

Transformation in the Farming Industry AgriBEE Sector Code

Presentation to AVI AFRICA 2014

Directorate BBBEE Charters Compliance

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Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

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Background – key aspects of the AgriBEE

- ❑ Launch of the AgriBEE Framework – **26 July 2004**
- ❑ Gazette of the AgriBEE Transformation Charter in terms of Section 12 of the BBEE Act 53 of 2003 – **20th March 2008**
- ❑ Inauguration of the AgriBEE Charter Council – **5th December 2008**
- ❑ Gazette of the Draft AgriBEE Sector Code in terms of Section 9 (5) of the BBEE Act 53 of 2003 – **26th March 2012**
- ❑ Gazette of the AgriBEE Sector Code in terms of Section 9 (1) of the BBEE Act 53 of 2003 – **28th December 2012**
- ❑ New Codes of Good Practice published – **11th October 2013**
- ❑ Amended BBEE Act signed – **27th January 2014**

What are the implications of the Section 9(1) AgriBEE Sector Code

- It implies that the Code has the same legal status as the Generic Codes of Good Practice.
- It implies that the Code is now fully implementable effective from that of publication, i.e. 28 December 2012.
- It implies that the Code is now enforceable using government measures, i.e. licenses, incentives, etc.
- However, the Code is not force-able because the BEE is voluntary and the stakeholders have the rights to choose whether to comply or not.

Scope of Application for the AgriBEE Sector Code

The scope of the AgriBEE Sector Code shall include any Enterprises which derives the majority of its turnover from:

- The primary production of agricultural products;
- The provision of inputs and services to enterprises engaged in the production of agricultural products;
- The beneficiation of agricultural products whether of a primary or semi-beneficiated form; and
- The storage, distribution, and/or trading and allied activities related to non-beneficiated agricultural products.

Scope (cont...)

❑ Exempted Micro Enterprises (EMEs):

- ✓ Turnover of less than R5m
- ✓ Fully exempted with automatic Level 4 BEE status
- ✓ Qualifies for Level 3 if it is more than 50% owned by black people
- ✓ In order to maximize points, EMEs can be measured in terms of the QSE Scorecard
- ✓ EMEs are encouraged to prioritize Skills Development and Socio-economic Development in the agricultural sector.

❑ Qualifying Small Enterprises (QSEs):

- ✓ Turnover of more than R5m, but less than R35m
- ✓ Must, at least, choose 5 elements out of 7 elements

❑ Large enterprises:

- ✓ Turnover of more than R35m
- ✓ Must comply to all 7 elements (100% compliance)

Weights of Measurement: AgriBEE Codes versus Generic Codes

Element	Agri LARGE	Generic LARGE	Var	Agri QSE	Generic QSE	Var
Ownership (Land and Equity)	20 points	20 points	0	20 points	25 points	- 5
Management Control	10 points	10 points	0	20 points	25 points	- 5
Employment Equity	10 points	15 points	- 5	20 points	25 points	- 5
Skills Development	20 points	15 points	+ 5	20 points	25 points	- 5
Preferential Procurement	20 points	20 points	0	20 points	25 points	- 5
Enterprise Development	10 points	15 points	- 5	20 points	25 points	- 5
Rural Development, Poverty Alleviation and CSI	10 points	05 points	+ 5	20 points	25 points	- 5

Understanding of the 7 Elements of Empowerment

1. **Equity (Land) Ownership** – Measures the **EFFECTIVE** Ownership of Enterprises by Black People.
2. **Management Control** – Measures the **EFFECTIVE** control of Enterprises by Black People.
3. **Employment Equity** – Measures the **INITIATIVES** intended to achieve **EQUITY** in the workplace under the Act, **and** the Employment Equity Act.
4. **Skills Development** – measures the **EXTENT** to which employers carry out **INITIATIVES** designed to develop the competencies of Black Employees.
5. **Preferential Procurement** – measures the **EXTENT** to which enterprises **BUY** goods and services from suppliers **with STRONG B-BBEE Procurement Recognition level**.
6. **Enterprise Development** – measures the **EXTENT** to which Enterprises carry out **INITIATIVES** intended to **assist and accelerate** the development and sustainability of other enterprises.
7. **Socio-Economic Development** – measures the **EXTENT** to which enterprises carry out **INITIATIVES** that contribute towards Socio-Economic Development or Sector-Specific initiatives that **promote** access to the economy for Black People.

Elements of Empowerment: Undertakings by Stakeholders

Pages	Element	Agri-Industry Undertakings	Government Undertakings
12-16	Ownership (Land and Equity)	<ul style="list-style-type: none"> ✓ Sell equity to black people ✓ Make land available for sale or lease 	<ul style="list-style-type: none"> ✓ Fund black people to buy equity in enterprises ✓ Implement land reform
16	Management Control	<ul style="list-style-type: none"> ✓ Promote black people to board and management positions 	Enforce the Implementation of the Employment Equity Act
14	Employment Equity	Employ black people at management positions	Enforce the Implementation of the Employment Equity Act
14-20	Skills Development	Spend 85% of total skills spend on core, critical & scarce skills	Enforce the Implementation of the Skill Development Act
20-21	Preferential Procurement	Procure goods & services from BEE companies	Enforce the Implementation of the Preferential Procurement Policy Framework Act
21-24	Enterprise Development	Spend 3% of NPAT on ED	Fund ED initiatives using CASP, MAFISA, etc
24-26	Rural Development, Poverty Alleviation and CSI	Spend 1% of NPAT on SED	Support SED initiatives

AgriBEE Scorecard (Large Enterprises)

ELEMENT	Weighting	Indicator Category	Indicator	Indicator Weighting Points	TARGET
Ownership	20%	Voting rights	Exercisable Voting Rights in the Enterprise in the hands of black people	3	25% + 1 vote
			Exercisable Voting Rights in the enterprise in the hands of black women	2	10%
		Economic interest	Economic Interest in the enterprise to which black people are entitled	4	25%
			Economic Interest in the Enterprise to which black women are entitled	2	10%
			Economic interest in the Enterprise to which black designated groups deemed participants in distribution schemes or employee schemes; participants in co-operatives, are entitled	1	2.5%
		Realisation points	Ownership fulfilment	1	No Restrictions
			Net Equity Interest Achieved accordingly:(See CoGP) 10% of the Target (Year 1) 20% of the Target (Year 2) 40% of the Target (Year 3-4) 60% of the Target (Year 5-6) 80% of the Target (Year 7-8) 100% of the Target (Year 9-10)	7	25%
		Bonus points	Involvement in the ownership of the Enterprise of black new entrants ; black disabled people, black youth and black Deemed Participants of Broad-Based Ownership Schemes; or black Participants in Co-operatives	3	Bonus per each level of 5%

AgriBEE Scorecard (Large Enterprises) Cont..

Land Ownership	20%		Commercial agricultural land transferred or sold to black people (The full detail of this matter can only be finalized once the legislative framework emanating from the current Land Reform Green Paper has been established. Until such time, the provisions of this Sector Code, read in conjunction with Statement 102, Recognition of Sale of Assets of the Codes of Good Practice, will be valid for measurement purposes.	20	30%
		Bonus points	<p>Contribution to achieving in excess of 30% land transfer.</p> <p>Note: Given the need to transfer land in support of national objectives, the nature of farming and the need to support Black People in establishing viable commercial farming Enterprises on the land that they receive, Measured Enterprises are encouraged to sell land in accordance with the principles and criteria attached to Qualifying Transactions as outlined below. However, these criteria and principles will only apply for a period of 5 years following the sale of land, where after the Measured Enterprise will enjoy continued recognition for ownership contributions. This refers exclusively to title deed land transfer.</p> <p>Further Black participation through ownership in the Agri-Industry by increasing the level of entitlement of Black People to participate in the Economic Interest and Exercisable Voting Rights in existing and new Enterprises. This includes the sale of equity in a Measured Enterprise, sale of assets through Qualifying Transactions and/or through share equity schemes and other forms of joint ventures with farm labourers and other Black entrepreneurs</p> <p>(Commercial agricultural land transferred or sold to black people (The full detail of this matter can only be finalized once the legislative framework emanating from the current Land Reform Green Paper has been established. In the interim those paragraph 5.1.3 of this Code shall apply. The provisions of this Sector Code, read in conjunction with Statement 102, Recognition of Sale of Assets of the Codes of Good Practice, will be valid for measurement purposes.</p>	5	30% (Bonus point per each percentage of land transferred above 30% of total land)

AgriBEE Scorecard (Large Enterprises) Cont..

Management Control	10%	Board Participation	Percentage of exercisable Voting Rights held by Members of the Board who are black people to the total of all Voting Rights exercised by all members of the Board	3	50%
			Executive Members of the board who are black people	1	50%
			Executive Members of the board who are black women	1	25%
		Top Management Participation	Percentage that Senior Top Management who are black people constitute of the total number of Senior Top Management	2	40%
			Percentage that Senior Top Management who are black women constitute of the total number of Senior Top Management	1	20%
			Percentage that Other Top Management who are black people constitute of the total number of Other Top Management	1	40%
			Percentage that Other Top Management who are black women constitute of the total number of Other Top Management	1	20%
		Bonus Points	Percentage that black people who are Independent Non-executive Board Members constitute of the total number of Independent Non-executive Board Members	1	40%

AgriBEE Scorecard (Large Enterprises) Cont..

Employment Equity	10%		Black people with disabilities employed in by the Measured Enterprise as a percentage of all full-time employees	2	3%
			Black people employed by the Measured Enterprise at Senior Management level as a percentage of employees at Senior Management level	2	60%
			Black women employed by the Measured Enterprise at Senior Management level as a percentage of employees at Senior Management level	2	30%
			Black people employed by the Measured Enterprise at Professionally Qualified, Experienced Specialist and Mid-management level as a percentage of employees at Professionally Qualified, Experienced Specialist and Mid-management level	2	75%
			Black women employed by the Measured Enterprise at Professionally Qualified, Experienced Specialist and Mid-management level as a percentage of employees at Professionally Qualified, Experienced Specialist and Mid-management level	1	40%
			Black people employed by the Measured Enterprise at Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen and Superintendents as a percentage of employees at Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen and Superintendents level	1	80%
			Bonus point for meeting or exceeding the EAP target in each category above	3	

AgriBEE Scorecard (Large Enterprises) Cont..

Skills Development	20%	Skills Development Spend	Skills development spend on black employees as a percentage of Leivable Amount. (85% of spend focused on core skills as identified by the enterprise and critical skills as identified by the relevant SETA).	7	2%	
			Skills development spend on black women as a percentage of Leivable Amount (85% of spend focused on core skills as identified by the enterprise and critical skills as identified by the relevant SETA).	2	0.93%	
			Spend on black employees with disabilities as a percentage of Leivable Amount	1	0.2%	
	Recognised Training Programmes			Number of black employees participating in training programmes that lead to recognised qualifications as percentage of total employees.	3	5%
				Number of black women participating in training programmes that lead to recognised qualifications as percentage of total employees	2	2.5%
				Number of people who are members of Black Designated Groups participating in training programmes that lead to recognised qualifications as percentage of total employees .	3	1%
				Number of Black employees participating in ABET Training.	2	1%
	Bonus points			Percentage of employees at ABET level 3	2	70%

AgriBEE Scorecard (Large Enterprises) Cont..

Preferential Procurement	20%	Preferential Procurement Spend	BEE procurement spend from Suppliers based on the BEE procurement recognition system contained in section 5.5 of the Sector Code (The TRICKLE down Effect)	12	70%
			BEE procurement spend from Qualifying Small Enterprises in accordance with the BEE procurement recognition system contained in section 5.5 of the Code	2	15%
			BEE procurement spend from Exempted Micro Enterprises in accordance with the BEE procurement recognition system contained in section 5.5 of the Code	1	5%
			BEE procurement spent from suppliers that are 50% black owned as a percentage of Total Measured Procurement Spend.	3	12%
			BEE procurement spent from suppliers that are 30% black women owned as a percentage of Total Measured Procurement Spend.	2	8%
			BEE procurement spent from suppliers that are 30% black owned as a percentage of Total Measured Procurement Spend.		

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AgriBEE Scorecard (Large Enterprises) Cont..

Enterprise Development	10%	Enterprise Development Spend	Cumulative contributions made by the Measured Entity to enterprise Development as a percentage of cumulative net profit after tax measured from the commencement / Inception Date to the date of measurement	10	3% of NPAT
		Bonus Points	Enterprise development contributions that directly increase employment levels in preceding year	2	One point for every 5% proven increase in permanent employment on previous year's permanent employment
			Lease of 20% of land or capital assets on a long term basis to black persons which meets the criteria of a qualifying transaction as outlined in paragraph 5.1.1.2	2	Lease longer than 10 years

AgriBEE Scorecard (Large Enterprises) Cont..

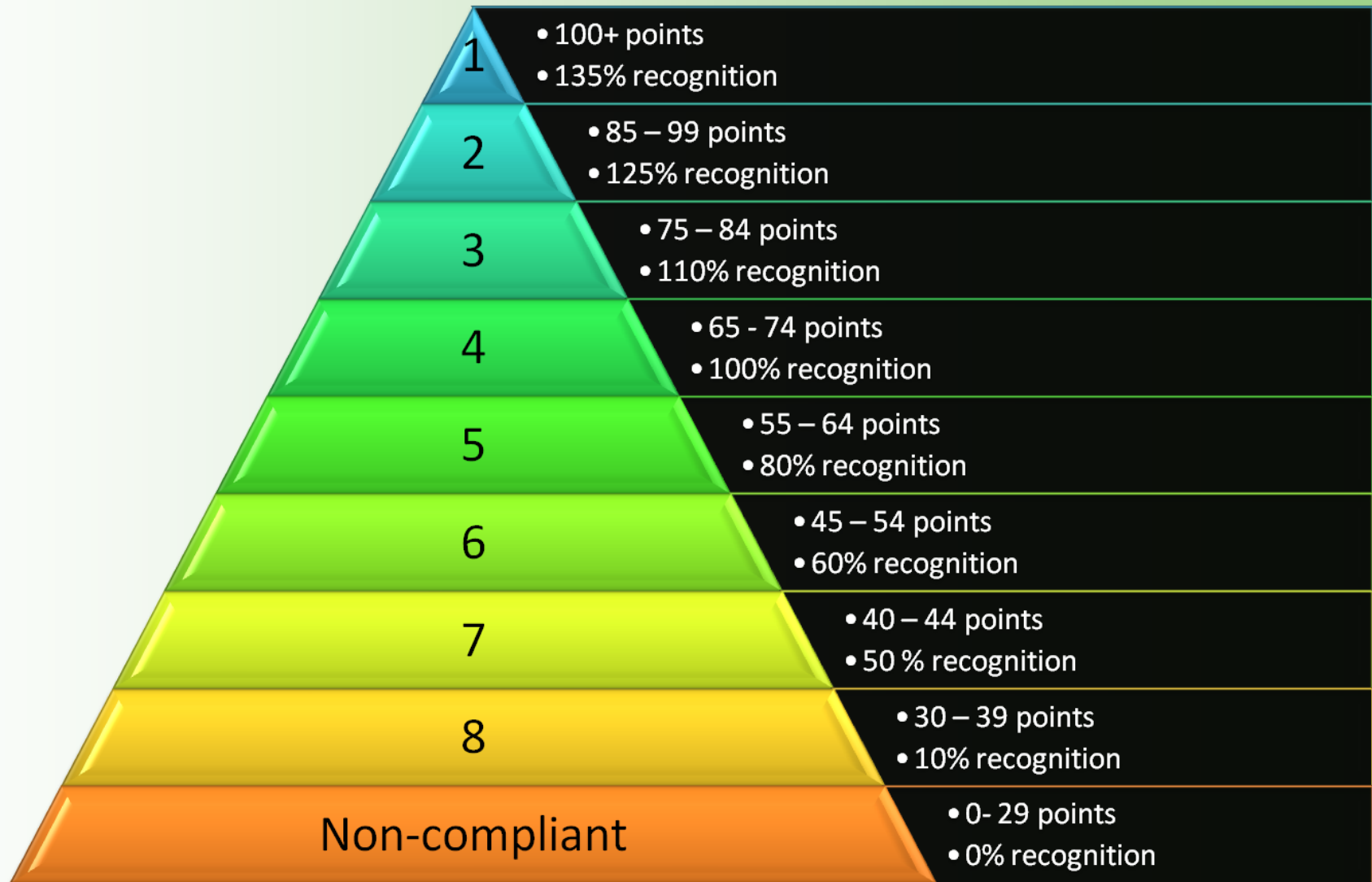
Socio-economic Development	10%	SED Spend and/or Land available to farm workers ¹	Cumulative Rand value of SED contributions as a percentage of net profit after tax over five years measured from the commencement date of this Code or the Inception Date over 10 years of the Code period and/or Land made available to farm workers measured from the commencement date of this Code or the Inception Date over 10 years of the Code period	10	1,0% of NPAT
		Bonus Point	SED contributions benefiting black people in rural communities or geographic areas identified in government's integrated sustainable development programme and urban renewal programme		1

AgriBEE Scorecard For The Qualifying Small Enterprises (QSE).

AgriBEE Scorecard For QSE

Element	AgriBEE QSE Scorecard <u>Weighting</u>	Generic QSE Scorecard <u>Weighting</u>
Ownership	20 points	25 points
Management control	20 points	25 points
Employment equity	20 points	25 points
Skills Development	20 points	25 points
Preferential procurement	20 points	25 points
Enterprise development	20 points	25 points
Residual	20 points	25 points

Enterprises' Indicate AgriBEE Status and Procurement Recognition Levels



How will AgriBEE Sector Code be enforced? The Guiding Principles

□ The Constitution of the Republic South Africa 1996

Section 217 (1); (2); and (3) of the Constitution of South Africa states that:

- (1). When an organ of the state in the **national, provincial or local spheres of government**, or any other institution identified in national legislation, **contracts for goods or services**, it must do so **in accordance with a system** which is fair, equitable, transparent, competitive and cost-effective.
- (2). Subsection (1) does not prevent the organs of the state or institution referred to in that subsection from implementing a procurement policy providing for:
 - a). Categories of preference in the allocation of contracts; and
 - b) The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- (3). National legislation must prescribe a framework within which the policy referred to subsection (2) may be implemented.

The Guiding Principles (Cont....)

- ❑ The BBBEE Act 53 of 2003: Section 10 of the Act provide for All Organs of State and Public Entities to apply any relevant Legislation and applicable relevant Sector Code of Good Practice issued in terms of the Act in:
 - ✓ Determining qualification criteria for licenses, concessions (grants).
 - ✓ Developing & implementing a preferential procurement policy.
 - ✓ Determining qualification criteria for the sale of state-owned enterprises.
 - ✓ Developing criteria for entering into partnerships with the Private Sector.

- ❑ The Trickle Down Effect (The Process or Rules of the Game)
 - ✓ **First:** Government must buy from entities that contribute much to BBBEE. (Higher BEE Recognition Level).
 - ✓ **Second:** The Higher an entity's BEE Recognition Level, the higher is its contribution/compliance to BBBEE. (*Seven Elements*).
 - ✓ **Thirdly:** When this occurs, there is ensured increasing market access by black companies.

What are the applicable Enforcement Measures for the AgriBEE Sector Code?

- ❑ **Preferential Procurement Policy Framework Act**
 - ✓ Through the Supply Chain Management policies of DAFF
- ❑ **Water Licenses**
 - ✓ DWA's policy water use allocations include compliance to the AgriBEE Sector Code as a requirement
- ❑ **Agricultural trade permit**
 - ✓ The policy for the allocation of trade permits for imports and exports of agricultural products requires compliance to the AgriBEE Sector Code
- ❑ **Fresh Produce Market Agents' certification**
 - ✓ The amendments of the Agricultural Produce Agents Act have aligned the certification of market agents to the AgriBEE Sector Code

How compliance to Code will be measured: Source of Information

- ❑ DAFF has developed the AgriBEE IT Portal, which is an web-based information system to be used by the sector stakeholders when reporting their BEE status.
- ❑ Training on the AgriBEE IT Portal was rolled out to all 9 Provincial Departments of Agriculture (PDAs) officials to assist farmers and agribusinesses to upload their Valid BEE Certificates & Scorecard information into portal
- ❑ DAFF and the AgriBEE Charter Council will utilise the information from the Portal to write annual reports on the **REAL** status of transformation in the sector.
- ❑ The Portal was tested in consultation with Agricultural Sector Stakeholders and is functional, URL: <http://webapps.daff.gov.za/agribee/>

Homepage of the AgriBEE IT Portal



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AgriBEE IT POPTAL

facilitating Broad-Based Black Economic Empowerment in the agricultural Sector

The Broad-Based Black Economic Empowerment (BBBEE) was introduced to empower South African black people who were previously marginalized from participating in the economy of South Africa during the apartheid regime.

The objectives of AgriBEE are to facilitate Broad-Based Black Economic Empowerment in the agricultural Sector by implementing initiatives to include Black South Africans at all levels of agricultural activity and Enterprises...



[read more](#)

Enterprise Registration



List of Verification Agencies



B-BBEE Documents



Latest News



"Media Statement from the Ministry of Agriculture, Forestry and Fisheries on the Human Rights Watch Report
The Ministry of Agriculture, Forestry and Fisheries has noted and welcomed the Human Rights Watch Report released today on the working conditions of the farmworkers in the fruit and wine industry in the Western Cape..."



Governance and Reporting

- ❑ **AgriBEE Charter Council will be institutionalised as Independent Body in form on NPC funded by Government**
- ❑ **The Council will oversee the implementation of the AgriBEE Sector Code and monitor compliance through the AgriBEE IT Portal**
- ❑ **The Council will report status of BEE in the sector to the Minister of DAFF and the Dti / Advisory Council.**
- ❑ **Verification and Rating of Agri-Businesses will be done by:**
 - ✓ **Accredited Auditors by Independent Regulatory Board for Auditors (IRBA), or**
 - ✓ **Accredited Verification Agencies by South African National Accreditation Systems (SANAS).**

Governance and Reporting (cont....)

Elements

Ownership

Ownership

Management Control

Employment Equity

Skills Development

Preferential Procurement

Enterprise Development

Socio-Economic Development

Sources

Statement 004

Shareholding

HRM

HRM

HRD

SCM

ED initiatives

SED Initiatives



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Concluding Remarks

- ❑ The implementation of the AgriBEE Sector Code is effective from the date of publication, 28 December 2012.
- ❑ All Agricultural stakeholders have to implement their agreed-undertakings and report compliance thereof on a continuous basis.

Q & A

Thank You!

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