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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**PORTFOLIO COMMITTEE  
PRESENTATION**

**11 NOVEMBER 2014**

## **PRESENTATION LAYOUT**

- 1. Introduction.**
- 2. The B-BBEE Amendment Act 46 of 2013.**
- 3. The Codes of Good Practice.**
- 4. Establishment of the B-BBEE Commission.**
- 5. Alignment of Sector Charters.**
- 6. Way forward**

# Introduction and Background

- 2013 marked 10 years since the promulgation of the BBBEE Act
- The Act was positioned as *soft legislation* with no consequences for non-compliance
- The Act had to be strengthened to ensure effective and consistent implementation and reporting across the economy



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# Objects of the Amended Act

Align the Act with other legislation impacting on B-BBEE and with the codes of good practice

Establish the B-BBEE Commission to monitor and evaluate B-BBEE

Deal with non-compliance and circumvention

Give effect to government policy aimed at reducing inequality, defeating poverty and creating employment



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# B-BBEE Commission

The proposed B-BBEE Commission is intended to provide an institutional environment for the monitoring and evaluation of B-BBEE

- Commission established as an entity within the administration of the DTI, headed by a Commissioner appointed by the Minister.
- The Minister may issue directives of a general nature to the Commission concerning the performance of its functions, with which the Commission must comply.



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# B-BBEE Commission, cont...

- S13F: Functions –
  - Oversee, supervise and promote adherence with the Act
  - Strengthen and foster collaboration between the public and private sector in order to promote and safeguard the objectives of B-BBEE
  - Receive and investigate complaints relating to B-BBEE
  - Investigate any matter relating to B-BBEE
  - Promote advocacy, access to opportunities and educational programmes and initiatives



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# Aligning the Act and the codes, cont...

- Provide explicitly that **every organ of state must take into account** any relevant code of good practice in terms of this Act;
- Provide explicitly that codes of good practice remain in effect until amended, replaced or repealed;
- An enterprise in a sector in respect of which the Minister has issued a **sector code may only be measured for B-BBEE compliance in accordance with that code**;
- Enterprises required to report annually on B-BBEE compliance to sector councils



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# Functions of B-BBEE Commission, cont...

- Maintain a registry of major B-BBEE transactions;
- Receive and analyse prescribed reports concerning B-BBEE compliance;
- Promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of B-BBEE; and
- Exercise such powers which are not in conflict with the Act as may be conferred by the Minister



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# Offences, penalties and prohibitions

The Amended Act proposes the introduction of offences, penalties and prohibitions to deal with non-compliance and

## Offences in Connection with the Commission

Include:

- Unauthorised disclosure of confidential information by a person acting on behalf of the Commission;
- Hindering, obstructing, or improperly influencing the Commission; and
- Knowingly providing false information to the Commission



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# Offences, penalties & prohibitions, cont...

- Misrepresenting the B-BBEE status of an enterprise;
- Providing false information or misrepresenting information to a B-BBEE verification professional in order to secure a particular B-BBEE status; and
- Providing false information or misrepresenting information relevant to assessing the B-BBEE status of an enterprise, to any organ of state or public entity



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# Offences & Penalties cont

- Minimum penalty 10 years imprisonment (and/or a fine), or
- if the offender is not a natural person, a fine of 10% of its annual turnover
- Maximum penalty for an offence relating to the Commission, or for a failure to report, is 1 year imprisonment (and/or a fine



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## Penalties, cont...

- Value of the transaction which was derived from, or sought to be derived from to be considered,
- A person convicted of an offence under the Act is prohibited from contracting or transacting any business with an organ of state or public entity for a period of 10 years.



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## THE B-BBEE AMENDMENT ACT 46 OF 2013

- The Honourable President signed into law the B-BBEE Amendment Act (the Act) 46 of 2013 on the 27 January 2014.
- The Proclamation Notice was signed on the 2nd October 2014.
- The Proclamation was gazetted on the 24 October 2014.
- All provisions of the Act came into effect on date of publication except for the Trumping Clause (Section 3) which has been deferred for 12 months, and will come into force in October 2015; and
- The Regulations will be finalised by end of November 2014.

## THE B-BBEE AMENDMENT ACT 46 OF 2013 Cont...

- B-BBEE Amendment Act Regulations will cover the following areas:
  - Interpretation of the Act;
  - Application of the BBEE framework;
  - Reporting, Monitoring and Evaluations; and
  - Offences and Penalties.



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# ESTABLISHMENT OF THE B-BBEE COMMISSION

## THE B-BBEE COMMISSION

- The process of setting up the Commission is at an advanced stage;
- National Treasury , DPSA and **the dti** are jointly driving the process; and
- Target date for setting up a Commission is 31 March 2015.





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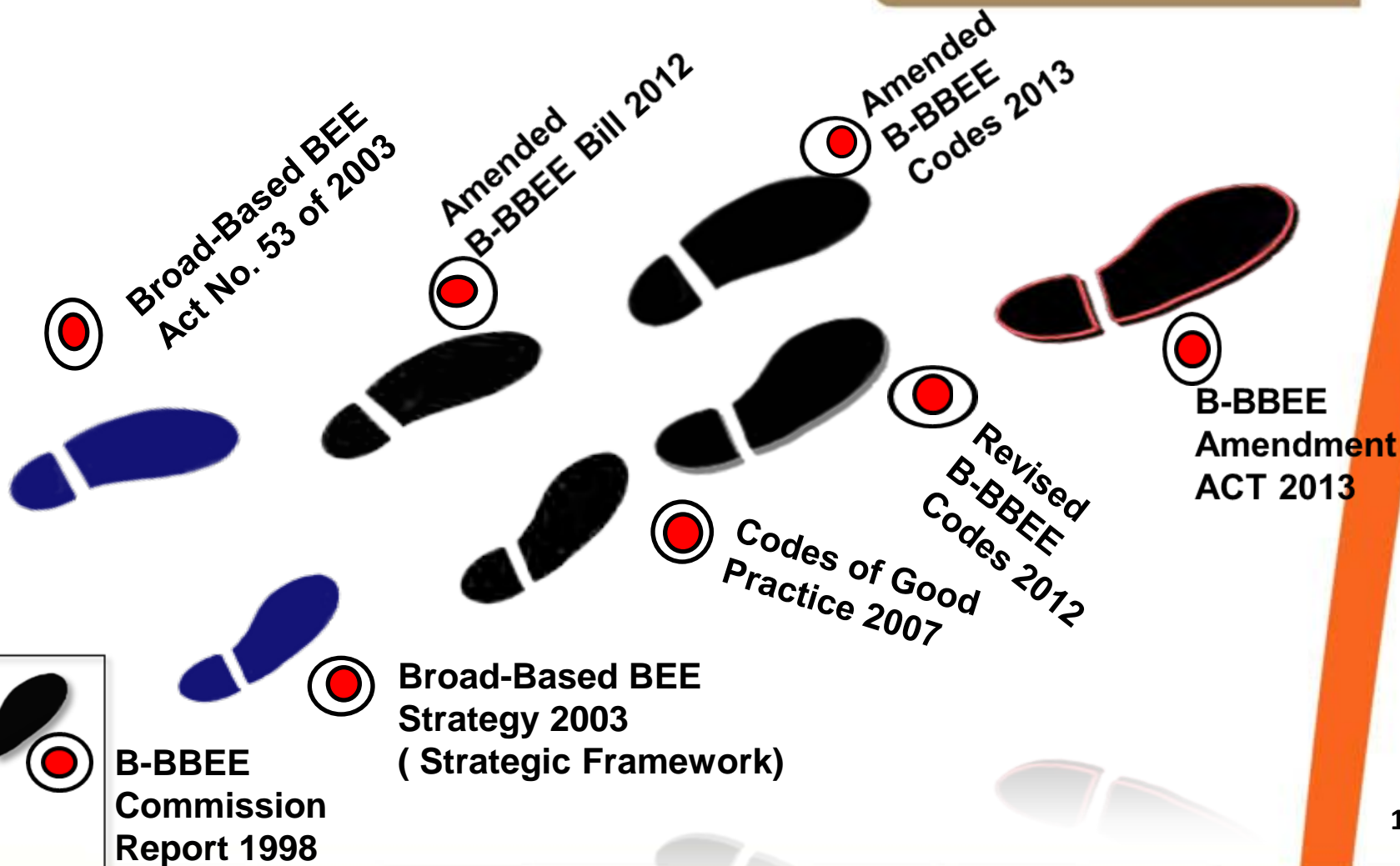
# PHASE 1 OF THE CODES OF GOOD PRACTICE



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# B-BBEE IMPLEMENTATION FRAMEWORK

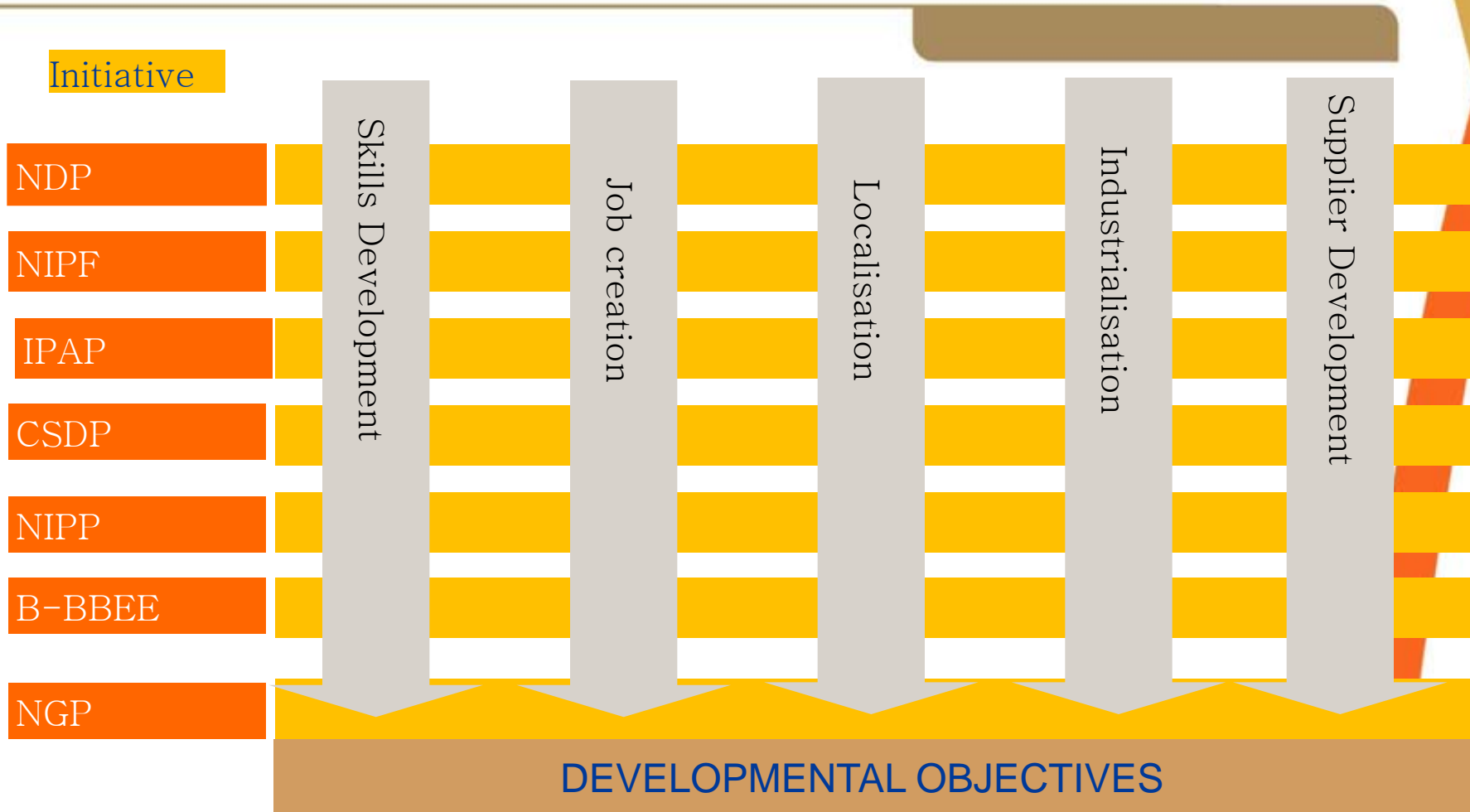




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# USHERING IN A NEW ERA OF EMPOWERMENT





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## CODE 000 : KEY PRINCIPLES

Key Principles	Description	Implication
Priority Element	Ownership, Skills Development and Enterprise and Supplier Development have 40 % subminimum	<ul style="list-style-type: none"><li>• QSEs to comply with at least two of the priority elements</li><li>• Ownership is compulsory and either Enterprise and Supplier Dev. or Skills Development;</li><li>• Large entities to comply with all priority elements</li><li>• Non-compliance of the thresholds in priority elements, the overall Score will be discounted by one (1) level down</li></ul>
Enhanced Recognition Status (ERS)	Enhanced the recognition status of Black Exempted Micro Enterprises (EME) and Qualifying Small Enterprises (QSE)	<ul style="list-style-type: none"><li>• EME to obtain a sworn affidavits</li><li>• Black Owned QSE only required to obtain a sworn affidavits</li></ul>



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## CODE 000 : KEY PRINCIPLES

Key Principles	Description	Implication
Adjusted Threshold	<p><b>EME : Annual Total Revenue up to R10 million</b></p> <p><b>QSE: Annual Total Revenue R10 million - R50 million</b></p> <p><b>Large entities: Annual Total Revenue of R50 million and above</b></p>	<p><b>Companies that are expected to comply with the generic scorecard represents 2% of all active fillers.</b></p> <p><b>SOURCE: SARS 2012</b></p>



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## CODE 000 : AMENDED GENERIC SCORECARD

Element	Weighting	Compliance Target
Ownership	25 points	25% + 1 vote
Management control	19 points	(50% to 88%)
Skills Development	20 points	6% of payroll
Enterprise and Supplier Development	40 points	PP = 80% SD = 2% (NPAT) ED = 1% (NPAT)
Socio-Economic Development	5 points	1% (NPAT)
<b>TOTAL</b>	109 points	



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# PHASE 2 OF THE CODES OF GOOD PRACTICE

## CODES OF GOOD PRACTICE

- On the 10 October 2014, the department gazetted phase two of the Codes of Good Practice for thirty (30) days public comment;
- Phase two covers the following Statements:
  - Statement 600: Qualifying Enterprises Scorecard;
  - Statement 004: Specialised Scorecard;
  - Statement 102: The Recognition of the Sale of Assets;
  - Statement 103: The Recognition of Equity Equivalents; and
  - Statement 003: Guidelines for the Development and gazette of Transformation Charters and Sector Codes.





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# ALIGNMENT OF SECTOR CHARTERS

## THE SECTORS CHARTERS

- The department has been engaging with various sector charters to ensure alignment with the Codes;
- Alignment process is at an advance stage in all sector charters
- The following 10 sector charters are being aligned:
  - Construction Sector Charter; Property Sector Charter;
  - Tourism Sector Charter; Transport Sector Charter;
  - Financial Sector Charter; Mining Sector Charter;
  - Chartered Accountancy Charter; Forestry Sector Charter;
  - AgriBEE Sector Charter; and Information, Communication and Technology Sector Charter;



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## NEW TRAJECTORY FOR B-BBEE

- ❑ Change SA culture to be supportive of entrepreneurship and diversification of value chains;
- ❑ Concerted effort in linking B-BBEE with other government economic development strategies such as Industrial Policy , Competitive Supplier Development Programme , New Growth Path , etc. (the real economy);
- ❑ Empowerment efforts should result in the promotion of a culture of venturing into new territories, operational excellence and risk taking ;
- ❑ Focus on businesses and industries that result in significant job creation and addressing socio economic challenges; and
- ❑ Symbiotic relationship between the public and the private sector and amongst private sector players , and large and small enterprises to unlock opportunities.

## WAY FORWARD

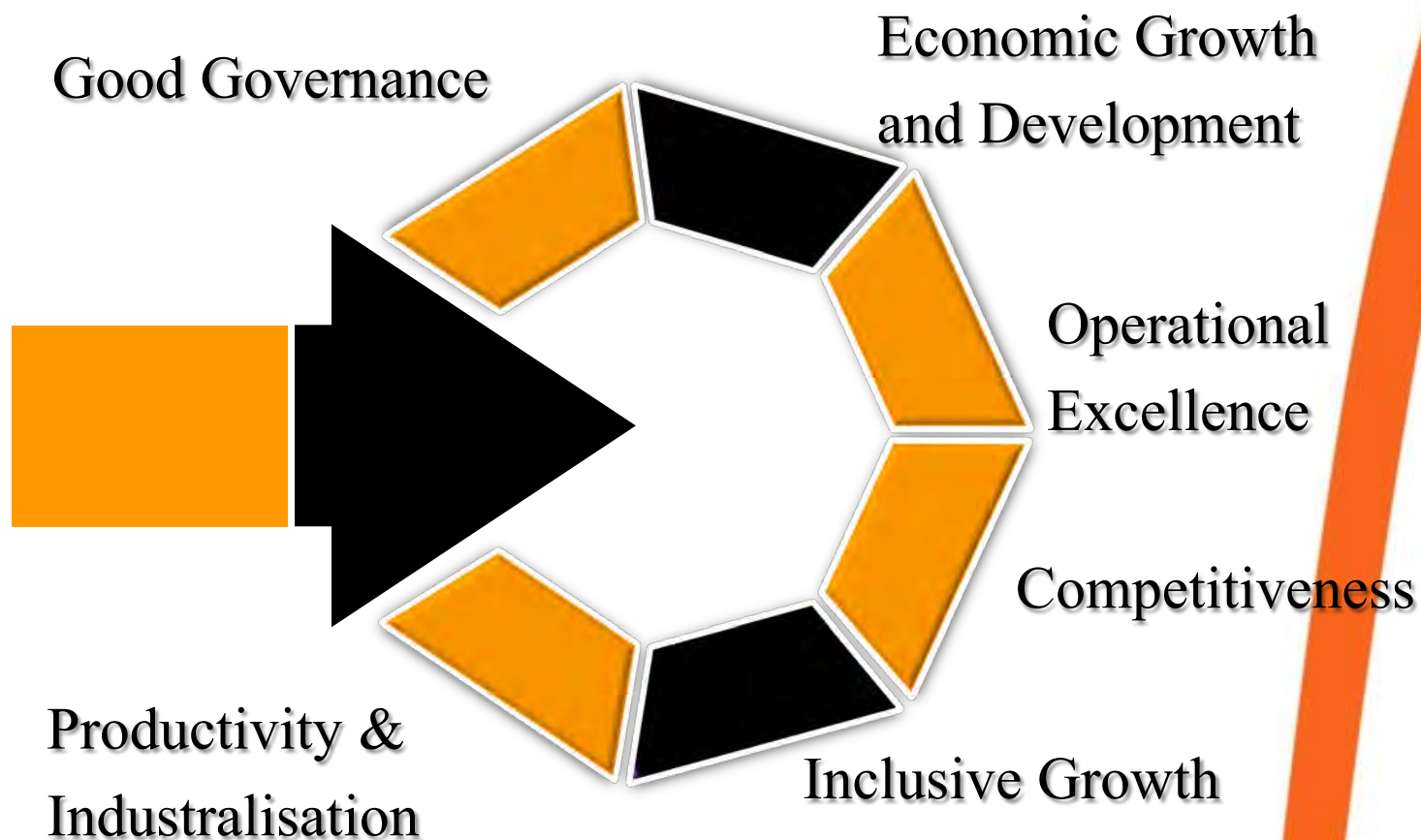
- Establishment of the B-BBEE Commission by 31 March 2015;
- Appointment of the BBEE Commissioner;
- Complete phase 2 of the Codes of Good Practice;
- The amended Codes will come into effect on the 1st May 2015; and
- On-going awareness campaign on the new B-BBEE framework.



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## RE-ORIENTATION OF B-BBEE





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**THANK YOU**