required the company to meet a certain minimum BBBEE rating, otherwise it put them at risk of losing a licence to operate, such as a mining licence.

“Definitely ESD - why I’m saying it’s ESD is because we’ve had several meetings with our current suppliers and as I mentioned to you, our suppliers are not necessarily black owned companies. And we’ve sat down with them and said guys, we have an issue. Our contract with XYZ company says if they are going to keep procuring from us, we need to be a level 4 (minimum). For us to be a level 4 minimum, you need to be a level 4. So, if you’re not going to be a level 4, it’s going to impact on our score and we can’t afford to lose them as a client. So, our clients have also come to us and said, we wish you all the best with the new codes. We are very happy with your services, the quality of your products, however business will continue with you on a provision you remain a level 4. And all these letters came in after the new codes. Why, because they are also aware that if you’re going to tender for government business, they also need to have a certain BEE score. If they don’t have that minimum score, they may lose out on that tender. We went to our suppliers and said this is our current situation and they said our problem is not their problem”. Respondent B

The three companies that identified skills development as the most challenging to implement cited the following:

- As companies they were now required to spend double the amount they previously had spent on training employees under the old codes.
- They would have to train according to the EAP statistics in order to score points.
- Where companies did not have adequate representation or were either over or under-represented on any level of staff, they would not score points. Therefore, employment equity had to be achieved first, with representivity within each company shown before training could occur.
- Courses had to be accredited, which in some instances meant that a test had to be written at the end for the training in order to count for BBBEE purposes.

- Companies would have to find black men and women who wanted to be trained, which could be a challenge at the more senior graduate level.
- A concern was expressed about whether spending so much time, money and effort on training was a business imperative, or whether it would even drive productivity or was simply a compliance *mechanism*.

As one respondent put it:

“Skills development is the one that is more challenging. Because not everyone in every ethnic group wants to do training, so if you have to meet the percentage target that is set out in the skills plan per ethnicity how do we get that right? It means I have to force Coloured people to train, I have to force Indian people to train, as if I am targeting them. And they already have degrees, they are already qualified. The African people that we bring in are already qualified. The question is where are these people going to train? It means we have try and find these people to get training done. And we have to increase and bring in more learnerships in order to get this training done. It means an increase in headcount, it is an increase in all other counts which brings in complexities in empowering supplier. If I increase my headcount every year I have to make sure that it complies. Because the number of black people in your opening balance and your closing balance at the year-end must show growth in black people. When learners are done we must also show absorption on the one side, but it is not easy”.
Respondent D

The companies that were concerned that ownership would be the most challenging element to implement were in the position of not having implemented an ownership deal of any sort, even under the old codes. These companies decried the difficulties of finding the right BEE partner and stated that:

“...we have made many attempts to secure the right (BEE) partner, but have failed”.

Respondent F

They gave examples of instances in forming joint ventures with individuals in the communities in which they operated, but were disappointed after they had put up all the capital for a venture, only to find that the BEE partner just wanted a pay-check at the end of the month and had no regard for working capital requirements and investing in the long-term sustainability of the joint venture. Further, views expressed pertaining to the lack of BEE ownership in the company, were that:

- The company was listed, and if a BEE investor wished to buy shares they should buy them on the JSE, like everyone else.
- Why should other investors be prejudiced by allowing a BEE investor to purchase shares at a discount not afforded to other investors?

- The owners of the business had worked very hard to build it, and would not give it away.

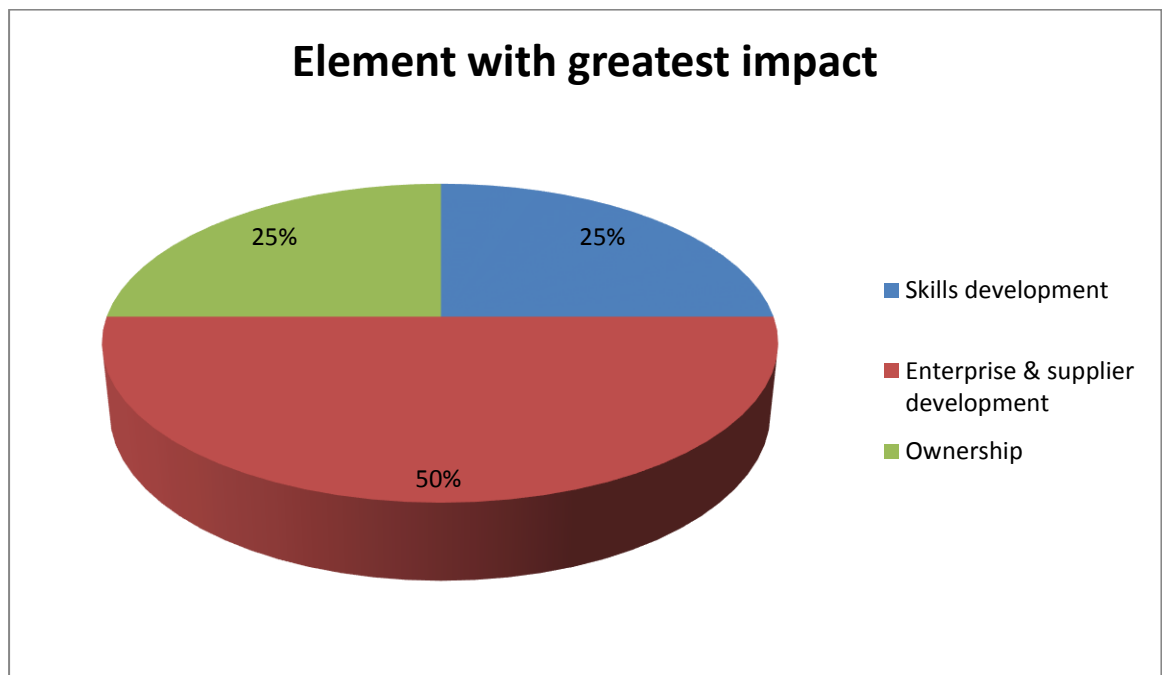
One of the companies that cited ownership as likely to be the most challenging to implement, was really due to the timing of the interview relative to their BEE deal conducted in the past having just unwound. At the time the company had an Employee Share Option Plan (ESOP) for black managers which had been extended and would provide some points for ownership; there was a clear sense that an ownership deal would be done in due course. However, the company was adopting a “wait and see” attitude in the meantime. The executive stated:

“So, we are in a very difficult situation. Firstly, our BEE partners which were a consortium under Mr XYZ, so they unwound the deal and took the money and buggered off. And then there was also an element in that same deal for black managers, so there was a black management trust that has also unwound, as at end of December 2015. But for that one, we managed to ask the board to allow an extension for the black managers up to February next year, in order to mitigate the loss of empowerment”. Respondent I*

Note: An asterisk* denotes that the name above has been withheld

The results discussed above are depicted in Figure 2:

Figure 2: BBBEE element assessed as having the greatest impact

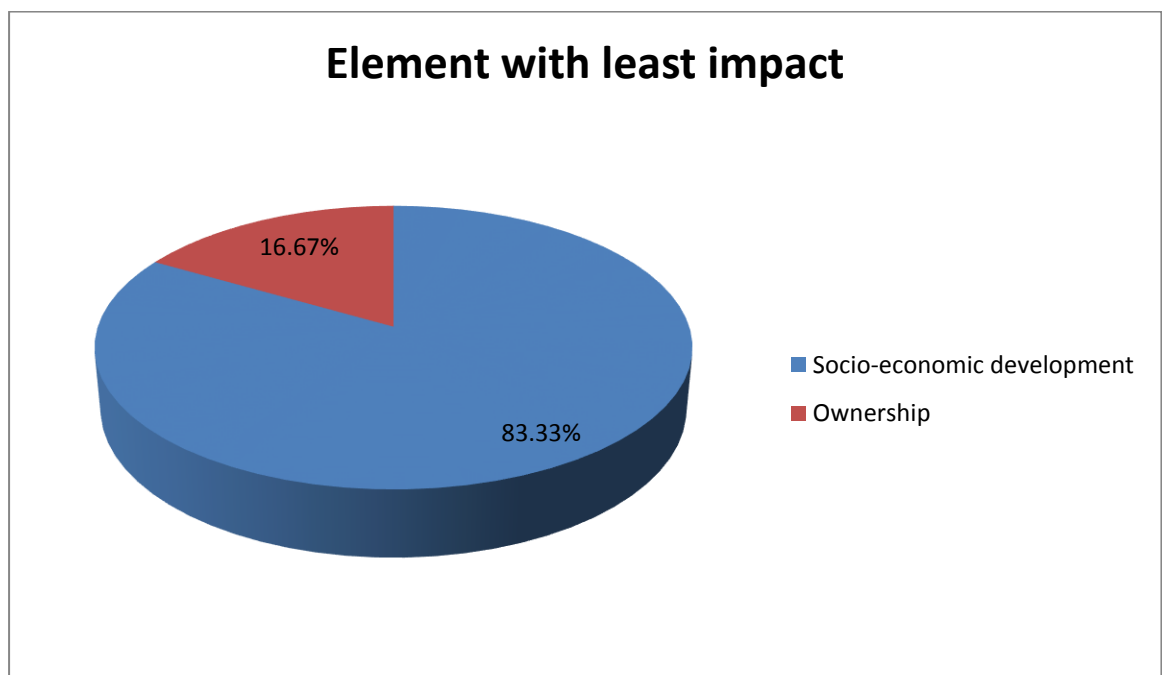


Source: Self

Companies were also asked to identify the element that would be the least challenging to implement, and by implication would therefore not have a significant impact in terms of the changes in the BEE legislation. Ten out of the twelve companies interviewed identified socio-economic development as that element. Many companies were comfortable with the idea of CSI as they had been doing it for a number of years and had become good at it. Whether companies had established foundations or trusts, or departments whose main objective was CSR, the executives interviewed were relaxed about complying with the SED element, as each company still had to spend 1% of NPAT. The one change that a respondent was unhappy about was the requirement that to score 100% of the points, then at least 75% (by value) of the SED contributions had to be directly for the benefit of black people, as defined. The respondent was of the opinion that implementing this on a practical basis within her environment was potentially divisive, as good causes were to be supported without counting the number of black beneficiaries.

The remaining two companies were of the opinion that ownership would be the least challenging element, even with the changes in points attributable to ownership from 20% to 25%. This was because they already had BBBEE deals in place and therefore would not be embarking on any in the next few years. The results discussed are depicted in Figure 3:

Figure 3: BBBEE element assessed as having the least impact



Source: Self

4.5 Research Question 3: Likely cost implications of compliance with the new codes

Question 3 sought to explore what the likely impact of costs of implementing the new codes was likely to be, by understanding which element would be the most costly to implement and in the process, the element which would be the least costly to implement.

One executive felt that costs permeated the entire new codes, and was quoted as saying:

“As an organisation we were horrified to say the least, because it is all well and good to have transformation but one has to be practical and realistic in terms of the financial costs associated therewith. Government has no consideration for organisations that have cash flow problems. To implement any of these strategies one needs to look at finances. Even if I were to look at ownership I have to go to an organisation that has the funding, if I look at employment equity, it also costs for me to go and headhunt these types of candidates and from an organizational perspective we have a strategy to transform internally by encouraging people to study and develop them, we have a skills matrix. Everything comes at a cost, so in theory everything looks grand but in the bigger scheme of things there are financial implications and penalizing employers. This code is seen as a punitive measure”. Respondent F

The results of the respondents are presented in Table 6:

Table 6: BBBEE element identified as most and least costly to implement

NO.	RESPONDENT IDENTITY	ELEMENT MOST COSTLY TO IMPLEMENT	ELEMENT LEAST COSTLY TO IMPLEMENT
1.	Respondent A	Ownership	SED
2.	Respondent B	ESD	SED
3.	Respondent C	ESD	SED
4.	Respondent D	Skills development	SED
5.	Respondent E	Skills development	Ownership
6.	Respondent F	ESD	SED
7.	Respondent G	ESD	Ownership
8.	Respondent H	ESD	SED
9.	Respondent I	Skills development	SED
10.	Respondent J	Skills development	Ownership

NO.	RESPONDENT IDENTITY	ELEMENT MOST COSTLY TO IMPLEMENT	ELEMENT LEAST COSTLY TO IMPLEMENT
11.	Respondent K	Skills development	Ownership
12.	Respondent L	Skills development	SED

There was almost a 50/50 split between those companies that identified skills development and ESD as the two likely to be most costly. Only one company identified ownership as likely to be the most costly BBBEE element to implement, which was a function of their not having concluded a BEE deal and being cognisant that the attendant costs can be rather expensive. The potential costs can include the discount offered on the shares, which must be borne by existing shareholders; cost of corporate finance advisors as well as other advisors; legal costs; and International Financial Reporting Standard 2 *Share-based Payment* (IFRS2) costs; not to mention the time and effort involved, depending on the type of ownership deal.

The cost of skills development under the new codes are likely to at least double, based on the requirement that the percentage charged on the leviable amount (payroll), has increased from 3% to 6%. Costs also increase because the courses that qualify as training will have to be accredited, which may mean revising the courses themselves or obtaining external consultants to do the job. Learnerships are an important mechanism encouraged by the codes, but they need to be managed and monitored. In addition, overall company training spend will need to be recorded appropriately and monitored to enable reporting, which requires smart software, (especially in large groups with many divisions or subsidiaries) and a person to oversee this. This is before one takes into account the bonus points for employing the unemployed people who have been trained in terms of the learnerships. Skills development was assessed as the most costly element to implement, with one executive quoted as saying:

"If you go to skills that has increased, from 3% to 6%, which means you have to double it (spend) and you have to have specific programs as not everything counts. Before everything counted, now you have to have it per category, per ethnic group and it needs to be accredited training in the CAT learning matrix which is ABCD, effectively you have to have defined programs and all of them have to be accredited. That means your in-house training has to be accredited otherwise you lose it". Respondent D

ESD was considered likely to be costly by the other half of the companies because many indicated that in terms of preferential procurement, they had not done well and would therefore need to invest money in identifying companies in their supply chain. They indicated that they would need to conduct a due diligence to assess the suitability of the black-owned companies they would invest in, whether from an ED or supplier development perspective to ensure: 1) that they were investing in the right entities; 2) the entities were deserving; 3) they could be associated with the entity without running a reputational risk; 4) understanding the areas of strength and weakness of the targeted black investee companies.

All this would be done before injecting a cent of capital into the black business. Once the due diligence was completed, the companies would need to decide how much money would be invested in each entity, and who would be appointed to ensure the companies were operating, incubated and monitored accordingly. There is also a belief that procuring from black QSEs and EMEs would be more expensive compared mainstream companies that had been used historically. This is because black emerging companies do not have the benefit of economies of scale and therefore competitive pricing.

One executive expressed their sentiments on the matter:

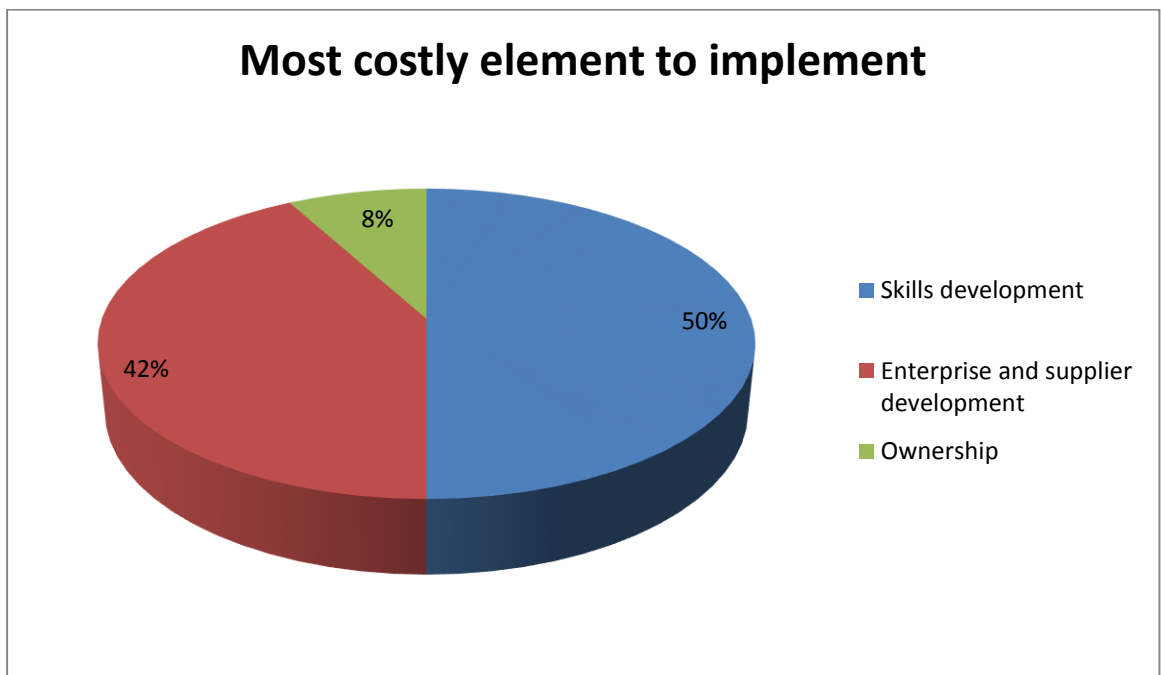
“Now with our black owned suppliers, some of them still need mentorship, others are not able to ensure delivery because of capacity issues. Their balance sheet is not that strong, there are just so many challenges. And yes we appreciate that from an enterprise development we have an obligation to take on these very suppliers and transform them to a level where they then will be able to meet our requirements, however, that’s a journey. On the back of that journey, we have clients whom we already have existing contracts with who don’t care that we are going through this lovely enterprise development programme to transform our new so called suppliers and enterprises. To bring them to the level that we have been operating with previous suppliers. They are saying we agreed this is what we are going to get, this is when we are going to get it, so please can we have it. If not, penalties kick in. Also, as you can imagine we have government agreements with certain clients. With those clients, the agreements state that as at the time of the tender that was awarded we were a level 2. The condition of the tender states we have to remain a level 2 for the duration of the tender, if we don’t, the penalties kick in.” Respondent B

Another executive put it more succinctly:

“How are companies who couldn’t spend 12% of their procurement on Black companies, going to spend 40%.... where do we find these companies....it means we need to create them and transform our procurement...” Respondent D

The outcome of the impact on costs is shown in Figure 4 and 5.

Figure 4: BBBEE element assessed as being the most costly to implement



Source: Self

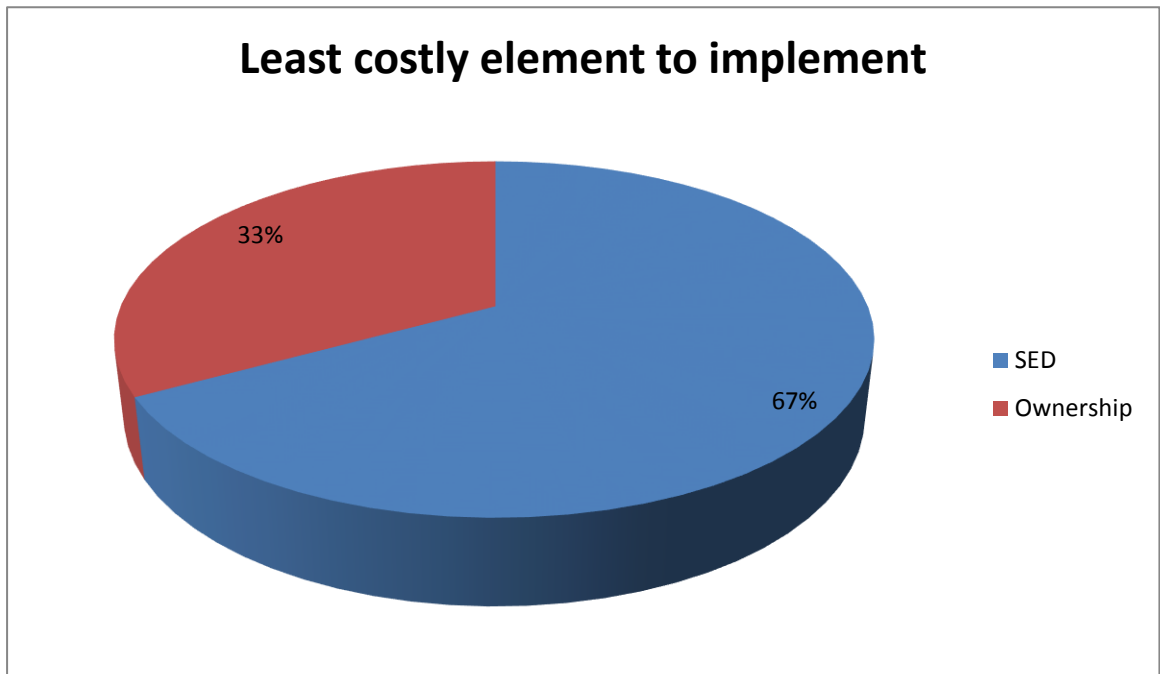
When comparing the old codes to the new codes, the majority of companies agreed that socio-economic development was unlikely to have any impact on their individual companies' incremental costs, which had already been budgeted for. An exception was that some of the companies with strong BBBEE empowerment deals felt that they would still be required to spend the 1% of NPAT on SED, but would spend nothing in respect of ownership for the next few years.

Consensus from the majority of the executives is represented in this statement:

"SED is Social Economic Development, which is five (5) points. We do that very well as an organisation. We have a lot of programs and get 100% of the points." Respondent D

In Figure 5, the BBBEE element assessed as being the least costly to implement is shown.

Figure 5: BBBEE element assessed as being the least costly to implement



Source: Self

Other costs of compliance which were identified from the interviews included:

1. People – a question was asked about who within each company was responsible for BEE compliance and what teams they had working on compliance within the organisations. Only four of the companies, had a head of transformation whose main focus was all matters BEE, who reported into the Executive. In some instances, that person had one or two full-time individuals reporting into them. In the majority of the companies, each division or business unit had a 'transformation champion' who also had their full-time job. All the companies had a transformation committee consisting of the transformation champions presided over by either the Chief Executive Officer (CEO) or Executive in charge of transformation. The mandate of this committee was ensuring implementation of BBBEE within the organisation, including feedback on progress thereof. Some companies were considering hiring a transformation manager, which was clearly an extra cost as the burden of compliance had increased.

2. Time and effort – The changes in the number of elements to be measured has reduced from seven to five elements, but the indicators for each element and complexity of the new codes has increased. Companies complained that time and effort would need to be invested in firstly understanding the codes, disseminating the information and creating awareness throughout the companies on the changes, not to mention the time and effort in performing a gap analysis on what initiatives need to be implemented.
3. Other resources – these include the mechanisms and/ or tools that will enable the collection or collation of data or information to enable the measurement at verification time. As one executive put it:

“...it’s very onerous and I’m talking about it not from a point where the responsibility on the company has just become quite heavy, but there’s also a huge administrative burden that goes with it..massively administrative unless you invest in like fancy tools and all sorts of things. To try and do this on a manual basis, is just very, very challenging.”
Respondent L

This executive summarised the costs of compliance as follows:

“Given the intricacies of the code, means that the company must have resources, i.e. employ additional resources, to deal with it because each has its own caveat or its own concern, if you have ownership, you have to have a team dealing with it to ensure that you get it right. On the ESD, you have to employ people to do so, on skills development you have to have departments in order to do so. Because you have to move from 3% to 6%, how do you manage such a big budget without employing internal resources to manage that, more than anything else it is a financial cost to the organisation. The financial cost alone is the skill spend apart from employing internal resources.”
Respondent D

4.6 Conclusion on Results Chapter

The results of the study conducted can be summarised as follows: Twelve out of eighteen (67%) of the companies' executives in the sample selected were interviewed for an average time of one hour. One company did not want to participate in the study, as they believed the information was price-sensitive. Of the remaining five companies, one was excluded due to its head office being based in Cape Town while interviews were unable to be secured with the rest. Seven of the twelve executives interviewed were responsible for HR, with the balance being CFO's. The majority (67%) were Black and male (75%). The research into the impact of the new codes on a company's BEE rating showed that on average the rating will drop by 3 levels. 50% of the respondents identified the element on the new scorecard most likely to be most challenging to implement as ESD, while the remainder were split 50/50 between ownership and skills development. In line with the literature reviewed SED was deemed the least challenging to implement by the majority of respondents (83%). 50% of the respondents stated that the most costly element to implement is likely to be skills development, as the required spend had doubled from 3% to 6% of payroll as expected. The least costly to implement was SED, as it was already budgeted for according to 67% of the respondents identified. There was consensus that the starting point on dealing with the new codes was creating awareness within all the companies of the changes within the codes, which entailed both time and effort, and this was before the implementation initiatives that would pose their own challenges.

CHAPTER 5: DISCUSSION OF RESULTS

5.1 Introduction

The objective of this chapter is to discuss the results of the research and provide the conclusions of the exploratory study. The chapter is organised as follows: Section 5.2 discusses the results for question 1 on how the new codes affect the company's new BBBEE rating. Section 5.3 deals with the results on the likely BBBEE implementation challenges under the new codes, while Section 5.4 discusses the results on the costs of compliance with the amended codes. Section 5.5 lists areas in which companies believe that further amendments and/ or improvements are required to the new codes, which is an area that developed as an area of interest as the interviews were being conducted. Finally, Section 5.6 concludes on the chapter.

5.2 Results discussion on the sample of companies selected and profile of respondents

5.2.1 Sample of companies selected

The 2015 Empowerdex Top 100 JSE most empowered companies 100 survey classified under the industrial goods and services were selected for the interviews. Although all the companies chosen for interviews were classified generally as industrial goods and services under, according to the JSE sectors, they were under different industries, as noted in Table 2. The results were not affected by those companies that use the industry charters, as none of them were in place at the date of the interviews, as such all companies assessed the impact of the new codes on the basis of the generic code. The majority of companies used the generic scorecard and even those that didn't, still largely explained the changes in the codes based on the generic scorecard, as none of the relevant sector charters had yet been gazetted.

5.2.2 Demographic profile of respondents

The majority of the respondents were executives responsible for Human Resources (HR) within the companies, or alternatively, they were the CFOs. This made sense considering that at least two of the scorecard elements would be within the ambit of HR, being management control and skills development. Together, they account for almost 40% of the points and require constant monitoring, unlike ownership which, once in place, would secure the same points for the same duration. Of the executives interviewed, 64% were black, as defined, and 36% were white, while 25% were female and 75% male. This means that the transformation mandate within these companies is largely under the responsibility of black male executives. Further conclusions could not be made about their impact on the companies without further research.

5.3 Results Discussion on Question 1: how the new codes affect the companies' BBBEE rating

The literature studied was largely supported by the results of the study, which suggested that the 2013 amended codes were considered onerous and punitive (Balshaw and Goldberg, 2014). This was evident from the average decrease in the indicative or actual rating of 3 points, consistent with the results by (Empowerdex, 2014), who predicted companies would be discounted by at least 3 points. This would be further exacerbated by the existence of the three priority elements, being ownership, skills development as well as enterprise and supplier development, all of which require companies to achieve a 40% sub-minimum score. Failure to achieve this would result in the company's overall rating dropping by a further one level for each element that was not met. Consistent with the above, the research showed that the majority of companies (ten out of twelve) expected to have the overall BEE score by drop one level due to not meeting the sub-minimums for the three priority elements. The main contributor to this was non-compliance with ESD. Companies generally expected to struggle to meet the ESD requirements, particularly those whose inputs are largely imported, such as in the motor and heavy equipment industries. With the removal of the import exclusion, companies appear to be unable to source suppliers locally, which affects their status as an empowering supplier. In addition as was identified by (Kleynhans and Kruger, 2014), most companies struggle to source or create black suppliers in their specific industries in the short term. Of the two companies that were concerned about the ownership priority element, one would definitely have its rating discounted because it had never ventured into a BEE deal. As one of the executives said: *"Ownership is difficult but we have tried"* Respondent F

5.4 Results discussion on Question 2: Companies' views on the most challenging BBBEE element to implement

The research showed that companies will be most impacted by the challenges in implementing ESD, which is made up of preferential procurement, enterprise development and supplier development, and is the single most important element, as it accounts for 40 points (Jeffrey (2014)). It is also a priority element, which means that failing to achieve the 40% minimum threshold will discount the company's entire BBBEE rating, which would fall by one more level. 50% of the companies believed that ESD would have the most impact, therefore posing the most implementation challenges, while 45% believed it would also be the most costly to put in place. This is directly linked to procuring from empowering suppliers as identified by (Jeffrey, 2014). Their criteria as defined in the codes is too narrow and will be difficult for large companies to meet (Jeffrey, 2014); as one respondent noted regarding their company's spend, which is over R10 billion per annum. One respondent asked:

"Where do I find Black EMEs and QSEs to spend and spread over R1.5 billion on each per annum in my industry?" Respondent K

Skills development and ownership play a lesser role in the impact on companies, albeit not without sensitivities on implementation. A number of executives pointed out the challenges of skills development under the new codes; they included: training according to the demographics of race and gender (EAP model per Appendix 3), having to accredit training courses including those run by business schools (as they were too internally focused), the willingness of particularly black staff to be trained on an ongoing basis, particularly where they had degrees and did not wish to be trained. As one executive said: *"We cannot train for training's sake."* Respondent I

On the ownership side, none of the companies viewed it as being the element posing the greatest challenge to implement. This was not because they viewed ownership as unimportant, but as (Fauconnier and Mathur-Helm, 2008) said a number of ownership deals were concluded under the old codes, which was the case in this sample. Only two out of the twelve companies had never attempted a BEE deal at all. The reason they gave was that it was not through lack of effort on their part, however they were also of the opinion that giving shares to a select few blacks, at a discount would prejudice or be unfair to their existing shareholders. In fact, they were of the opinion that anyone wanting their shares whether black or white, is welcome to buy them as they were freely available as they were listed on the JSE.

Some companies had done empowerment deals whether with strategic partners, and/ or employees and/ or community groups and these had reached their term recently and unwound. Some were in the money, while others were 'under water', but none-the-less a gratuitous amount was paid to the BEE partners as a sign of goodwill. As one executive said: *"Our BEE partners cashed in their shares and sailed into the wind"*, which effectively means that these companies have their ownership score at risk. That said none of them wanted to commit to doing a deal in the near future, in spite of acknowledging that it was required. They felt that currently there was too much uncertainty and they would adopt a "wait and see attitude", until either the "once empowered always empowered" issue was clear, or other companies did deals, so they could see how those were structured and if they were working.

There was consensus that the element which would be the least challenging to implement was socio-economic development (SED). Ten out of twelve companies mentioned that and the reasons they all advanced were similar in nature. Most said they had been doing CSI for years and had in fact been doing it well. It appeared that many company executives were more than happy to spend the money and/or the time and only one lamented the unfairness that white people were excluded for spend that could be measured for BBBEE. The other reason advanced was that the amount was already in the budget, and it had not even increased and programs supported were known. It was interesting to note that education was supported by a number of the companies interviewed.

Two companies mentioned that ownership was the element with the least impact/challenge since they felt they had solid empowerment credentials arising from their BEE deals. One company mentioned that they were 62% black owned.

5.5. Results discussion on Question 3: costs of compliance under the new codes.

50% of the companies interviewed were of the opinion that the most expensive element to implement would be skills development, as the amount to be spent has doubled from 3% per annum of the leviable amount (payroll) to 6% per annum. This doubling of the costs is before one considers the definition of the leviable amount and the requirements that training be according to the EAP matrix (see Appendix 3).

45% of the companies surveyed considered ESD as the most expensive to implement and not skills development, as some said they either were working on programs like learnerships already and it was not difficult to comply with skills development, as one just needed to “*throw money at it*”. ESD on the other hand was considered some sort of enigma or unknown cost and in some cases bordering on the impossible to implement, especially with companies who imported a sizeable portion of either their inputs or what they sold. Companies cited the fact that they couldn’t do much if their foreign owned principals did not wish to open a plant locally. They also complained about the fact that foreign owned companies are not subject to the same stringent BBBEE rules that local companies are subjected to. They indicated that by allowing this, Government did not help their cause and in fact, made their lives difficult.

From the research done companies seemed to still differentiate between ED and SD. Companies appeared comfortable with ED part and almost unsure of where to begin with SD. Others had clearly thought it through and identified the challenges of their existing supplier base who were mostly white and large companies, if local. They could articulate both the issues facing them regarding SD and how they planned to address them. Their only concern was that this was going to be a long process and a journey that would take years to develop. This reconciled with the discounting due to not meeting the sub-minimum threshold, as ESD and SD featured high on those.

5.6 The Companies’ recommendations for amending or clarifying the new codes

Company executives were asked to provide any recommendations for amending or clarifying the new codes in any area, and why these specific areas were chosen.

The results were as follows:

1. Government must do away with the BBBEE codes and introduce a simple mechanism that addresses the ownership element only. This was considered common across many countries that referred to it as “indigenisation” or “localisation”.

This was in order to simplify BEE for all parties involved and was deemed a more effective mechanism which Government could use to implement and monitor BEE.

2. Government must make compliance with BBBEE more stringent, by introducing more direct enforcement with clearer penalties for non-compliance such as the South African Receiver of Revenue (SARS) has for non-compliance with taxation legislation. The respondent in this instance did not subscribe to the 'carrot and stick' approach to BBBEE that (Horwitz and Jain, 2011) mention where companies only comply when they want Government tenders. The respondent wanted a BEE certificates to be submitted to a government institution as a matter of course and not as and when required, but more importantly that lack of submission must attract clear penalties.
3. Codes are rather involved and time consuming and therefore there is a need to simplify them. This would promote compliance. The respondent expressed a concern that BBBEE compliance takes management away from the real issues of running the business, as such the recommendation was if the codes were easier to understand, the motivation to comply would increase.
4. It appears that in drafting the codes, government did not consider the fact that South Africa is part of a global village and therefore there are a myriad of implications which, from a score-card perspective are punitive, especially for local companies that either operate under the licence of original equipment manufacturers (OEMs), or those who purchase raw materials from multi-national companies that are foreign-based. These companies run the risk of not meeting the empowering supplier requirement, on the 25% of local content and run the risk of being rated as "non-compliant" from a BBBEE perspective.
5. Companies that import significant amounts are concerned about imports not being excluded from qualifying spend, as they were under the old codes. The reason this is an issue is that such companies are required to spend a certain percentage on local goods in order to score points on the preferential procurement portion of ESD, which accounts for twenty-five out of the total of forty points available for that element.

6. Some companies would like the score-card to take into consideration the economic cycle they are in as well as their financial status. Such companies believed the realities of their different industries, under different economic cycles were not considered in drafting the new codes. An example given was that just because a company's turnover is in excess of R50 million, which automatically meant the company was measured under the generic score-card was not fair, as profits may be low in certain economic cycles.
7. From an ownership perspective the principle of "once empowered always empowered" needs to be clarified. This is because companies are not clear about whether this principle is in force or not. Were this to apply, then a company would be able to retain full equity ownership points, even if their BEE partners sell their stake in the company. A number of companies are of the opinion that doing equity deals is too expensive to keep repeating every few years.
8. On skills development, there was a recommendation that the codes be aligned to the Skills Development Act 97 of 1998, which is already in place. This is because companies are already paying a 1% levy on their payroll in terms of the Skills Development Act and its amendments, and are now required to pay 6% of their payroll for skills development under the new codes. Companies believe this is misalignment of objectives and double taxation on them.
9. The turnover threshold used to determine enterprises that no longer require incubation by companies, was deemed an incorrect indicator of whether the enterprise would remain profitable and sustainable. This was raised because there is a new requirement that companies be incubated until they reach a pre-determined turnover, thereafter new ones must be found for supplier development.

5.7 Conclusion on Results

The results were found to be largely in line with the literature reviewed. Empowerdex had concluded in their 2015 survey that most companies were likely to have their BEE rating drop by 3 levels. This was clearly borne out by the research conducted as per Figure 1. In terms of the impact on the companies of the changes in the elements and resultant weightings, ownership which had increased by 5% was not a concerning factor, as most companies had a BEE deal in place as reflected on Table 3. Skills development which also increased its weighting in the generic scorecard by 5%, was unsurprisingly identified as the most likely costly to implement per Figure 4, given that in addition the amount companies were required to spend had increased from 3% to 6% of payroll. The biggest impact would come from ESD per Figure 2, not only because the attributable percentage was the highest at 40%, but also due to the complexities of import exclusions, definition of empowering suppliers and the introduction of this element as one of the three elements, upon which a sub-minimum 40% must be scored, otherwise the overall BEE rating would be dropped by one level. The others are ownership and skills development. Companies not focusing on these priority areas will suffer the consequences of BEE ratings dropping even further. As expected, companies expect SED to continue to be business as usual from the results, as even the attributable points remain unchanged. Finally, even though the codes effective May 2015 have barely been fully implemented, companies are already noting areas that require clarification and/ or amendment. This mainly revolves around the simplification of the codes, clarity on grey areas such as “once empowered, always empowered” and consideration of the codes in light of other pre-existing legislation. Company executives believe compliance with codes will automatically increase if simplification and clarity is introduced.

CHAPTER 6: CONCLUSIONS OF THE STUDY AND RECOMMENDATIONS

6.1 Introduction

Chapter 6 concludes the study and provides recommendations for further study. Section 6.2 presents conclusions of the study, while Section 6.3 provides recommendations for further research.

6.2 Conclusions of the study

Questions in the interviews sought to explore the impact of the new codes on companies by asking three questions: firstly, how the new codes will affect a company's new BBBEE rating, secondly what would be the most challenging element to implement, and lastly what are the costs of compliance thereof. In addition, the view of the companies on the overall changes in the scorecard were identified, as well as an assessment made of the likely changes in BBBEE scores if measured under the new codes.

Research Question 1 on the overall view of the changes did not yield any surprising results, but highlighted the fact that there was a general concern that the new codes were not easy to comply with, and in certain instances are vague, ambiguous and open to interpretation (Jeffrey (2014)). Most companies were disappointed that the gains they had made in initiatives done on most elements over the past few years would not necessarily count, making some despondent that they would have to begin the transformation journey once again. A minority were considering complying on a “need to” basis, and that was only where they did government work. On the other hand, there were companies that embraced the changes, and in fact went as far as saying that government had not gone far enough in drafting and enforcing the amendments. They welcomed the challenge of the new codes and understood them not only in a business context and as licence to trade, but that their implementation was for the greater good of the South African nation.

Research Questions 2 and 3 explored the likely challenges and costs of implementing the new codes. It was clear that companies saw compliance with ESD as the most challenging, followed by skills development, which was considered as being the most costly, and was followed by ESD. This was not surprising as these elements are not only both priority elements, but have had the most changes effected to them. Skills development spend would need to at least double, based on the new requirement of 6% of payroll (from 3% per annum), but was also further complicated by the types of training that could qualify under the codes. This, before considering training the right people at the right levels within the organisation, in terms of EAP. Companies were also concerned that implementing ESD would not only be costly to implement but time-consuming and hard to achieve practically. In addition, the need to be an empowering supplier as well as procuring from empowered suppliers is an added complication. There is also likely to be an increase in the need for resources, including human resources, and in most cases software to manage the data required to measure the entity at verification. In addition, there is the training and awareness of all staff who must be assisted in understanding the changes to the codes.

From the research done it is clear that the executives are close to this subject of BBBEE and that all the companies interviewed indicated that transformation and BEE is a strategic objective for them, that is discussed in transformation committees, SETCO's and the Board. Indeed, while some worried that the scorecard approach promoted a tick box approach to transformation, others felt strongly that BEE was a moral and business imperative and no company should do business in South Africa, if it was not prepared to embrace BEE with all its imperfections. A quotation from one executive states:

"In 2007 when the codes were gazetted all companies in South Africa said it is impossible to meet the requirements in terms of the codes – history would show otherwise". Respondent D

6.3 Recommendations for further study

6.3.1 Recommendations for government and policy-makers

From the study, it appears that the area of skills development, while understood as critical, has been overly complicated by the DTI, which appears to micro-manage companies. Training is a business imperative and must meet business needs, therefore the introduction of EAPs and which level of manager must do which level of training is perhaps going too far. Simplification may assist companies in making the right training decisions, taking into account their employee as well as business needs.

6.3.2 Recommendations for companies

BEE is here to stay and the sooner companies embrace it and introduce those measures that they can, the better. Contrary to popular belief, there does not appear to be a sunset clause in BBBEE; The Director General (DG) of the DTI, Lionel October is quoted in the Financial Mail (Paton, 2015) to have said:

“People have asked if there is a sunset clause to BEE, but we can’t have sunset if we haven’t had sunrise” It is therefore time to embark on the journey, even if it is a hard one. Over time, government will hopefully release guidelines to simplify the codes and clarify the areas in which there are ambiguities and lack of clarity, thus making them easier to implement.

6.3.3 Suggestions for further research

This research was conducted when the amended codes are still fairly new in terms of effective implementation date, therefore most companies are either in the process of performing ratings on the amended codes or will need to do a new rating later this year. Therefore, three to five years from now the actual impact of the 2013 codes can be researched, either on all the elements, or choosing and focusing on only one element. It would be interesting to track the strategies and initiatives put in place by the respondent companies to improve their ratings, and whether they in fact, improve and/or regain their previous ratings. Alternatively, a case study can be done, focusing on one company’s BEE journey over a period of years, covering challenges and opportunities arising from BBEE implementation.

As interviews were being conducted, interesting and differing views were expressed on whether or not compliance with the BBEE codes actually gives a company a competitive advantage in retaining existing business and winning new business. This could also be further explored.

APPENDIX 1: AMENDED BBBEE RECOGNITION LEVELS

BBBEE STATUS	OLD QUALIFICATION	NEW QUALIFICATION
Level One Contributor	≥100 points on the Generic Scorecard	≥100 points on the Generic Scorecard
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	≥95 but <100 points on the Generic Scorecard
Level Three Contributor	≥75 but <85 points on the Generic Scorecard	≥90 but <95 points on the Generic Scorecard
Level Four Contributor	≥65 but <75 points on the Generic Scorecard	≥80 but <90 points on the Generic Scorecard
Level Five Contributor	≥55 but <65 points on the Generic Scorecard	≥75 but <90 points on the Generic Scorecard
Level Six Contributor	≥45 but <55 points on the Generic Scorecard	≥70 but <75 points on the Generic Scorecard
Level Seven Contributor	≥35 but <45 points on the Generic Scorecard	≥55 but <70 points on the Generic Scorecard
Level Eight Contributor	≥30 but <40 points on the Generic Scorecard	≥40 but <55 points on the Generic Scorecard
Non-Compliant Contributor	<30 points on the Generic Scorecard	<40 points on the Generic Scorecard

Source: (Balshaw and Goldberg, 2014)

APPENDIX 2: LIST OF COMPANIES SELECTED AS SAMPLE FOR INTERVIEWS

No.	COMPANY RESPONDENT	INTERVIEW CONDUCTED	TURNOVER/ REVENUE R'MILLIONS	FINANCIAL YEAR
1.	Respondent A	Yes	R13,322	28 February
2.	Respondent B	Yes	R22,086	28 February
3.	No Respondent	No	R2,151	30 June
4.	Respondent C	Yes	R1,389	28 February
5.	Respondent D	Yes	R5,229	30 September
6.	No Respondent	No	R913	28 February
7.	No Respondent	No	R1,483	31 December
8.	Respondent E	Yes	R5,230	30 November
9.	Respondent F	Yes	R957	31 December
10.	Respondent G	Yes	R1,117	30 June
11.	Respondent H	Yes	R702	30 June
12.	No Respondent	No	R1,100*	31 May
13.	Respondent I	Yes	R17,291	30 September
14.	Respondent J	Yes	R1,368	31 May
15.	No Respondent	No	R7,996	30 June
16.	Respondent K	Yes	R19,818	30 June
17.	Respondent L	Yes	R182,165	30 June
18.	No Respondent	No	R2,038	28 February

Source: Empowerdex Top 100 JSE companies classified as industrial goods and services

Source for Revenue Figures: OneSource Business Browser (2015 year ends except for Company identified with an asterisk, which had a 2014 year end)

APPENDIX 3: PROFILE OF THE NATIONAL EAP BY POPULATION GROUP AND GENDER

RACE	MALE	FEMALE	TOTAL
African	40.3%	34.9%	75.2%
Coloured	5.6%	5.0%	10.6%
India	1.9%	1.2%	3.1%
White	6.2%	4.6%	10.8%
Total	54%	46.0%	100%

Source: The Employment Equity Commission Report 2013/ 2014 - Part 2

APPENDIX 4: BBBEE INTERVIEW QUESTIONNAIRE

BBBEE Interview Questionnaire by NP Dongwana (Student number: 768279) to accompany MCom Research report – impact of implementing new codes on the JSE top empowered companies within the diversified industrials sector

BACKGROUND INFORMATION: (to be completed as far as possible by researcher prior to each interview)

1.	Name of company	
2.	Financial year-end	
3.	Name of verification agency used	
4.	Position of respondent in the company	
5.	Expiry date of current BBBEE certificate	
6.	Scorecard used by Company	
7.	Is the company an empowering supplier?	
8.	Date of conducting the interview	2016/02/17

BBBEE SCORE:

1. Please state the BBBEE rating based on the 2007 Codes as at 30 April 2015

Choose an item.

2. Did the Company do another rating to extend the BBBEE rating certificate by another year? **Choose Item**

3. If the answer to 2 above is yes, then what was the BBBEE rating? **Choose an item.**

4. Has the Company done an indicative rating based on the amended codes? **Choose an Item**

5. If the answer to 4 above is yes, then what was the BBBEE rating? **Choose an item.**

INTERVIEW QUESTIONS

1. The Amended BBBEE Codes of Good Practice of 2013 (“new codes”) introduced significant changes to the 2007 codes (“old codes”). In this context, what is your Company’s overarching view of the amendments?
2. How has the introduction of the BBBEE codes of 2013 affected your Company’s business taking into account costs, resources and any potential opportunities?
3. When comparing the old codes to the new codes, which element(s) do you think are the most onerous or challenging to implement, and why? Have you encountered implementation challenges thus far? If so, in which particular/ specific areas, and how does the company plan to deal with them?
4. For which of the three priority elements, being ownership, skills development and enterprise and supplier development (ESD), is the Company’s BBBEE rating likely to be discounted as a result of not meeting the minimum 40% threshold? If so, what plans have been introduced to counter this risk?
5. How has the Company reacted to the changes in BBBEE legislation at board level, and has there been a change in strategy that is sanctioned and monitored by the board? If so, in what way?
6. Of the five new BBBEE elements identified below, please rank them according to which element is likely to have the biggest impact on the Company due to changes made in the scorecard, with 1 indicating the most impact on the Company and 5 having the least impact. *(Please note that currently they are listed per the Codes and not in order as requested)*

Ownership	Choose an item.
Management Control	Choose an item.
Skills Development	Choose an item.
Enterprise and Supplier Development	Choose an item.
Socio-economic Development	Choose an item.

7. For the element that you have ranked as having the **most impact** on your Company (i.e. 1 above), please provide reasons why you think this is the case:

--

8. For the element that you have ranked as having the **least impact** on your Company (i.e. 5), please provide reasons why you think this is the case:

--

9. Of the five new BBBEE elements identified below, please rank them according to which element is likely to have the biggest cost to the Company due to changes made in the scorecard, with 1 indicating the most impact on the Company and 5 having the least impact. (Please note that currently they are listed per the Codes and not in order as requested)

Ownership	Choose an item.
Management Control	Choose an item.

Skills Development	Choose an item.
Enterprise and Supplier Development	Choose an item.
Socio-economic Development	Choose an item.

10. For the element that you have ranked as having the **greatest impact on company costs** (i.e. 1), please provide reasons why you think this is the case:

11. For the element that you have ranked as having the **least impact on company costs** (i.e. 5), please provide reasons why you think this is the case:

12. Who within the Company is responsible for BBBEE compliance and why has that responsibility been allocated to that individual? How many people in total within the Company are tasked with BBBEE compliance?
13. Were you to be given an opportunity to give recommendations for amending or clarifying the new Codes in any area, what would these relate to and in what specific area(s) would this be, and why?

THANK YOU FOR YOUR INPUT

APPENDIX 5: SAMPLE OF E-MAIL SENT TO POTENTIAL RESPONDENTS REQUESTING INTERVIEW

Dear Mr/ Ms XYZ*

Thank you for agreeing to meet with me.

I am currently registered for a Masters in Commerce at the University of the Witwatersrand. I am in the process of writing my thesis on the topic of the changes in the BBBEE codes of good practice and their impact on specific JSE companies.

My selection of companies is from the Empowerdex Top 100 companies' survey of 2015. Within those I chose to interview the executives in charge of BBBEE or transformation within the diversified industrials sector. ABC Limited* is one of these companies.

I look forward to our meeting and have attached the interview questions that I will be using for your perusal, as well as my profile.

Kind regards

Neo Phakama Dongwana

Mobile: +27 82 453 6292

Email: ndongwana@gmail.com

* Name withheld

REFERENCES

- ACEMOGLU, D., GELB, S. & ROBINSON, J. A. 2007. Black Economic Empowerment and economic performance in South Africa. *MA: Center for Economic Development, Working Paper.*, 1-50.
- ARYA, B. & BASSI, B. 2009. Corporate social responsibility and broad-based black economic empowerment legislation in South Africa codes of good practice. *Business & Society*, 50, 674-695.
- BALSHAW, T. & GOLDBERG, J. 2014. *Broad-Based Black Economic Empowerment: Amended Codes & Scorecard*, Cape Town, Tafelberg.
- BOOYSEN, L. 2007. Barriers to employment equity implementation and retention of blacks in management in South Africa. *South African Journal of Labour Relations*, Vol 31, 1-26.
- BOWMAN GILFILLAN, A. 2010. Black Economic Empowerment Guide. Johannesburg.
- BUREAU, U. S. C. 2014. United States Quickfacts from the US Census Bureau.
- BURGER, G. 2014. The Proper Tool For BEE Fronting Removal. *Accountancy SA*, 38-43.
- COHEN, M. 2012. South Africa's Racial Income Inequality Persists, Census Shows *Bloomberg Business* [Online]. [Accessed 20/03/2016].
- CRESWELL, J. W. & PLANO CLARK, V. L. 2011. *Designing and Conducting Mixed Methods Research*, United States of America, Sage Publications Inc.
- DE WET, A. 2015a. Forward-Thinking B-BBEE Challenge. *Accountancy SA*, April 2015, 24.
- DE WET, A. 2015b. Why Immediate B-BBEE Implementation is important. *Accountancy SA*, May 2015, 22-23.
- ECONOMIST, INTELLIGENCE & UNIT 2015. Country Commerce: South Africa. *EIU*, 78.
- EMPOWERDEX 2012. Trailblazers 2012 Report Johannesburg.
- EMPOWERDEX. 2014. Amended BEE Codes: A New Focus. *Mail & Guardian*.
- ERASMUS, J. & BREIER, M. 2009. Skills Shortages in South Africa: Case Studies of Key Professions. *In: LABOUR, D. O. (ed.)*. Cape Town: HSRC Press.
- ESSER, I.-M. & DEKKER, A. 2008. The Dynamics of Corporate Governance in South Africa: Broad Based Black Economic Empowerment and the Enhancement of Good Corporate Governance Principles *Journal of International Commercial Law and Technology* 3, 157 -169.
- FAUCONNIER, A. & MATHUR-HELM, B. 2008. Black economic empowerment in South African mining industry: A case study of Exxaro Limited. *South African Journal of Business Management*, 39, 1-14.
- FERREIRA, P. & VILLIERS, C. D. 2011. The association between South African listed companies' BEE scores and market performance: An introductory study. *Meditari Accountancy Research*, 19, 22-38.
- HAREEPARSAD, S. 2015. B-BBEE and its implications for fronting. *Accountancy SA*, May 2015, 24-25.
- HERRINGER, A., FIRER, C. & VIVIERS, S. 2009. Key challenges facing the socially responsible investmentSRI sector in South Africa. *Investments Analysts Journal*, 11 - 26.
- HORWITZ, F. & JAIN, H. 2011. An assessment of Employment Equity and Broad Based Black Economic Empowerment developments in South Africa. *. Equality, Diversity and Inclusion: An International Journal*, 30, 297-317.
- INTELLIDEX 2015. The Value of BEE Deals. *Research report June 2015*. Johannesburg: Intellidex.
- JACK, V. & HARRIS, K. 2007. *Broad-based BEE: The complete guide*, Cape Town, Frontrunner Publishing.
- JACKSON III, W. E., ALESSANDRI, T. M. & BLACK, S. S. 2005. The Price of Corporate Social Responsibility: The Case of Black Economic Empowerment Transactions in South

- Africa *The Open Access Publication Server of the ZBW – Leibniz Information Centre for Economics*, 2005-29, 1-30.
- JEFFREY, A. 2014. *BEE Helping or Hurting?*, Cape Town, Tafelburg.
- JSE 2015. Black South Africans hold at least 23% of the Top 100 companies listed on the Johannesburg Stock Exchange. *In: ATERFORD, C. (ed.)*.
- KIM, S. J. 2010. *Truth is Somewhere in Between: An Ethnographic Account of Broad Based Economic Empowerment (BBBEE) in South Africa - A Work in Progress*. Masters of Arts (Anthropology), University of the Witwatersrand.
- KLEYNHANS, E. P. J. & KRUGER, M. C. 2014. Effect of Black Economic Empowerment on profit and competitiveness of firms in South Africa. *Acta Commercii*, 14, 1-10.
- LABOUR, D. O. 2014. Commission for Employment Equity Report 2013/ 2014. *In: LABOUR, D. O. (ed.)*. Pretoria.
- LEEDY, P. D. & ORMROD, J. E. 2005. Practical research. *Planning and design*, 8.
- LEEDY, P. D. & ORMROD, J. E. 2013. *Practical Research: Planning and Design*, United States of America, Pearson.
- MAFOHLA, S. P. 2011. *The Contribution of the seven BBBEE elements to excess returns on the JSE Securities Exchange*. Master of Business Administration, University of the Witwatersrand
- MAKIZA, T. 2013. *High potential black entrepreneurs and business support in South africa*. Master of Business Administration, University of the Witwatersrand.
- MBIZA, N. 2007. *Factors that Make Black Entrepreneurs Successful in South Africa*. Master of Business Administration, University of the Witwatersrand.
- MONEYWEB 2013. BEE deals few and far between.
- PATON, C. 2015. Black Economic Empowerment: Just How Big is BEE? *Financial Mail*. Johannesburg: BDFM Publishers (Pty) Ltd.
- PLAATJIES, E. 2014. *Funding structure efficiency and empowerment success: A Broad Based Economic Empowerment Study*. MMFI, University of the Witwatersrand
- REPUBLIC of South Africa (2007). 'Broad-Based Black Economic Empowerment Codes of Good Practice'. *Government Gazette No. 29617, February 2009*.
- REPUBLIC of South Africa (2013). 'Broad-Based Black Economic Empowerment Codes of Good Practice'. *Government Gazette No. 36928, May 2015*
- ROGERSON, C. M. 2013. Improving market access opportunities for urban small, medium and micro- enterprises in South Africa. *Urbani izziv*, 133 - 143.
- RYAN, B., SCAPENS, R. W. & THEOBALD, M. 2002. *Research Method & Methodology in Finance & Accounting*, United Kingdom, Lightening Source.
- SAICA 2014a. Driving Better Reporting by embedding BBBEE into your corporate strategy *Accountancy SA*, September 2014, 30-31.
- SAICA 2014b. Survey reveals that transformation in the CA(SA) profession contributes positively to the transformation of listed company directors under the age of 40. *In: DIVISION, S. C. M. (ed.)*. Johannesburg: SAICA.
- STATISTICS SA, S. A. 2016. Quarterly Labour Force Survey Quarter 4: 2015. Pretoria: Statistics South Africa.
- TANGRI, R. & SOUTHALL, R. 2008. The Politics of Black Economic Empowerment in South Africa. *Journal of Southern African Studies*, 34, 699-716.
- VAN DER NEST, D. 2004. *The Impact of Broad Based Economic Empowerment on the Management of Small Business in South Africa* Master of Commercii in Business Management, Rand Afrikaans University.
- WERKSMANS 2014. Amendments to the BBBEE Act and the Codes explained. Johannesburg: Werksmans.

- WOLMARANS, H. & SARTORIUS, K. 2009. Corporate social responsibility: the financial impact of black economic empowerment transactions in South Africa: corporate governance. *South African Journal of Economic and Management Sciences= Suid-Afrikaanse Tydskrif vir Ekonomiese en Bestuurswetenskappe*, 12, 180-193.
- YIN, R. K. 2011. *Qualitative Research from Start to Finish*, United States of America., The Guildford Press.