Extract of Draft PLFCC B-BBEE Codes – Retail & Site owners

A YEAR LATER OF GETTING A BASIC UNDERSTANDING

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Content

LEGISLATION OF BEE

- Constitution – 1996
- B-BBEE Strategy Document
- Broad-Based Black Economic Empowerment Act (Trumping Provision)
- The Codes of Good Practice
- The Verification Methodology
- All Gazetted Sector Codes
- Government Notices

DEVELOPING A SECTOR CODE – Sections applicable

- **A B-BBEE Sector Charter, gazetted in terms of Section 12 of the B-BBEE Act, means that it:**
  - Is being developed and agreed upon by major stakeholders in the industry;
  - Is published for information and guiding purposes and used as a statement to drive B-BBEE through industry players; and

- **A B-BBEE Sector Charter, gazetted in terms of Section 9(5) of the B-BBEE Act, means that it:**
  - Is a Draft Sector Code, which complies with the provisions of **Section 12** of the B-BBEE Act, in that major stakeholders have agreed to the stipulations of the Charter; and
  - Is a Draft Sector Code, which has been published nationally **for public comment and input, for a period of sixty (60) days.**

DEVELOPING A SECTOR CODE (continue)

- **A B-BBEE Draft Sector Code, gazetted in terms of Section 9(1) of the B-BBEE Act, means that it:**
  - The draft sector code now becomes a **Sector Code of Good Practice (Sector Code)** and shares the same status as the B-BBEE Codes of Good Practice, published by the Minister of Trade and Industry, in February 2007; and
  - Is fully binding between and among businesses operating in the industry.

Recap NB definitions

PLFCC – Petroleum Liquid Fuel Charter Council

Sector Codes – developed as per slide 3-5

BEE –Black economic empowerment (***narrow based***) (two elements)

B-BBEE – ***Broad Based*** Black economic empowerment (five elements)

Black definition

African, Coloured & Indian

Measured entity – legal entity that holds the Retail operator or Site licence. ME will receive a B-BBEE verification and certificate.

Financial period – the company registered financial year end at CIPC or SARS

SANAS certificate – can only be issued by accredited SANAS accredited verification agency

Recap NB definitions

Revenue, all revenue as reflected in the annual financial statements.

Revenue thresholds, determine EME, QSE or GEN

EME - exempt micro enterprise, less compliance

QSE – Qualifying small enterprise, full scorecard

GEN – Generic enterprise, full complex scorecard

ESOP – employee related trust holding shares in the company

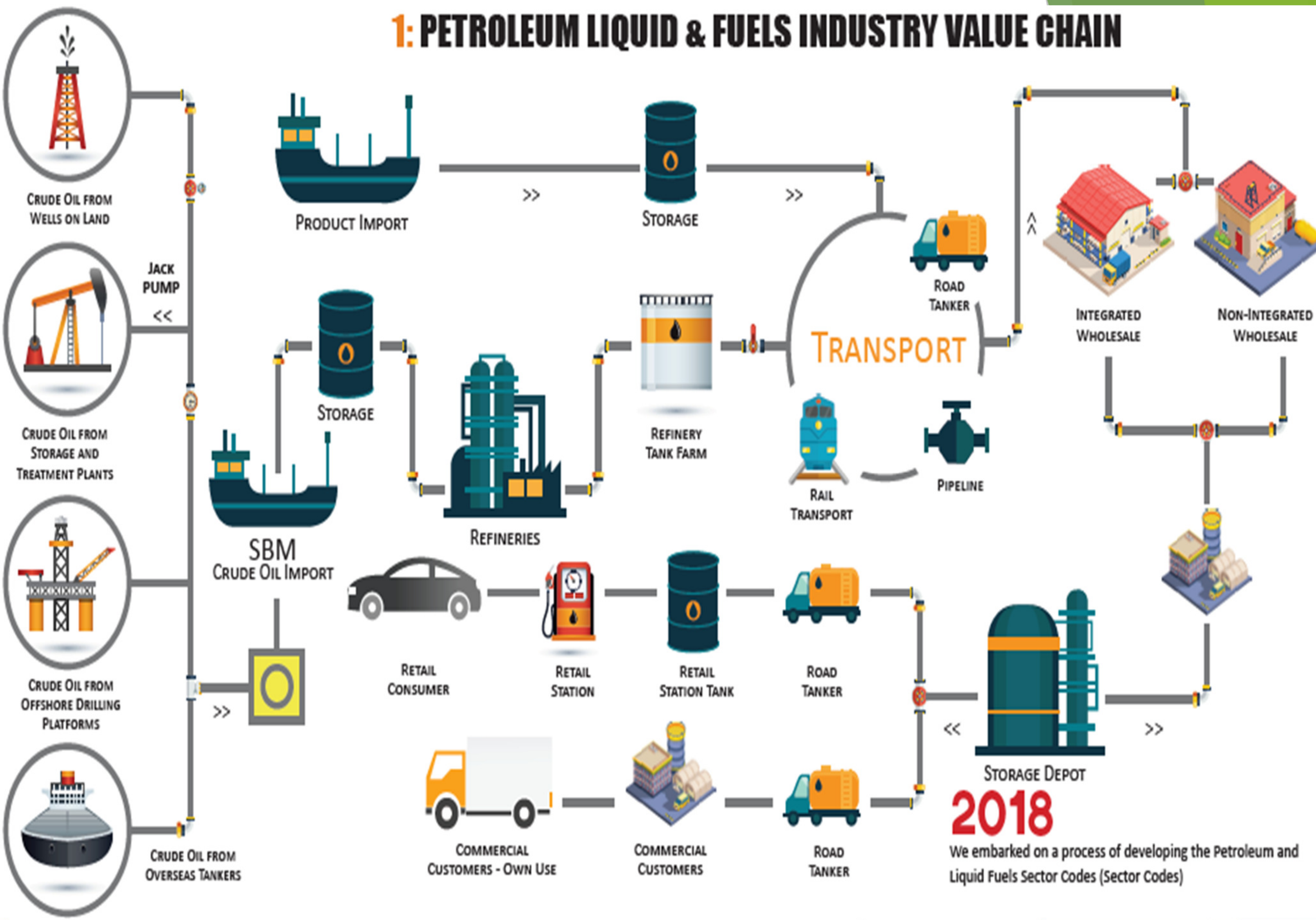
BBT – Broad based trust holding shares

Designated group – youth (< 35 years), rural, unemployed, disabled & military veteran

Value chain = procurement, supplier, & enterprise development, local economic development, disposal of assets

B-BBEE elements see slide 19

1: PETROLEUM LIQUID & FUELS INDUSTRY VALUE CHAIN



PLFCC sub-sectors

- Retail operators
- Site owners
- Wholesale
- Manufacturing
- Infrastructure

- LPG Gas
- Natural Gas
- Biofuels
- Energy Public Sector or Specialised

B-BBEE levels

Level	Points	Recognition
One	100	135%
Two	95	125%
Three	90	110%
Four	80	100%
Five	75	80%
Six	70	60%
Seven	55	50%
Eight	40	10%

2: BARRIERS TO ENTRY

COST OF ENTRY

SECTOR IS IDENTIFIED AS BEING HIGHLY CAPITAL INTENSIVE

The cost of setting up a enterprise in the sector requires a lot of financial capital. Without the necessary funding, new entrants find it difficult to start or sustain themselves.

SKILLS SHORTAGE

SKILL SHORTAGE IS A GENERAL PROBLEM IN THE OIL INDUSTRY

There are several aspects to running a business across the value chain and most of the owners succeeding in the industry are those who have already been in the industry in one capacity or the other and have a lot of experience.

ACCESS TO CUSTOMERS

RESTRICTIVE REGULATORY ENVIRONMENT

Factors such as the applicable regulatory environment and the reactions and strategies of incumbents affect the ability of entrants, and small players, to contest markets and compete for customers through better pricing, efficiencies or quality of service.

CONTESTABILITY OF MARKETS

AN IMPORTANT ASPECT OF THE VALUE CHAIN

In so far as the major oil companies already dominating key markets, customers and routes to market, the contestestability of markets further limits access to customers.

ACCESS TO LARGE INFRASTRUCTURE

MOVEMENT & STORAGE OF CRUDE OIL AND PETROLEUM PRODUCTS

Access to infrastructure such as Single Buoy Moorings (SBMs), pipelines and depots and storage tanks, is acknowledged as a critical weakness in the supply chain of emerging companies.

POLICY AND REGULATION

LICENSING AND REGULATION

They pose as a barrier to entry in particular through licensing, environmental regulations, municipality regulation and pricing regulations when there is inadequate support towards new entrants.

3: ADDRESSING BARRIERS TO ENTRY

OLD PETROLEUM LIQUID & FUELS SECTOR CODE

- Ownership
- Management & Control
- Employment Equity
- Supportive Culture
- Refining Capacity
- Retailing
- Wholesaling
- Enterprise Development
- Access to finance

B-BBEE CODES OF GOOD PRACTICE

- Ownership
- Management & Control
- Skills Development
- Enterprise & Supplier Development
- Socio- Economic Development

B-BBEE PETROLEUM LIQUID & FUELS SECTOR CODE

- Ownership
- Management & Control
- Skills Development
- Value Chain Enterprise and Supplier Development
- Socio- Economic Development

As illustrated above, the PLFSCC attempted to permeate all the barriers of entry, by exploiting the identified areas of critical and strategic focus and the B-BBEE elements to result into what became the 8 sub-sectors of the Petroleum and Liquid Fuels Sector Codes.

Revenue threshold - entity size determination proposed*

- * EME type 1
- GP model not allowed
- 200 000 L per month
- NFR ratio 1:1.5 = R 300 000 per month
- ***Revenue model proposed***
- Exclude inflated part of Fuel revenue
- Revenue as per financial statements less:
- BFP plus taxes, levies = Coastal exclusion rate +
- Zone differential rate =
- Total exclusion
- Multiply exclusion with volumes sold.
- Net result = Proposed amount R 10M

- *** EME type 2**
- **GP model not allowed**
- 300 000 L per month
- NFR ratio 1:1.5 = R450 000 per month
- ***Revenue model proposed***
- Exclude inflated part of Fuel revenue
- Revenue as per financial statements less:
- BFP plus taxes, levies = Coastal exclusion rate +
- Zone differential rate =
- Total exclusion
- Multiply exclusion with volumes sold.
- Net result = Proposed amount R 15 M

Revenue threshold - entity size determination - *proposed**

- **** QSE***
- ***GP model not allowed***
- > 300 000 L < 1 500 000 L per month
- NFR ratio 1:1.5 = > R 450 000 < R 2 250 000 per month revenue model proposed
- ***Revenue model proposed***
- Exclude inflated part of Fuel revenue
- Revenue as per financial statements less:
- BFP plus taxes, levies = Coastal exclusion rate +
- Zone differential rate =
- Total exclusion
- Multiply exclusion with volumes sold.
- Proposed amount > R15M < R75M

- **** Generic***
- ***GP model not allowed***
- > 1 500 000 L per month
- NFR ratio 1:1.5 = > R 2 250 000 per v month
- ***Revenue model proposed***
- Exclude inflated part of Fuel revenue
- Revenue as per financial statements less:
- BFP plus taxes, levies = Coastal exclusion rate +
- Zone differential rate =
- Total exclusion
- Multiply exclusion with volumes sold.
- Proposed amount > R75M

4: B-BBEE PLFSC COGP: ENTERPRISES

EXEMPTED MICRO ENTERPRISES DTI VS PLFSC

LEVEL 1 — ≤100% Black Owned, B-BBEE recognition level of 135%

LEVEL 2 — 51% Black Owned, B-BBEE recognition level of 125%

LEVEL 4 — ≤51% Black Owned, B-BBEE recognition level of 100%

VS

B-BBEE recognition level of 125%	Level Two Contributor	100% Black Owned
B-BBEE recognition level of 110%	Level Three Contributor	51% Black Owned
B-BBEE recognition level of 100%	Level Four Contributor	30% Black Owned
B-BBEE recognition level of 80%	Level Five Contributor	<30% Black Owned

1. EME to comply with QSE Scorecard for Points Maximising
2. EME to obtain measurement from a SANAS accredited Verification Agency in terms of Ownership, Revenue and the Skills Development scorecard in the QSE scorecard for Level 1 BRL
3. Category 1 EMEs on Retail Operators and the Site-Owners scorecards encouraged to comply with Skills Development for Level 1 BRL
4. Category 2 EMEs on Retail Operators and the Site-Owners scorecards encouraged to comply with Skills Development & SED For Level 1 BRL

LEVEL 2 51% Black Own B-BBEE recognition Level of 125%	**LEVEL 3** 51% Black Own B-BBEE recognition Level of 110%
LEVEL 1 100% Black Own B-BBEE recognition Level of 135%	**LEVEL 2** 100% Black Own B-BBEE recognition Level of 125%

QUALIFYING SMALL ENTERPRISES DTI VS PLFSC

The DTI QSE to comply with all elements of the QSE Scorecard. The PLFSC QSE to comply with all elements of the QSE Scorecard. PLFSC QSE to obtain measurement from a SANAS accredited Verification Agency in terms of Ownership, Revenue and the Skills Development scorecard in the QSE scorecard for Level 1 BRL.

6: PLF SECTOR CODE SCORECARD ELEMENTS

OWNERSHIP

as set out in Code series PLF 100, measures effective ownership of entities by Black people.

Black People in line with National Demographics | **Youth** | Women | **ESOPS** | Recognition of Sale of Assets | **Equity Equivalent Investment Programmes**

Y1-Y3 MODIFIED
Y3-Y5 FLOW THROUGH

MANAGEMENT CONTROL

as set out in Code series PLF 200, measures the effective control of entities by Black People.

EAP Executive directors and other management control| **Specialized Positions** | Youth Positions

BOARD, SM, MM & JM

SKILLS DEVELOPMENT

as set out in Code series PLF 300, measures the extent to which employers carry out initiatives designed to develop the competencies of Black Employees and Black People internally and externally

Employees 75% of 5% Leviable | **International Training 1%** | Rural Training 1% | **Capacity Building in line with Management Levels** | Promotions

5% LEVIABLE AMOUNT
INCORPORATED YES PROGRAM

SOCIO-ECONOMIC DEVELOPMENT

as set out in Code series PLF 500, measures the extent to with entities carry initiatives that contribute towards SED or Sector specific industries that provide access to the economy for black people.

Socio Economic Development Programs | Universal access to Energy to Rural or underdeveloped areas

1% SED
0.5% UNIVERSAL ACCESS TO ENERGY

VALUE CHAIN ENTERPRISE AND SUPPLIER DEVELOPMENT

as set out in Code series PLF 400.1, measures the extent to which entities buy goods and services from Empowering Suppliers with strong B-BBEE recognition levels.

Procurement (L2 EME or L2 QSE) | **CRUDE & Petroleum Procurement** | Non Related Suppliers | **Bulk Transport Procurement** | Shipping Procurement | **Engineering Procurement** | LED | **Access to supply** | Access to Infrastructure | **Transformation of RN** | Disposal of Assets/Distribution Network

ONLY 20% RECOGNIZABLE
FOR FUND MANAGERS

7: THE PRIORITY ELEMENTS, SUB-MINIMUM AND DISCOUNTING PRINCIPLE

Ownership

The sub-minimum requirement for Ownership is 40% of Net Value (40% of the 8 points) based on the Time Based Graduation Factor.

Value Chain Enterprise and Supplier Development

The sub-minimum for Enterprise Value Chain/ Supplier Development is 40% of the total weighting points (excluding bonus points) of each of the broad categories.

Skills Development

The sub-minimum requirements for Skills Development is 40% of the total weighting points (excluding bonus points)

Supportive Culture

If Supportive Culture is applicable to any of the elements in any of the Sub-Sector Codes under the Petroleum and Liquid Fuels Sector Code, it qualifies as a priority element. The sub-minimum is achieving ALL guidelines for creating a supportive culture.

8.QSE Scorecard - draft

1. OWNERSHIP		Manufacturing, Wholesale, Retail, LPG, Infrastructure Old and Currently licensed	Natural Gas, Infrastructure New/ Renewing Licenses and Biofuels
1.1. Voting Rights	**Weighting Points**	**Compliance Target**	**Compliance Target**
1.1.1. Exercisable Voting rights by black African people	3.0	26.32%	44.75%
1.1.2. Exercisable Voting rights by black Colored people	1.0	2.86%	4.86%
1.1.3. Exercisable Voting rights by black Indian people	1.0	0.82%	1.39%
1.1.4. Exercisable Voting rights by black African Women	1.0	13.17%	23.70%
1.1.5. Exercisable Voting rights by black Colored Women	0.5	1.44%	2.59%
1.1.6. Exercisable Voting rights by black Indian Women	0.5	0.39%	0.70%
1.2. Economic Interest			
1.2.1. Economic Interest in the hands of black African people	3.0	26.32%	44.75%
1.2.2. Economic Interest in the hands of black Colored people	1.0	2.86%	4.86%
1.2.3. Economic Interest in the hands of black Indian people	1.0	0.82%	1.39%
1.2.4. Economic Interest in the hands of black African Women	1.0	13.17%	23.70%
1.2.5. Economic Interest in the hands of black Colored Women	0.5	1.44%	2.59%
1.2.6. Economic Interest in the hands of black Indian Women	0.5	0.39%	0.70%
1.2.7. Black New Entrance or Black Designated Groups	2.0	3.0%	3.0%
1.2.8. Black participants in Employee Share Ownership Programs	1.0	2.0%	2.0%
1.3. Realization Points			
1.3.1. Net Value/Net Economic Interest	8.0	Refer to Annex 100 (E) COGP	Refer to Annex 100 (E) COGP
1.4. Bonus Points			
1.4.1. Participation of Semi-Skilled and Unskilled Black People in the Employee Share Ownership Programs	1.0		
TOTAL	**25 + 1 bonus Points**		

8. QSE scorecard - elements

2. MANAGEMENT CONTROL		
2.1. Management Control: Manufacturing, Wholesale, Retail, LPG, NG, Infrastructure, and Biofuels		
Measurement Category and Criteria	**Weighting Points**	**Compliance Target**
2.1.1. Management		
2.1.1.1. Black employees in management position as a percentage of all management	4.0	70%
2.1.1.2. Black female employees in management position as a percentage of all management	2.0	35.00%
2.1.2. Semi-Skilled and Unskilled Positions		
2.1.2.1. Black People in semi-skilled and unskilled positions as a percentage of semi-skilled and unskilled employees	2.0	88.00%
2.1.2.2. Black women in semi-skilled and unskilled positions as a percentage of semi-skilled and unskilled employees	1.0	44.00%
2.1.3. Employees with disabilities		
2.1.3.1. Black employees with disabilities as a percentage of all employees	2.0	3.00%
2.1.4. Black Youth Employees		
2.1.4.1. Black youth in technical/professional positions as a percentage of technical/professional employees	4.0	40.00%
TOTAL	**15 Points**	

8. QSE scorecard - elements

3. SKILLS DEVELOPMENT		Manufacturing, Wholesale, Retail Operators, LPG, NG, Infrastructure, and Biofuels	Specialized Government & SOC
Measurement Category and Criteria	**Weighting Points**	**Compliance Target**	**Compliance Target**
3.1. Skills Development Expenditure on any programme specified in the Learning Programme Matrix for Black people			
3.1.1. Skills Development Expenditure on Learning Programs specified in the Learning Programs Matrix for Black people as a percentage of the Leviable Amount of which 75% must be spent on Black Employees	10.0	3% (Year 1 - 3) 4% (Above Year 3)	4.00%
3.1.2. Skills Development Expenditure on Learning Programs specified in the Learning Programs Matrix for Black Female people as a percentage of the Leviable Amount of which 75% must be spent on Black Employees	5.0	1% (Year 1 - 3) 2% (Above Year 3)	2.00%
3.1.3. Skills Development Expenditure on Learning Programs specified in the Learning Programs Matrix for Black People with disabilities as a percentage of the Leviable Amount	3.0	0.15%	0.15%
3.1.4. Skills Development Expenditure on STEM (science, technology, engineering and maths) Learning Programs, activities and equipment for Black People living in Rural Areas and delivered in Rural Areas as a percentage of the Leviable Amount	3.0	1.00%	1.00%
3.2. Capacity Building Interventions - must be priority, critical or scarce skills			
3.2.1. Junior Management			
3.2.1.1. Number of Black People in Junior Management Participating in Advancement Programs as a percentage of all Junior Management	3.0	10.00%	10.00%

QSE scorecard - elements

3.2.1.2. Number of Black Females in Junior Management Participating in Advancement Programs as a percentage of all Junior Management	1.5	5.00%	5.00%
3.2.2. Semi-Skilled and Unskilled			
3.2.2.1. Number of Black People in Semi-Skilled and Unskilled Positions Participating in Advancement Programs as a percentage of all Semi- Skilled and Unskilled Employees	3.0	20.00%	20.00%
3.2.2.2. Number of Black Females in Semi-Skilled and Unskilled Positions Participating in Advancement Programs as a percentage of all Semi- Skilled and Unskilled Employees	1.5	10.00%	10.00%
3.3. Bonus Points			
3.3.1. Number of black people absorbed by the measured and/or Industry entity at the end of the Learnerships programme in relation to unemployed Learnerships	5.0	100.00%	100.00%
TOTAL	**30+5 Bonus Points**		

8. QSE scorecard - elements

4.3. VALUE CHAIN ENTERPRISE AND SUPPLIER DEVELOPMENT		Retail Operators and Retail Site
Measurement Category and Criteria	**Weighting Points**	**Compliance Target**
4.3.1. Preferential Procurement		
4.3.1.1. B-BBEE Procurement Spend from Empowering Suppliers based on the B-BBEE Procurement Recognition Level as a percentage of Total Measurable Procurement Spend	10.0	70.00%
4.3.1.2. B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% black owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of the Total Measured Procurement Spend	5.0	15.00%
4.3.1.3. B-BBEE Procurement Spend from Empowering Suppliers that are at least 30% black women owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of the Total Measured Procurement Spend	3.0	5.00%
4.3.2. Bonus points		
4.3.2.1. B-BBEE Procurement Spend from Designated Group Suppliers that are at least 51% Black Owned	1.0	1.00%
4.3.3. Local Economic Development		
4.3.3.1. B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% Black African Owned Companies based on the applicable B-BBEE Procurement Recognition Levels within a 100km radius from site as a percentage	2.0	5.00%
4.3.4. Access to Infrastructure- applicable to only RORO/DODO		
4.3.4.1. Disposal of assets to Black owned and controlled Retail Operators with a least 51% Black ownership (Level 1 – 3) of total asset disposal	5.0	15.00%
4.3.5. Supplier Development		

QSE scorecard - elements

4.3.5.1.	Annual value of all Supplier Development Contributions made by the measured entity as a percentage of the target	3.0	2% of NPAT
4.3.5.2.	Annual value of all Supplier Development Contributions made by the measured entity to Supplier beneficiaries within a 100km radius Supplier beneficiaries as a percentage of the target	2.0	1% of NPAT
4.3.6.	**Enterprise Development**		
4.3.6.1.	Annual value of Enterprise Development Contributions on Sector Specific Programs made by the Measured Entity as a percentage of the target	3.0	1% of NPAT
4.3.6.2.	Annual value of Enterprise Development Contributions and/or Sector Specific Programs made by the Measured Entity as a percentage of the target made to beneficiary enterprises with a 100km radius	2.0	0.5% of NPAT
4.3.7.	**Bonus Points**		
4.3.7.1.	Bonus point for the graduation of one or more Black African Owned Enterprise Development beneficiaries to graduate to the Supplier Development level	1.0	
4.3.7.2.	Bonus point for creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives by the Measured entity	1.0	
TOTAL		**35+3bonus points**	

8. QSE scorecard -elements

5. SOCIO- ECONOMIC DEVELOPMENT		Manufacturing, Wholesale, Retail, Gas, Infrastructure, and Biofuels	Specialized Government & SOC
Measurement Category and Criteria	**Weighting Points**	**Compliance Target**	**Compliance Target**
5.1. Annual value of Socio Economic Development Contributions made by the Measured Entity as a percentage of the target	3.0	1% of NPAT	1% of NPAT or 0.1% Annual Revenue/ Allocated budget/ Gross receipts / Discretional spend
5.2. Annual value of Socio Economic Development Contributions made by the Measured Entity towards Universal Access to Energy in rural and underdeveloped communities as a percentage of the target	2.0	0.5% of NPAT	0.5% of NPAT or 0.05% Annual Revenue/ Allocated budget/ Gross receipts / Discretional spend
TOTAL	**5 Points**		

8: PRIORITY PLACED ON NATIONAL DEMOGRAPHICS AND EAP TARGETS

- African, Coloured and Indian (as defined by the BEE Act) are still lagging behind in term of transformation in the sector.
- **Target are required to apply the most up to date demographic percentile in calculating the elements of Ownership, Value Chain Enterprise and Supplier Development.**
- The EAP targets have been applied in line with thedti generic codes i.e. for both Management Control and Skills Development. However, in all 8 sub-sectors of the Petroleum and Liquid Fuels Sector Codes, the EAP targets and calculations have been applied to Other Executive Management as well.

9. Y.E.S initiative – level enhancement

- Youth Employment Services
- Requirements – employ initiative, for a period of 12 month under fixed term contract or temporary contract
- May not reduce staff during this period
- EME & QSE with 20-39 staff, require 2 Y.E.S employees, with 2.5% absorption
- This can result in ***one level*** enhancement
- If double target is achieved, ***two levels*** enhancement can be achieved.

Draft codes timing period to finalisation

- Next, final review by technical experts
- Hand-over to DOE (DME) line ministry
- Line ministry hand-over to DTI for Section 9(5) gazetting
- Once gazette, open 60 day (working days) public commentary period
- Resolve commentary to finalisation with stakeholder and public participation
- Incorporate final changes to Draft codes
- Hand-over to DOE (DME line ministry for final Section 9(1)
- DOE hand-over to DTI for final
- DTI minister approval of final gazette
- PLFCC Sector code gazette and effective

End of presentation

- Questions ?
- FAQ
- When will this be implemented – a good question, but answer not easy. Only after Section 9(1) final gazetting the PLFCC B-BBEE Sector codes became effective.
- What audited financials will be used in B-BBEE verification. Most recent, normally not older than 12-18 months. If B-BBEE is issued in for eg, Jan 2020, it will be based upon 28 Feb 2019 financials. No way to change it the financials now, period is past.
- Skills, Value chain, SD & ED & SED expenditure must take place within the financial period.
- Do white women qualify as B-BBEE beneficiaries. No the definition was changed to exclude white women. Refer definition of black for B-BBEE purposes (Slide 7)
- Ownership and management can be changed up to close to the verification date, as these elements are measured as close to verification date.
- DOE issued a letter dated 03 April 2019, that all parties involved in the Petroleum Industry must comply with B-BBEE
- QSE – is it possible for QSE to achieve a level 4 without black ownership?. Answer - No
- ***A big thank you to the PLFCC infographics, contained in slide 7,10,11,14,15,16 & 24***.