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DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5221

20 September 2024

**CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC
EMPOWERMENT**

I, Mr Mpho Parks Tau, Minister of Trade, Industry and Competition, by virtue of the powers vested in me in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, (B-BBEE Act No. 53 of 2003) as amended by Act No.46 of 2013 ('the Act'), hereby publish the **Legal Sector Code and determine that these Codes will come into effect on the date of this publication.**

Purpose

The purpose of the Legal Sector code is:

1. to provide a policy framework for the meaningful sustainable transformation and growth of the legal sector in the Republic of South Africa;
2. to provide a legislative framework for the transformation and restructuring of the legal profession that embraces the values underpinning the Constitution and ensures that the rule of law is upheld;
3. to broaden access to justice by putting in place measures that provide equal opportunities for all aspirant legal practitioners to have a legal profession that broadly reflects the demographics of the Republic; and
4. to facilitate the realisation of a transformed and restructured legal profession.



**MR MPHOPARKS TAU, MP
MINISTER OF TRADE, INDUSTRY AND COMPETITION**

Date: 11/09/2024

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT LEGAL SECTOR CODE OF GOOD PRACTICE IN
TERMS OF SECTION 9 (1) OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003
AS AMENDED BY ACT 46 OF 2013**

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1. BACKGROUND

- 1.1. The history of apartheid in South Africa is well documented. The apartheid legislation, policies and practices have created inequalities and injustice in the socio-economic and political landscape of the country. Such legislation, policies and practices have created high levels of poverty amongst black people and resulted in racial inequalities in South Africa. Such policies and legislation were designed to, and succeeded in, excluding black people from meaningful participation in the economy of the country. The fundamental objective of apartheid legislation, policies and practices was to ensure that black people, who constitute the majority of the people in the Republic of South Africa, should only provide unskilled labour. The shortage of skills and expertise among black people is a consequence of such policies. The consequences of apartheid still prevail in the democratic era with the economy largely owned and controlled by whites while black people have a minimal role therein.
- 1.2. In April 1994, the changes in the political dispensation culminated in the adoption and promulgation of the new Constitution ("the Constitution") of the Republic of South Africa and the establishment of democracy. However, the legacy of apartheid requires a robust legislative intervention. The adoption of the Constitution assisted in the eradication of the apartheid laws and promoted the important principles of democracy and values, including recognising the human dignity of the majority of the people in the country.
- 1.3. The right of all South Africans to fully participate in the economy of South Africa is enshrined in the Constitution. This is not only a fundamental right, but it is also an important tool designed to assist growth of the economy of the country. It is in this context that the government of the Republic of South Africa promulgated the Broad-Based Black Economic Empowerment Act No. 53 of 2003, as amended, to address the imbalances created by apartheid and to promote sociopolitical equality and, in the process, facilitate equal participation in the economy of the country.
- 1.4. Members of the legal profession do not have a sector code to guide them in addressing imbalances and inequality within the legal profession. To date, reliance has been placed on the principles of the Codes of Good Practice issued under Government Gazette No: 36928 of May 2015 ("the Generic Codes") as amended from time to time, which are, as the name suggests, inherently generic applying broadly to business entities and not addressing the unique nature of the legal profession as an economic sector. The Legal Sector Code ("LSC") is therefore intended to address this gap. There are sufficient common commercial and professional characteristics in the legal sector to make it feasible and appropriate to develop a sector-specific code to address the unique characteristics of the legal sector.

2. VISION

The aim and objective of the LSC is to transform the legal sector in order to give effect to the objectives of the Constitution of promoting effective and sustainable economic participation by black people in the general economy of the Republic of South Africa and, in particular, the legal profession.

3. MISSION

The LSC is intended to provide a policy framework for the meaningful sustainable transformation and growth of the legal sector in the Republic of South Africa.

4. INTERPRETATION AND DEFINITIONS

- 4.1. In this LSC, unless the context otherwise requires, the words, expressions, definitions and/or qualifications used have the meaning assigned to them, and should be read together with the Generic Codes
- 4.2. In the event of a conflict between certain provisions of the LSC and the Generic Codes, the provisions of the LSC shall prevail and take precedence. Where a matter is not expressly dealt with in terms of this LSC, then the relevant provisions of the Generic Codes shall be deemed to apply only insofar as they do not contradict the intended objectives of the LSC.
- 4.3. In addition, words and expressions defined in B-BBEE Act but not in the LSC, shall, unless the context dictates otherwise, convey the same meanings.
- 4.4. The following words, expressions, definitions and/or qualifications shall convey the following meanings:

CONCEPT	DEFINITIONS
advocate	means a legal practitioner who is admitted and enrolled as such in terms of the LPA;
annual revenue	means the income generated by an LSME in providing its services in the course of rendering professional services as regulated by the LPA;
associate	means an attorney employed in such a capacity by an LSME in terms of an employment agreement concluded by these parties;
attorney	means a legal practitioner who is admitted and enrolled as such in terms of the LPA;
B-BBEE Act	means the Broad-Based Black Economic Empowerment Act No. 53 of 2003, as amended;
B-BBEE	<p>means Broad Based Black Economic Empowerment - the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:</p> <ul style="list-style-type: none"> • increasing the number of black people that manage, own and control enterprises and productive assets; • facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises; • human resource and skills development; • achieving equitable representation in all occupational categories and levels in the workforce; • preferential procurement from enterprises that are owned or managed by black people; and • investment in enterprises that are owned or managed by black people;
B-BBEE Commission	means the Commission set up in terms of section 13 B of the B-BBEE Act;
B-BBEE-compliant LSME	Means a legal sector measured entity that has achieved a Level 1 to Level 8 B-BBEE status level as set out in the B-BBEE Codes;

B-BBEE verification agency	means an entity which has been confirmed, approved and classified as such by the B-BBEE verification regulator or SANAS to verify compliance with the LSC in terms of the provisions of the B-BBEE Act;
B-BBEE verification certificate	means any certificate prepared and issued by a B-BBEE verification agency verifying compliance with the LSC by the LSME in terms of the provisions of the B-BBEE Act;
B-BBEE verification regulator	means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals;
black people	is a generic term which means Africans, Coloureds and Indians: <ul style="list-style-type: none"> • who are citizens of the Republic of South Africa by birth or descent; or • who became citizens of the Republic of South Africa by naturalisation: <ul style="list-style-type: none"> - before 27 April 1994; or - on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;
51% black owned	means an LSME in which: <ul style="list-style-type: none"> • black people hold at least 51% of the exercisable voting rights; and • black people hold at least 51% of the economic interest;
51% black women owned	means an LSME in which: <ul style="list-style-type: none"> • black women hold at least 51% of the exercisable voting rights; and • black women hold at least 51% of the economic interest;
black owned	means an LSME that is 51% or more than 51% black owned;;
black women owned	means an LSME in which; <ul style="list-style-type: none"> • black women hold at least 51% of the exercisable voting rights; and/or • black women hold at least 51% of the economic interest;

black youth	means black people between the ages of 14 and 35 years as defined in the National Youth Development Agency Act 54 of 2008
board of directors	means, in respect of an incorporated LSME, a body that is constituted by the directors of such LSME, and in respect of a partnership, a body which is constituted by the partners of such an LSME, which, in each event, is responsible for the executive management decisions and/or strategic direction of such an LSME;
candidate attorney	means a person undergoing practical vocational training with a view to being admitted and enrolled as an attorney in terms of the LPA;
Charter Council	means the Legal Sector Code Charter Council to be established by the Minister of Justice to oversee and implement the LSC, as set out in paragraph 13 of this LSC;
Companies Act	means Companies Act No. 71 of 2008, as amended;
continuous legal education	means the practical legal training which is intended to improve the practical knowledge and skills of the practitioners (including the skills and knowledge of candidate attorneys and pupils);
confirmatory affidavit	means an LSC-specific sworn affidavit to be completed by qualifying advocates for purposes of declaring and confirming their race and annual revenue for measurement purposes as envisaged in this LSC;
designated categories	means black women, black youth, black people with disabilities and black people from the rural areas, as contemplated in this LSC;
director	this term shall bear the same meaning as defined in the Companies Act;
DOJ&CD	means the Department of Justice and Constitutional Development;
DTIC	means the Department of Trade, Industry and Competition;

EAP	means the Economically Active Population, comprising persons between the ages of 15 and 65, as may be determined from time to time by the quarterly labour force survey published periodically by Statistics South Africa. The operative EAP for the purposes of any calculation under the LSC shall be the most recently published EAP statistics;
economic interest	means the right of a legal practitioner to share in the profits and liabilities of an LSME and to receive distributions from that LSME, representing a return on ownership similar in nature to a dividend right ;
ELE	means an exempted law firm which generates annual revenue of not more than R5 million or an advocate who generates annual revenue of not more than R3 million and is exempted from measurement as contemplated in this LSC respectively;
employment agreement	means any written agreement concluded between an LSME and an attorney for the employment of the attorney by the LSME for a certain duration as contemplated therein;
ESD	means an enterprise and supplier development programme as set out in this LSC and includes the measurement of preferential procurement;
equity partner/director	means a partner or a director, the latter notwithstanding the definition ascribed to that term in the Companies Act, who has an ownership interest in an LSME and shares in the profits of that LSME and is liable for the expenses and liabilities of such an LSME;
executive management	for the purposes of this LSC, means executive management shall be constituted by members of the various sub-committees established by the board including any executive committee, or in the case of a partnership, an equivalent structure to carry out and implement specific functions and/or duties, as may be delegated to such sub-committees by the board, from time to time. Such members may include without limitation, managing partners, chairpersons and chief executive persons who are attorneys;
goods and services	for the purpose of this LSC, means goods and services which shall without limiting the generality thereof, refer to and include textbooks, technology hardware and software, furniture, accounting

	services and electrical equipment and services and all other goods and services that are essential for the operation of legal practices;
incorporated LSME	means an LSME constituted, organised, and incorporated by one or more attorneys in accordance with the provisions of the Companies Act, and registered and established as a law firm with the LPC in terms of the provisions of the LPA;
in-service training	means practical training which is intended to improve and enhance the skills and knowledge of the support staff in an LSME;
junior management	for the purposes of this LSC, shall be constituted by associates and/or professional assistants within an LSME with no specific management duties and/or responsibilities, unless the board determines otherwise;
Large LSME	means an LSME which generates a total revenue of more than R25 million per annum in the case of a law firm and more than R15 million in the case of an advocate;
law firm	means an LSME which has been established by one or more attorneys and is duly registered with the LPC, in terms of the provisions of the LPA, for the purposes of engaging in the business and practice of law in South Africa;
legal entity	shall, for purposes of this LSC, have similar meaning as a law firm, and the two terms may be used interchangeably throughout this LSC;
legal practitioner	shall bear the meaning ascribed to that term in the LPA, but for the purposes of the LSC, it shall include only: <ul style="list-style-type: none"> • attorneys registered with the LPC and practicing as such; and • advocates, registered with the LPC and practicing as such;
leviable amount	shall bear the meaning ascribed to it in the Generic Codes;
LPA	means the Legal Practice Act No. 28 of 2014, as amended;

LPC	means the Legal Practice Council, which is a national statutory body established in terms of section 4 of the LPA. The LPC and its provincial councils regulate the affairs of and exercise jurisdiction over all legal practitioners (attorneys and advocates) and candidate attorneys and pupils;
LSC	means this Legal Sector Code, gazetted in terms of section 9(1) of the B-BBEE Act;
LSME	means a Legal Sector Measured Entity in the form of a law firm in the case of attorneys whether as sole practitioner, in a partnership, an incorporated legal entity or an individual advocate;
LSTF	means the Legal Sector Transformation Fund to be established in terms of paragraph 37 of this LSC, by the Charter Council, for the purpose of receiving and administering contributions made by qualifying LSMEs and advocates and any ELES seeking enhanced recognition in terms of this LSC, to provide financial assistance and support to black legal practitioners and for transformation-related purposes as may be determined by the Charter Council from time to time;
measurement date	means the last day of the measurement period (or such later date agreed upon with the LSME) that is as close as practically possible to the commencement of the verification or to the date of the LSME's confirmation affidavit, whichever the case may be;
middle management	means senior associates and/or senior professional assistants employed by any LSME who carry out and/or implement any decisions, functions and/or management duties, as may be delegated to them by directors, partners or practice group heads or department heads from time to time;
Minister	means the Minister of Trade, Industry and Competition of the government of the Republic of South Africa;
Minister of Justice	means the Minister of Justice and Correctional Services of the government of the Republic of South Africa;
NDP	means the National Development Plan which is a set of proposals devised by the government of South Africa aimed at eliminating poverty and reducing inequality by 2030;

NPAT	Net Profit After Tax which is the operating profit of a measured entity after tax. It includes both the loss figures and abnormal figures but excludes extraordinary items as determined by International Financial Reporting Standards;
organs of state	means any of the following institutions: <ul style="list-style-type: none"> • a national or provincial department as defined in the Public Finance Management Act No. 1 of 1999, as amended; • a municipality as contemplated in section 151 of the Constitution; and • a constitutional institution listed in schedule 1 of the Public Finance Management Act No. 1 of 1999, as amended;
partner	means an attorney who has been employed in such capacity by an LSME who is entitled to the profits of such LSME and is liable for its expenses and liabilities;
partnership	means an LSME, other than an incorporated LSME established and constituted by two or more attorneys, registered with the LPC in accordance with relevant provisions of the LPA, to manage and oversee the business operations of such LSME and share the profits and liabilities of such LSME;
PGL	means Practice Group Leaders, who are generally equivalent and have the same rank as the heads of departments within the LSME, and carry out the same mandate and/or functions, as heads of departments, as the case may be, within an LSME;
priority scorecard elements	means the compulsory elements that must be complied with in terms of the LSC, as outlined in the scorecards, referring to ownership, skills development and enterprise and supplier development;
professional assistant	this term shall bear a similar meaning as an associate, unless the context indicates otherwise;
PSED	means Procurement, Supplier and Enterprise Development element as a measurement statement as contained in this LSC;
pupil	this term shall bear the same meaning as defined in the LPA;

public entities	means enterprises that are listed as public entities in Schedule 2 or 3 of the Public Finance Management Act No. 1 of 1999, as amended;
QPB	means a Qualifying Procurement Beneficiary who is a recipient that qualifies, in terms of the qualifying enterprise and supplier development contributions and interventions, as set out in this LSC;
QSE	means a Qualifying Small Enterprise LSME which generates annual revenue above R5 million but not more than R25 million or an advocate who generates annual revenue above R3 million but not more than R15 million;
rural areas	for the purposes of this LSC means low population-density geographical areas which are located outside towns and cities, and are recognised as such by Statistics SA, and have limited access to ordinary public services, such as water, sanitation, infrastructure and/or economic opportunities;
salaried director	for the purposes of this LSC means, notwithstanding the definition ascribed to that term in the Companies Act, an attorney employed in that capacity by an LSME who does not participate in the profits of the LSME nor has a legal entitlement to such profits and is not liable for the expenses and liabilities of such LSME;
SANAS	means the South African National Accreditation System, an agency responsible for carrying out accreditations in respect of conformity assessments mandated through the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act No. 19 of 2006, as amended;
senior associate	means an attorney employed by an LSME, in that capacity, who is at a senior level above an associate but who is not a partner or a director at such LSME;
senior management	for the purposes of this LSC, shall be constituted and refer to the heads of departments or PGLs, as the case may be, of the various departments within a relevant LSME, who are the leaders of such departments, and oversee the performance, effectiveness and efficiency of such departments;

senior professional assistant	this term shall bear a similar meaning as a senior associate, unless the context indicates otherwise;
SOEs	means the State-Owned Enterprises which are entities that are wholly or partly owned by the state or any organs of state;
sole practitioner	means an LSME, which, in the case of attorneys, a firm which has been established and is operated by a single attorney as a law firm and registered with the LPC in terms of the provisions of the LPA;
specialised areas of law	means those areas of law from which black people have historically been excluded, and remain largely excluded, or have limited exposure to, including, but not limited to, the following: <ol style="list-style-type: none"> 1. corporate and commercial law; 2. intellectual property law; 3. information technology; 4. maritime law; 5. regulatory law; 6. conveyancing and property law; 7. pension law; 8. aviation law; 9. entertainment law; 10. arbitration and mediation; 11. insolvency and business rescue; 12. banking law; 13. initial public offerings and the securities exchange; 14. business and corporate tax law;

	<p>15. asset restructuring;</p> <p>16. mergers, acquisitions and take-overs;</p> <p>17. competition law;</p> <p>18. mining, energy and natural resources;</p> <p>19. international trade;</p> <p>20. corporate governance;</p> <p>21. due diligences and compliance;</p> <p>22. forensic and fraud investigation;</p> <p>23. transaction advisory services;</p> <p>24. environmental law;</p> <p>25. project finance;</p> <p>26. corporate finance;</p> <p>27. structured finance;</p> <p>28. construction and engineering law;</p> <p>29. media law;</p> <p>30. telecommunication law;</p> <p>31. sports law; and</p> <p>32. B-BBEE transaction advisory and related services.</p>
Statement 003	<p>means Statement 003: Amended Guidelines for Developing and Gazetting of Sector Codes Issued under s.9 of the B-BBEE Act published in Government Gazette no 38766 of 6 May 2015;</p>
Statistics SA or Statistics South Africa	<p>means the department referred to in section 4 of the Statistics Act No. 6 of 1999, as amended;</p>

Steering Committee	<p>means the committee which was established in terms of the B-BBEE Act as read with Statement 003 to consult with stakeholders with regard to this LSC and to draft the LSC and submit it to the Minister of Justice and Correctional Services and Minister of Trade, Industry and Competition for gazetting and which is constituted by key stakeholders in the legal profession, being the following:</p> <ul style="list-style-type: none"> • Black Lawyers Association (“BLA”); • Pan African Bar Association of South Africa (“PABASA”); • National Association of Democratic Lawyers (“NADEL”); • National Bar Council of South Africa (“NBCSA”); • General Council Bar of South Africa (“GCBSA”); • Law Society of South Africa (“LSSA”); • Black Conveyancers Association (“BCA”); • Department of Justice and Constitutional Development (“DOJ&CD”); • Department of Trade, Industry & Competition (“DTIC”); • The Corporate Counsel Association of South Africa (“CCSA”); • Advocates for Transformation (“AFT”); • Legal Aid South Africa (“Legal Aid SA”); • South African Women Lawyers Association (“SAWLA”); and • The Legal Practice Council (“LPC”)
targeted procurement	<p>means procurement from preferred categories of bidders, such as persons previously disadvantaged by unfair discrimination, provided that such procurement (a) does not compromise the value for money requirement; and (b) is an incentive for recognising and rewarding genuine innovators in the case of unsolicited proposals, provided that such incentives do not compromise the competitive bidding process and (c) complies with the provisions of the Preferential Procurement Policy Framework Act 5 of 2000;</p>
total revenue	<p>means the total income of an LSME from its services as determined under South African generally accepted accounting practice; and</p>
voting rights	<p>means, with respect to any matter to be decided by an LSME, the rights of an equity director or partner to vote in connection with that matter.</p>

5. INTRODUCTION AND PREAMBLE

5.1. Economic transformation is a constitutional imperative. There can be no equality as provided for in the Bill of Rights without effective transformation. Black economic empowerment is an indispensable policy instrument to achieve such equality.

5.2. As indicated above, despite the advent of democracy and the new dispensation in April 1994, the South African legal profession continues to face transformational challenges. This is evidenced by the fact that, among others, the top and senior management positions including senior partners and directors of racially mixed law firms remain largely homogenous and are generally dominated by white male practitioners. As such, there is a marked absence of diversity on the basis of either race or gender.

5.3. Although there have been pockets of improvement, a holistic overview of the South African legal profession shows that despite an increase in the numbers of admitted black legal practitioners, there are still insufficient black-owned law firms in the country that can compete in size, scale and service offerings with the large traditionally established, majority white owned law firms.

6. CHALLENGES FACED BY BLACK PRACTITIONERS

6.1. The main challenges faced by black practitioners, especially black women, as a result of historical inequalities are:

- 6.1.1. inadequate access to a sustainable flow of quality work from the private sector;
- 6.1.2. discrimination by the private sector in terms of procurement of specialised work;
- 6.1.3. inconsistent briefing patterns from organs of state and SOEs;
- 6.1.4. unequal access to senior positions in racially mixed law firms, in particular large LSMs; and
- 6.1.5. lack of skills resulting from limited access to quality and specialised areas of work.

6.2. These challenges require a robust intervention.

7. BUSINESS CASE FOR THE LSC

7.1. According to research conducted in 2014 by the Centre for Applied Legal Studies and the Foundation for Human Rights, it was established that:

“South Africa’s corporate law firms are still dominated by white men, especially in the upper echelons: 80 percent of the chief executives of the 12 firms canvassed in the survey were white men, as were 72 percent of all managing partners. The picture at the CEO/managing partner level was replicated in the ownership and remuneration structures of the firms: 53 percent of all equity partners were also white and males.”¹

7.2. In research for his Master’s in Business Administration programme, titled *South African Broad-Based Economic Empowerment and the Provision of Legal Services in the Financial Services Sector*², submitted to the Faculty of Commerce, Law and Management, of the University of the Witwatersrand, in 2018, Boitumelo Shalliam Phungwayo submits, on page 8, that:

The systematic, structural and social-economic inequalities that were prevalent under the apartheid government distorted the ability of the people in accessing courts, legal services and legal work on the basis of race, gender and disability (Roopram, 2007). The socio-economic status and geographic location factors were further hindrances for black people from being able to gain access to legal services. In their media release on 29 November 2007, the co-chairpersons of the LSSA acknowledged “that although much had been done to improve the structural and systematic issues of the past; inequality and discrimination still prevailed in the new democratic dispensation” (Ramathodi, 2010). According to the meeting report shared at the LSSA briefing on legal profession transformation, statistics showed that there were 24% fully female-owned attorney practices, 60% fully male-owned practices and 9.1% practices which were gender mixed (Law Society of South Africa, 2007). Ramathodi (2010) in his briefing further advised that 80% of the practices were fully owned by whites, only 6.5% fully owned by Africans, 6.2% by Indians, 1.4% by coloureds and 6.5% had mixed ownership (Ramathodi, 2010).

¹ Transformation of the Legal Profession [2014] para 2 page 5.

² South African Broad-Based Black Economic Empowerment and the Provision of Legal Services in the Financial Services Sector, Johannesburg, 2018, protocol number WBS/BA1738718/952.

- 7.3. Phungwayo concludes on page 76 that:
“The results of this research study illustrate deep structural challenges within the financial services sector in supporting the previously disadvantaged legal firms in accessing legal work and the promotion of their growth to becoming established businesses that will equally compete with their white counterparts. The results point to a need for robust transformation and reforms in both the banks and the government.”
- 7.4. Against this background, in 2007, prior to the establishment of the LPC, the Council of the Law Society of South Africa, developed and adopted a Legal Sector Charter as a Transformation Charter (“**the Transformation Charter**”) in terms of section 12 of B-BBEE Act.
- 7.5. The Transformation Charter represented a historic milestone in the pursuit of transformation of the legal profession. It came about as a result of an extensive process of consultations which culminated in the legal profession undertaking the responsibility for the drafting of the Legal Sector Charter (“**the Legal Sector Charter**”) in consultation with the DOJ&CD. The Legal Sector Charter stated that it embodies the profession’s commitment to transformation and recognises that a strong, independent and representative profession is essential to ensure access to justice and to promote the Bill of Rights as contained in the Constitution.
- 7.6. The Legal Sector Charter recognised that whereas significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes thereby undermining the aspirations and values underpinning the country’s constitutional democracy.
- 7.7. Subsequent to the 2007 Legal Sector Charter, the LSSA held a summit in March 2016 titled “Summit on Briefing Patterns in the Legal Profession”. The summit expressed *“its deepest concerns about the legal briefing patterns in the public and private sectors insofar as this endangers the constitutional democracy and insofar as there appears to be bias against black practitioners and women practitioners in these sectors.”*
- 7.8. This, the summit indicated, flouts the principles of non-racialism and non-sexism as espoused in both the preamble and elsewhere in the Constitution. It also has a *“a negative impact on the occupational progression of practitioners in these groupings and their economic wellbeing.”*

- 7.9. The participants therefore concluded that meaningful action had to be taken by all stakeholders from the date of the summit and recommended strict accountability. One of the resolutions taken was to set up a task team made up of various stakeholders to initiate remedial steps.
- 7.10. The summit participants agreed on procurement protocols for the legal profession which were signed by several law firms. The signatories to the protocols:
- 7.10.1. recognised that apartheid introduced race- and gender-based discrimination which excluded black practitioners on the one hand and bestowed "unfair privileges" on white male practitioners on the other hand;
- 7.10.2. accepted that transformation initiatives to empower black and women practitioners have been met with some reluctance and resistance on the part of some of members of the legal profession and the broader industry;
- 7.10.3. acknowledged that black and women practitioners have not been treated in line with the foundational constitutional values of equality; the right to equal access; the right for everyone to choose and practice their profession freely; and
- 7.10.4. acknowledged that, objectively measured, the efforts of the legal profession to reverse the imbalances flowing from our past have failed to yield the desired transformation of the legal profession;³
- 7.11. The signatories therefore undertook to, among other steps, promote the procurement of legal services from black and female practitioners, bridge the skills set deficits, and ensure black and female practitioners are included in the mainstream of practice.

³ Information on the Summit and Protocols for the Legal Profession can be accessed on www.issa.org.za.

- 7.12. The Generic Codes was first promulgated in 2007 and since then have been used by all sectors of the economy including those LSMs that opted to be measured for their compliance with black economic empowerment. In 2015 the Amended Codes of Good Practice were gazetted. The Generic Codes are currently used by LSMs. As the codes are inherently generic, provision is not made for the unique nature of a professional service sector such as the legal sector. For example, advocates cannot, because of the nature of their practice, be measured under ownership and management control.
- 7.13. The targets in the Generic Codes are the minimum as confirmed in paragraph 3.1.6 of Statement 003, yet no provision has been made for a progressive increase of such targets.
- 7.14. Black economic transformation is not a once-off event. It is intended to be a continuous incremental process until all systemic barriers are removed and a more equal society is enjoyed by all – including black practitioners. Furthermore, there is no monitoring mechanism in the Generic Codes to measure compliance and improvement towards this goal.
- 7.15. Statistics from Statistics SA show that in 2022 whites constituted 7.7% of the population and black people 92%. Statistics from the Legal Practice Council as of April 2023 shows that in large racially mixed law firms (15 or more partners) 72% of the partners/directors are white and, on average, 25% are black. At the associate level in the same firms, there has been more progress with 59% black and 40% white associates. With regard to professional assistants, whites constitute 57% and black professional assistants 43%.
- 7.16. A 2021 LexisNexis study confirms the LPC's statistics in relation to the ownership structure of mixed firms. It was found that in such firms, over half the white owners own more than 75% of the firms whilst 74% of the black practitioners is limited to less than 25% ownership. These figures demonstrate the effects of discrimination. A further expression of such discrimination is the fact that 2023 LPC statistics show that the largest majority black-owned firm has only 18 directors. In contrast, the largest majority white owned law firm has 396 partners and the smallest among such larger firms has 79 partners. It is the limited access to a sustainable flow of quality instructions that prevent black practitioner from building firms that can compete with large majority white-owned law firms.

- 7.17. Current research confirms earlier research from 2010 onwards as well as the conclusions drawn by the 2016 LSSA Summit insofar as they relate to lack of transformation in the legal profession. The findings show that black practitioners employed in racially mixed firms in the legal sector continue to experience significant structural and systemic discrimination and inequality.
- 7.18. The research referred to above, the conclusions reached at the 2016 LSSA Summit, as well as the feedback from black practitioners during countrywide consultations by the Steering Committee, demonstrate that 16 years after its promulgation, the Generic Code has not been effective in promoting meaningful transformation and nor have any of the initiatives referred to above been successful in solving the problems experienced by black practitioners.
- 7.19. There is therefore a need for a sector-specific code that will take cognisance of the unique characteristics of the legal profession and include sector-specific interventions that will be more effective in achieving equality and economic opportunities for black practitioners, thereby contributing to the growth of the profession and the economy as a whole. The development of the LSC should be seen in this context as well as in the context of the legal profession as one of the cornerstones of a constitutional democracy.

8. THE LEGAL PRACTICE COUNCIL

- 8.1. The LPC was established as a national statutory body to, in conjunction with its provincial councils, regulate the affairs of and exercise jurisdiction over all legal practitioners in South Africa, that is, attorneys, advocates and candidate legal practitioners.
- 8.2. The purpose of the LPA is to *inter alia*:
- 8.2.1. "Provide a legislative framework for the transformation and restructuring of the legal profession that embrace the values underpinning the Constitution and ensures that the rule of law is held ..."; and
- 8.2.2. Broaden access to justice by putting in place: (iii) measures that provide equal opportunities for all aspirant legal practitioners in order to have a legal profession that broadly reflects the demographics of the Republic.

- 8.3. Section 5 (a) of the LPA provides that one of the objects of the LPC is to facilitate the realisation of a transformed and restructured legal profession.
- 8.4. Section 6(1) (b) (v) of the LPA further enjoins the Council to develop programmes to empower black legal practitioners as well as candidate legal practitioners.
- 8.5. The role of the LPC in facilitating the development of the LSC is in terms of ss 5(a) and 6(1) (b) of the LPA.
- 8.6. In pursuance of these provisions of the LPA, the LPC in February 2020, resolved to facilitate the development of the LSC. The procedures followed in developing the LSC were in accordance with the provisions of the B-BBEE Act as read with Statement 003. In June 2020, the LPC issued a public notice notifying all stakeholders and members of the public, that it was commencing with facilitating the drafting of the Legal Sector Code. In August 2020, the LPC issued invitations to stakeholders to participate in the formation of the Steering Committee which would be responsible for the development and drafting of the Legal Sector Code. The Steering Committee was duly constituted. The LPC issued a further media alert in October 2020 extending an invitation to all legal practitioners (attorneys and advocates), all government departments and other stakeholders to consultative physical meetings; virtual meetings and to submit written submissions to a dedicated email address within the stipulated periods.
- 8.7. The Steering Committee conducted public consultations throughout the country from November 2020 in seven provinces physically and one virtual meeting was held to include all stakeholders who could not attend physical meetings. Stakeholders were also invited to submit written comments. Based on the public consultations and comments received, several drafts of the LSC were produced by the Steering Committee. The LPC provided logistical support for the consultations and acted as secretariat for all the work of the Steering Committee. After comments closed, the Steering Committee held several meetings to consider the comments and amended the draft LSC accordingly. The final draft was submitted to the DTIC in August 2021 and published for comment in July 2022. After comments were received, a committee consisting of some members of the Steering Committee, officials of the DTIC and the DoJ & CA considered the comments and amended the draft LSC. The full Steering Committee considered comments and the amendments and made their own and then approved the final draft for gazetting. This draft was submitted to the Minister of Justice in September 2023 for approval. The Minister of Justice approved the LSC and submitted it to the Minister for gazetting in October 2023.

9. OBJECTIVES OF THE LSC

- 9.1. It is important to ensure that the following outcomes and objectives of the LSC are achieved:
- 9.1.1. to deal with and manage the legal sector's unique features and characteristics that require specific measurements and interventions;
- 9.1.2. to ensure that industry stakeholders commit to the implementation of the LSC and commit to respecting and upholding the values enshrined in the Constitution that the provisions of the LSC aim to achieve;
- 9.1.3. that industry-specific and practical thresholds, targets, measurement principles and weighting points are clearly defined and outlined in the LSC for all to understand and implement;
- 9.1.4. to implement more effective interventions in certain elements of the scorecard; and
- 9.1.5. to ensure that incentives for innovative and progressive implementation of the LSC in a unique manner are promoted, encouraged and protected.
- 9.2. It is important that in achieving the objectives of the LPA and the B-BBEE Act:
- 9.2.1. the legal sector supports the vision of and commitment to a transformed quality legal profession in compliance with the B-BBEE Act, which establishes a legislative framework for the promotion of B-BBEE and economic inclusiveness;
- 9.2.2. the LSC is aligned to the principles underpinning the NDP which aims to, *inter alia*, eliminate poverty and reduce inequality by 2030 in the context of promoting transformation in the legal sector ;
- 9.2.3. introduces EAP targets which are aimed at addressing the unequal representation of racial sub-groups participating in the sector, based on regional and demographic representations, being Africans, Coloureds and Indians;

- 9.2.4. minimum levels of procurement spend and the procurement of work from LSMs, where applicable, are set aside based on racial and gender demographics at a national level, with specific reference to LSMs that are at least 51% black owned or at least 51% black women owned; and
- 9.2.5. minimum levels of allocations of work are set aside for LSMs that are, with regard to the racial and gender demographics at a national level, at least 51% black owned or 51% black women owned.
- 9.3. At all relevant and material times, the implementation of the LSC should be underpinned by the following objectives:
- 9.3.1. **ensuring that black women are equitably represented** in the management and ownership structures of legal practices;
- 9.3.2. **providing access to justice** and outlining the responsibilities and obligations of stakeholders in addressing those challenges;
- 9.3.3. improving the **availability of quality legal services** by ensuring the provision of continuing and sustained education and skills development;
- 9.3.4. enhancing, developing and empowering black legal professionals, in particular in **designated categories** in all fields of legal practice especially specialised areas of law;
- 9.3.5. addressing challenges of **entry into the legal profession**, with specific emphasis on challenges experienced by law students and trainees from designated categories;
- 9.3.6. ensuring the availability of **quality legal training and education** by ensuring the availability of continuing legal training and education; and providing quality in-service training and learnership opportunities;
- 9.3.7. implementing measures to address the provision and availability of **community-based legal services**, thus ensuring access to affordable legal services for all South Africans, particularly those in marginalised, poor and rural communities;

- 9.3.8. facilitating the **transformation of the legal sector** to ensure that it is representative of the demographics of South Africa;
- 9.3.9. ensuring that a body of well-trained and competent providers of legal services are developed to enable **equitable appointments to be made to the judiciary**;
- 9.3.10. adopting measures to promote the **equitable distribution of all areas of legal work effectively and meaningfully** to eliminate barriers of entry and provide equal opportunities by empowering black legal practitioners, especially persons from designated categories, by ensuring equal participation in the economic opportunities within the legal sector;
- 9.3.11. ensuring and enhancing demographic **representation in respect of ownership, management, control and employment** within legal practices; and
- 9.3.12. creating an **enabling environment to reflect the diversity of our society** and ensuring the promotion of equality and the prevention of discrimination.
- 10. UNDERTAKINGS AND COMMITMENTS BY THE INDUSTRY STAKEHOLDERS**
- 10.1. The development of the LSC is based on the definitions, principles and methodologies of transformation as outlined in the B-BBEE Act and the Generic Codes aligned to the unique nature of the legal sector and is necessitated by the prevailing conditions of inequality and the need to foster equitable participation and representation of all races.
- 10.2. Stakeholders within the legal profession represented on the Steering Committee affirmed their commitment to the Constitutional principle of equality, and therefore pledged their support for, and undertook to be bound by, the applicable provisions of the LSC and compliance with the LSC scorecards.

11. UNIQUE FEATURES AND STRATEGIC OBJECTIVES OF THE LSC

- 11.1. The LSC is premised on the recognition that a B-BBEE measurement framework in the legal sector is necessary to address transformation as a whole, B-BBEE in general, the promotion of black practitioners, as well as the need for a significant increase in the fair and equitable procurement of quality and specialised areas of law from black practitioners by both the private and public sectors.
- 11.2. The LSC therefore seeks to ensure that the continuing adverse consequences of past discriminatory practices for black practitioners are addressed by providing for certain measures, including the following:
- 11.2.1. seeking to achieve a substantial, meaningful, and accelerated change in the racial and gender composition of ownership, control and management of legal practices in the legal sector;
- 11.2.2. promoting employment patterns in the sector that adhere to the principles of non-racialism and non-sexism by addressing the underrepresentation of black practitioners in many LSMEs;
- 11.2.3. addressing the prevailing shortage and lack of relevant skills and increasing the skills pipeline with the aim of accelerating the advancement of black legal practitioners, black women legal practitioners and practitioners from designated categories, including legal internships, employment of candidate attorneys and pupils with specific reference to legal and management skills;
- 11.2.4. increasing the procurement of legal services from the private and public sectors by LSMEs that are at least 51% black owned and/or 51% black women owned;
- 11.2.5. where applicable, enhancing enterprise and supplier development in the value chain of legal services that leads to sustainable empowerment of qualifying supplier and enterprise development beneficiaries in the legal sector;

- 11.2.6. contributing to the creation of sustainable LSMEs that are majority or wholly owned by black legal professionals through effective enterprise and supplier development initiatives.
- 11.2.7. increasing ongoing qualitative and quantitative methods for monitoring and evaluating progress towards realising the goals of this LSC and B-BBEE in general and thereby contributing to measures that eradicate fronting and other mechanisms for circumventing such goals; and
- 11.2.8. ensuring reporting to the Charter Council to monitor progress of LSMEs toward implementing the provisions of B-BBEE as reflected in this LSC.

12. SCOPE OF APPLICATION

- 12.1. In terms of section 10 of the B-BBEE Act, every organ of state and public entity must apply any relevant code of good practice issued under that Act. In terms paragraph 4 of Statement 003, a sector code enjoys equal status with that of any other code. In terms of paragraph 3 of Statement 000, any enterprise that undertakes any business with any organ of state or public entity and any other enterprise which undertakes any business with such enterprise, and which seeks to establish its own B-BBEE compliance, are measurable under the relevant Codes of Good Practice, including this LSC.
- 12.2. This LSC shall accordingly be applicable to and binding on all organs of state and public entities to the extent set out in paragraph 12.5 herein.
- 12.3. The following legal entities and advocates who elect to be measured in terms of, and benefit from, the provisions of the B-BBEE Act and B-BBEE policies may only be measured for compliance in terms of this LSC:
 - 12.3.1. **attorneys** except in the case of ELEs in defined categories, all law firms registered with the LPC whether they are sole practitioners, partnerships or incorporated legal entities; and

advocates

all advocates who are enrolled and registered on the roll of practicing advocates with the LPC and practicing as such.

- 12.4. All references in this LSC to LSMs shall be to those which/who have elected to be measured in terms of and benefit from the provisions of the B-BBEE Act and B-BBEE policies and practices.
- 12.5. The following organs of state and public entities shall be measured under this LSC insofar as it concerns the procurement of legal services:
 - 12.5.1. office of the state attorney and all organs of state and public entities whose primary focus is the procurement of legal services on behalf of the state from law firms and advocates;
 - 12.5.2. all organs of state other than those referred to in paragraph 12.5.1 of this LSC which procure legal services from law firms and advocates; and
 - 12.5.3. Legal Aid South Africa.
- 12.6. Notwithstanding anything to the contrary contained herein, all private sector entities that provide legal services to the public or procure legal services and notwithstanding that they are measured in terms of a different industry sector code, may nevertheless elect to submit their reports to the Charter Council reflecting the extent to which their procurement of legal services complies with this LSC.
- 12.7. It is specifically recorded herein that this LSC shall not apply to and be binding on:
 - 12.7.1. private sector entities that are measured in terms of a different industry sector code; and
 - 12.7.2. save for the provisions of paragraph 12.6, legal practitioners who are not enrolled and registered as practising legal practitioners with the LPC.

13. RESPONSIBILITY FOR MONITORING THE IMPLEMENTATION OF THE LSC

- 13.1. Subsequent to the Minister gazetetting the LSC, a Charter Council shall be established comprising of stakeholders in the legal sector in accordance with the provisions of the B-BBEE Act as read with the provisions of paragraph 6 of Statement 003.
- 13.2. The Minister of Justice is responsible for the establishment of the Charter Council.
- 13.3. Stakeholders in the legal sector shall nominate members of the Charter Council and such members shall be approved by the Minister of Justice.
- 13.4. The responsibility to monitor compliance with the LSC and oversee its implementation shall reside with the Charter Council.
- 13.5. The Charter Council shall be supported by administrative staff.
- 13.6. The establishment, operations and/or activities of the Charter Council shall be jointly funded by the LSTF, DOJ&CD and the LPC, in proportions and manner to be agreed to by such parties from time to time, or as may be regulated by the B-BBEE Act.
- 13.7. On an ongoing basis, the Charter Council shall:
 - 13.7.1. monitor compliance with the LSC;
 - 13.7.2. provide clarification, support and assistance in the interpretation and implementation of the LSC;
 - 13.7.3. liaise with all government departments, agencies, and other relevant stakeholders for the purpose of facilitating the implementation of the LSC;
 - 13.7.4. initiate and supervise revisions to the LSC; and

- 13.7.5. publish annual reports reviewing progress in the transformation of the legal profession and submit such reports to all relevant stakeholders including the Minister, the Minister of Justice, and the B-BBEE Commission.
- 13.8. In order to ensure compliance with this Sector Code, all Measured Entities that elect to be measured for B-BBEE compliance, shall annually provide a report to the Charter Council. Where applicable, the report must include a scorecard audited by an accredited verification agency and a detailed report on progress complying with the provisions of this Sector Code.
- 13.9. Notwithstanding the provisions of paragraph 13.7, ELEs and black-owned QSEs are not required to file a report referred to therein, except in the event that they elect to obtain enhanced recognition in terms of LSC 000 in the case of ELEs. They are only required to submit a sworn affidavit, or a certificate issued by the Companies and Intellectual Property Commission (CIPC) provided for in paragraph 14 to the Charter Council on an annual basis.
- 13.10. The first annual report shall be filed not later than the first anniversary of the promulgation of this Sector Code. The date for subsequent annual reports shall be determined by the Charter Council.
- 13.11. The Charter Council must, in accordance with the provisions of the B-BBEE Act and established working protocols that may be finalised with the B-BBEE Commission, report all suspected incidents of fronting and fraudulent scorecards to the office of the B-BBEE Commission to enable investigation of any fronting and circumvention practices within the legal services profession.
- 13.12. The Charter Council shall ensure that:
- 13.12.1. the LSC is complied with in both the public and private sectors; and
- 13.12.2. the relevant public sector clients and procurers of legal services achieve targeted procurement as set out in this LSC.

13.13. Notwithstanding anything to the contrary contained herein, the role of the Charter Council shall not override that of the B-BBEE Commission as provided for in the B-BBEE Act. The obligation to file reports to the Charter Council shall be in addition to the obligation to file reports with the B-BBEE Commission, not in substitution.

14. MEASUREMENT OF LSMES

- 14.1. The provisions set out in this paragraph shall apply to the measurement of all LSMES in terms of this LSC.
- 14.2. An ELE is only required to obtain a sworn affidavit, or a certificate issued by the CPIC on an annual basis confirming the following:
- 14.2.1. annual total revenue of R5 million (five million rand) or less; and
- 14.2.2. level of black ownership.
- 14.3. Any misrepresentation in terms of paragraph 14.2 above constitutes a criminal offence as set out in section 13 (O) (1) (a) of the B-BBEE Act. as read with paragraph 4.7 of the Generic Codes.
- 14.4. Notwithstanding any other provision in this LSC, a black-owned QSE is only required to obtain a sworn affidavit on an annual basis confirming the following:
- 14.4.1. annual total revenue of between R5 million (five million rand) and R25 million (twenty-five million rand); and
- 14.4.2. level of black ownership.
- 14.5. Despite the provisions of paragraph 14.4, a black-owned QSE may be measured in terms of the QSE scorecard should it so choose.
- 14.6. QSEs that are not black owned must be measured in terms of the QSE scorecard.

- 14.7. Any misrepresentation in terms of paragraph 14.4 above constitutes a criminal offence as set out in section 13 (O) (1) (a) of the B-BBEE Act as read with paragraph 5.5 of the Generic Codes.
- 14.8. Any B-BBEE verification certificate submitted by an LSME shall be deemed incomplete unless it is accompanied by a verification report that details the applicable LSME's performance and scoring against the scorecard elements in the LSC.
- 14.9. The information relied upon for providing the B-BBEE verification certificates and reports must be accurate, correct and verifiable by means of suitable evidence.
- 14.10. B-BBEE verification certificates and reports are valid for a period of 12 (twelve) months from the date of issue.
- 14.11. The Charter Council shall use the information, data and detail provided on the B-BBEE verification certificate and reports to assess the performance of each LSME to provide accurate and reliable state-of-the-industry reports to the DTIC and the DOJ&CD.
- 14.12. No contractual obligations between the B-BBEE verification agencies and the LSMEs shall preclude the B-BBEE verification agencies from providing such information and data as the Charter Council may require from time to time for measurement and monitoring purposes provided that the Charter Council shall fully comply with the provisions of the Protection of Personal Information Act No. 4 of 2013.
- 15. PRIORITY ELEMENTS AND SUB-MINIMUM**
- 15.1. The priority elements are as follows:
- 15.1.1. **Ownership**
the sub-minimum requirement for ownership is 40% of the total weighting points for ownership;

- 15.1.2. **skills development**
the sub-minimum requirement for skills development is 40% of the total weighting points or skills development; and
- 15.1.3. **enterprise and supplier development**
the sub-minimum requirement for enterprise and supplier development is 40% of the total weighting points for each of the three categories within the enterprise and supplier development elements, namely, preferential procurement, enterprise development and supplier development.
- 16. COMPLIANCE WITH PRIORITY ELEMENTS**
- 16.1. A Large Enterprise is required to comply with all the Priority Elements.
- 16.2. A QSE is required to comply with Ownership as a compulsory element and either Skills Development or Enterprise and Supplier Development, excluding QSEs that are black owned and to which the provisions of paragraph 14.4 are applicable.
- 17. DISCOUNTING PRINCIPLE EFFECT**
- 17.1. A QSE or Large LSME that fails to meet the 40% sub-minimum requirement for any or a combination of the priority elements in terms of paragraph 15 above, will have their B-BBEE status level discounted by one level down.
- 17.2. The discounted level will be recorded and be the applicable status level for such an LSME.
- 17.3. Notwithstanding the provisions of paragraph 17.1, the actual points by an LSME below the 40% sub-minimum will be recognised.
- 18. KEY MEASUREMENT PRINCIPLES**
- 18.1. The fundamental principle for measuring B-BBEE compliance by any LSME is that substance takes precedence over legal form.

- 18.2. In interpreting the provisions of the LSC, any reasonable interpretation consistent with the objectives of the B-BBEE Act and the B-BBEE strategy must take precedence.
- 18.3. The formulae that are used for measurement of initiatives, criteria, and indicators in the scorecards in this LSC shall be aligned to the formulae in the Generic Codes.
- 18.4. The basis for measuring B-BBEE initiatives under the LSC shall:
- 18.4.1. for the ownership and management control elements, be the B-BBEE compliance of the LSME at the date of measurement (as defined); and
- 18.4.2. for skills development and ESD elements, be the B-BBEE compliance of the LSME throughout the measured period.
- 18.5. Initiatives which split, separate or divide an LSME with the intent of ensuring eligibility as an LSME, a QSE or a new entrant enterprise shall constitute an offence and shall be dealt with in accordance with the provisions of the B-BBEE Act.
- 18.6. Any representation made by an LSME regarding its B-BBEE compliance must be supported by suitable evidence or documentation. An LSME that does not provide suitable evidence or documentation supporting any initiative shall not receive any recognition for that initiative.
- 18.7. Throughout the interpretation of the LSC, effect shall be given to the following underlying principles:
- 18.7.1. in the event that there is uncertainty or conflict, any reasonable interpretation consistent with the objectives of the B-BBEE Act must take precedence; and
- 18.7.2. any misrepresentation or attempt to misrepresent an LSME's true B-BBEE status shall be dealt with in accordance with the provisions set out in the B-BBEE Act and may lead to the disqualification of the entire scorecard of the entity concerned.

- 19. INTERPRETATION OF B-BBEE INITIATIVES IN THE LSC**
- 19.1. LSMEs are only measurable in respect of their South African operations and not their global operations and partnerships. This applies to the measurement of all the elements and indicators of the scorecard. The LSC is the applicable sector code for all activities listed in section 10 of the B-BBEE Act. This means that all LSMEs who elect to the measured in in terms of the B-BBEE Act are, unless exempted, obliged to be measured in terms of this LSC.
- 19.2. The requirement to submit data to the Department of Labour under the Employment Equity Act 55 of 1998 is only applicable to 'designated employers' who employ 50 or more employees. However, for the purpose of measurement in terms of this LSC, both SMEs and QSEs that employ fewer than 50 employees are required to submit sufficient evidence for verification purposes.
- 20. ELIGIBILITY TO QUALIFY AS AN ELE**
- 20.1. For the purposes of measurement in terms of the LSC, an LSME shall qualify as an ELE based on the criteria set out below for both attorneys and advocates and will be based on the annual revenue.
- 20.2. Any LSME with a total annual revenue set out in the relevant categories in this LSC for attorneys and advocates, respectively, shall comply with the elements of the LSC scorecard.
- 20.3. **The following tables set out the exempted legal entities:**

LSC 000 - EXEMPTED LEGAL ENTITIES				
ELEs – Attorneys				
Applicable to law firms registered with the LPC either as sole practitioners, partnerships and/or incorporated law firms				
Monetary Annual Threshold	Indicator	B-BBEE Level Contributor Status	Level of black Ownership	Suitable Evidence
For attorneys generating R0 up to R5 million annual revenue	Fully exempted from the LSC	B-BBEE Level 1	100% black owned	Sworn Affidavit or certificate issued by CPIC
		B-BBEE Level 2	51% black owned	Sworn Affidavit or certificate issued by CPIC
		B-BBEE Level 4	Any LSME that meets the monetary threshold, irrespective of black ownership	Sworn affidavit or certificate issued by CPIC
		Enhanced recognition for other categories of ELEs		
Can choose any one of the following LSTF for this purpose. LSC 300 contribution LSC 400 contribution		B-BBEE Level 4	Only if the firm is owned by less than 51% black persons	B-BBEE Certificate where enhancement is elected otherwise sworn Affidavit or Certificate issued by CPIC
		B-BBEE Level 5	If the firm is owned by less than 35% black persons	B-BBEE Certificate where enhancement is elected otherwise sworn affidavit or certificate issued by CPIC
		B-BBEE Level 5	Is a new entrant as defined in paragraph 20.4 of this LSC	Independent confirmation of status

- Legal entities with between 1 and 3 partners constitute 95.07% of the total number of legal practices in South Africa.
- Enhanced recognition referred to above means that an otherwise white or a majority white-owned ELE that is either B-BBEE level 4 or level 5 may enhance itself one level up if they implement at least one of the following three indicators, namely:
 1. contribution to LSTF; or
 2. training in specialised areas of law for black legal practitioners; or
 3. any contribution towards the enterprise development element.

LSC 000 - EXEMPTED LEGAL ENTITIES

ELE – Advocates			
All advocates who have an annual revenue of R0 to R3 million are exempted from complying with the LSC. An advocate who is so exempted and is black qualifies for elevation to Level 1 Contributor and an advocate who is so exempted and is white, qualifies for elevation to Level 4 contributor.			
Monetary Threshold	Practicing for their own account as such	Applicable scorecard	(B-BBEE Contributor Status)
Fully Exempted			
For advocates with an annual revenue of R0 to R3 million	Junior advocates	Fully exempted from the LSC	B-BBEE Level 4
			B-BBEE Level 1
		Suitable Evidence	
		Only if the advocate is black	Confirmatory Affidavit
		Only if the advocate is white	Confirmatory Affidavit

20.4. **New Entrants**

- 20.4.1. For the purposes of this LSC, an LSME shall constitute a new entrant and shall, for purposes of measurement, constitute a recently formed, constituted, established or incorporated law firm in practice for less than 3 (three) years or an advocate who has been in practice for less than 3 (three) years.
- 20.4.2. However, a new entrant does not include any newly formed, constituted, established or incorporated LSME in practice for less than 3 years which is merely a continuation or a breakaway of a pre-existing LSME or a newly established or incorporated law firm which is constituted established or incorporated by legal practitioners who have been in practice for a period of more than 3 (three) years.
- 20.4.3. An LSME that is a new entrant, unless it is black owned or a black advocate in which case it shall qualify as having a B-BBEE level in accordance with LSC 000 and 001, shall qualify as an automatic B-BBEE Level 4 LSME, in accordance with the provisions of this LSC. Consequently, in terms of this LSC, a new entrant shall qualify to be measured as an ELE. To qualify as a new entrant, the LSME must provide an independent confirmation of its status.
- 20.4.4. Despite the provisions of this paragraph 20.4, an LSME that is a new entrant shall be required to submit a QSE scorecard B-BBEE verification certificate when tendering for legal services with a value higher than R5 million (five million rand) but less than R25 million (twenty-five million rand). To the extent that the value of the legal services exceeds R25 million then, in that event, such an LSME shall be deemed to be a large enterprise and must submit a Large LSME B-BBEE verification certificate.

21. B-BBEE RECOGNITION LEVELS

FOR ATTORNEYS IN THE LSC

B-BBEE STATUS	B-BBEE QUALIFICATION	B-BBEE RECOGNITION LEVEL
Level One (1)	Has reached the minimum of 100 weighting points	135%
Level Two (2)	Has achieved the minimum of 85 but less than 100 weighting points	125%
Level Three (3)	Has achieved the minimum of 75 but less than 85 weighting points	110%
Level Four (4)	Has achieved the minimum of 65 but less than 75 weighting points	100%
Level Five (5)	Has achieved the minimum of 55 but less than 65 weighting points	80%
Level Six (6)	Has achieved the minimum of 45 but less than 55 weighting points	60%
Level Seven (7)	Has achieved the minimum of 35 but less than 45 weighting points	50%
Level Eight (8)	Has achieved the minimum of 35 but less than 45 weighting points	10%
Non-Compliant Contributor	Has achieved less than 25 points in the measurement scorecard	0%

FOR ADVOCATES IN THE LSC

B-BBEE STATUS	B-BBEE QUALIFICATION	B-BBEE RECOGNITION LEVEL
Level One (1)	Has reached the minimum of 50 weighting points	135%
Level Two (2)	Has achieved the minimum of 45 but less than 50 weighting points	125%
Level Three (3)	Has achieved the minimum of 40 but less than 45 weighting points	110%
Level Four (4)	Has achieved the minimum of 35 but less than 40 weighting points	100%
Level Five (5)	Has achieved the minimum of 3 but less than 35 weighting points	80%
Level Six (6)	Has achieved the minimum of 25 but less than 35 weighting points	60%
Level Seven (7)	Has achieved the minimum of 20 but less than 25 weighting points	50%
Level Eight (8)	Has achieved the minimum of 15 but less than 20 weighting points	10%
Non-Compliant Contributor	Has achieved less than 10 points in the measurement scorecard	0%

22. THE SUMMARY OF THE SCORECARDS, B-BBEE WEIGHTING POINTS AND CONTRIBUTION LEVELS

22.1. In this LSC, the following is the summary of the Scorecards assigned to each element of the LSC:

Code Series	Relevant Scorecard	Categories	Weighting Points
LSC 000	ELE	Attorneys Advocates	N/A N/A
LSC 100	Ownership	QSE	Above R5 million but not more than R25 million
LSC 001		Large	Above R25 million
LSC200	Management Control	QSE	Above R5 million but not more than R25 million
LSC 201		Large	Above R25 million
LSC 300	Skills Development	Attorneys	Above R5 million but not more than R25 million
LSC301		Attorneys	Above R25 million
		Advocates	Above R3 million but not more than R15 million
		Advocates	Above R15 million
LSC 400	PSED	QSE Large	Above R5 million but not more than R25 million Above R25 million
LSC 401	Specialised Scorecard	For organs of state and public entities	45

22.2. In this LSC, the following is the summary of the **B-BBEE Weighting Points (excluding bonus points)** assigned to each element of the LSC:

FOR LEGAL MEASURED ENTITIES THAT ARE ATTORNEYS (LAW FIRMS)		
	QSE Weighting Points	Large LSMs Weighting Points
Ownership	25	25
Management Control	20	24
Skills Development	15	15
PSED	45	45
PSED Specialised	-	-
Total weighting points	105	109

FOR LEGAL MEASURED ENTITIES THAT ARE ADVOCATES (INDIVIDUAL LEGAL PRACTITIONERS)		
	QSE	Large LE
Ownership	-	-
Management Control	-	-
Skills Development	50	50
PSED Specialised	-	-
Total weighting points	50	50

SPECIALISED SCORECARD – FOR SOEs AND GOVERNMENT DEPARTMENTS	
Ownership	-
Management Control	-
Skills Development	-
PSED	45
Total weighting points	45

23. KEY MEASUREMENT PRINCIPLES RELATING TO OWNERSHIP

- 23.1. The fundamental principle for measuring B-BBEE compliance in any LSME is that substance takes precedence over legal form.
- 23.2. The purpose of measuring ownership element in this LSC is to acknowledge the following unique characteristics and dimensions of the legal profession:
- 23.2.1. that the legal profession is partly made up of advocates who are admitted, enrolled and practicing as such and who cannot be measured on ownership and management control elements; and
- 23.2.2. that the legal sector is partly made up of admitted and enrolled attorneys who practice as such, either as sole legal practitioners or in partnerships or in incorporated practices of different sizes, in which event the ownership element would be applicable.
- 23.3. Certain principles applicable to ownership measurement set out in the Generic Codes, such as bonus points and new entrants, may not necessarily find full expression in the LSC due to the nature of the legal profession, although where practically possible, such shall be aligned accordingly.

24. OWNERSHIP SCORECARDS

- 24.1. The ownership scorecards for QSEs and Large enterprises are as set out below:

LSC 100 - OWNERSHIP SCORECARD FOR QSES							
Attorneys' ownership scorecard – Qualifying Small Entities (QSEs)							
Applicable to LSMs registered with the LPC as partnerships or incorporated LSMs							
Monetary Threshold	B-BBEE element	Measurement	WP	Compliance Targets Weighting Points (WP) Targets (T)			
				Year 1	Year 3	Year 5	
For LSMs generating over R5 million but not more than R25 million	Ownership	Voting Rights	Exercisable voting rights held by black legal practitioners	6	25%	30%	40%
			Exercisable voting rights held by black women legal practitioners	4	15%	15%	20%
	Economic Interest	Economic Interest held by black legal practitioners	6	25%	30%	40%	
			Economic Interest held by black women legal practitioners	4	15%	15%	20%
	Voting rights	Exercisable voting rights held by legal practitioners from designated categories	2.5	1%	%	3%	
			Economic Interest held by black legal practitioners designated categories	2.5	1%	2%	3%
Total Weighting Points			25				

* LSMs that have 3 to 14 partners/directors account for at least 4.55% of the total number of legal practices in South Africa.

LSC 001- OWNERSHIP SCORECARD FOR LARGE ENTITIES							
Attorneys Ownership Scorecard – Large LSME							
Applicable to LMSEs registered with the LPC as partnerships and incorporated LSMEs							
Monetary Threshold	B-BBEE element		Measurement	WP	Compliance Targets		
					Weighting Points (WP) Targets (T)		
					Year 1	Year 3	Year 5
For LSMEs generating more than R25 million per annum	Ownership	Voting Rights	Exercisable voting rights held by black legal practitioners	6	30%	40%	50%
			Exercisable voting rights held by black women legal practitioners	4	15%	20%	25%
	Economic Interest		Economic interest held by black legal practitioners	6	30%	40%	50%
			Economic interest held black women legal practitioners	4	15%	20%	25%
	Ownership by black designated categories (excluding women)		Exercisable voting rights held by designated categories	2.5	1%	3%	5%
			Economic interest held by designated categories	2.5	1%	3%	5%
Total Weighting Points				25			

* LSMEs that are made up of more than 15 partners number 62 and account for approximately 0.6% of the total number of legal practitioners in South Africa.

25. MANAGEMENT CONTROL SCORECARDS

25.1. In view of the unique features of the legal sector and profession, the measurement of LSMs shall not take the usual form of categories of management as found in other commercial entities and/or sectors or as they may apply in the Generic Codes.

25.2. The following table represents the criteria used for deriving a scorecard for the management control element under this LSC in respect of practicing attorneys. WP represents the weighting points, while T represents targets.

LSC 200 - MANAGEMENT CONTROL STATEMENT – QSE						
Attorneys						
Applicable to LSMs made up of attorneys whether as partnerships or incorporated LSMs						
Monetary Threshold	Applicable Sub-element	Measurement Indicator	Compliance targets Weighting Points (WP)			
			WP	Targets (T)		
			Year 1	Year 3	Year 5	
For LSMs generating over R5 million but not more than R25 million per annum	Board Participation	Measures the percentage of black legal practitioners as a percentage of board members	7	50%	50%	50%
		Measures the percentage of black women legal practitioners as a percentage of board members	3	25%	25%	25%
	Executive, senior, middle and junior management	Measures the percentage of black legal practitioners as a total number of members of executive, senior, middle and junior management within the LSM	7	50%	50%	50%

		Measures the percentage of black women legal practitioners as a total number of members of executive, senior, middle and junior management within the LSME	3	25%	25%	25%
Total Weighting Points			20			

LSC 201 - MANAGEMENT CONTROL STATEMENT – Large LSME

Attorneys

Applicable to LSMs made up of attorneys whether as partnerships or incorporated firms

Monetary Threshold	Applicable Sub-element	Measurement Indicator	Compliance targets				
			Weighting Points (WP)	Targets (T)			
				Year 1	Year 3	Year 5	
Above R25 million	Board participation	Measures the percentage of black legal practitioners who are equity directors as a percentage of board members	4	30%	40%	50%	
			2	15%	20%	25%	
	Executive Management	3	30%	40%	50%		
		Measures the percentage of persons from designated categories as a total number of members of executive management within the LSME.	1	10%	15%	20%	
	Heads of	Measures the number of black legal practitioners as a	3	20%	25%	30%	

	percentage of HoDs and PGLs in the LSME.								
Departments (HoDs) (senior management)	Measures the number of persons drawn from black designated categories of legal practitioners as a percentage HoDs and/or PGLs appointed in the LSME.	1	10%	15%	20%				
Middle Management	Senior Associates/	3	40%	50%	60%				
	Senior Professional Assistants	1	10%	15%	20%				
Junior Management	Black legal practitioners as a total of senior associates in the LSME								
	Black legal practitioners from designated categories as a total of senior associates in the LSME	3	40%	50%	60%				
Support and other consulting staff	Black legal practitioners as a total of associates or professional assistants in the LSME								
	Black legal practitioners from designated categories who are associates or professional assistants in the LSME	1	12%	15%	18%				
Management role of people who are not legal practitioners	Measures the appointment of black people in support roles within the LSME	1	6%	9%	13%				
	Measures the appointment of persons from designated categories in the support roles within the LSME	1	3%	6%	10%				
Total Weighting Points						24			

26. KEY MEASUREMENT PRINCIPLES RELATING TO MANAGEMENT CONTROL

- 26.1. A key consideration in the allocation of weighting points, is the need for more equitable representation of black legal practitioners in key decision-making categories of management and participating in profits of the LSME.
- 26.2. An LSME shall only receive points for its achievement towards the targets for participation of black legal practitioners and black women legal practitioners at board, executive management, middle management and junior management levels.
- 26.3. The compliance targets for executive, senior, middle and junior management in the management control scorecard are based on the national and regional demographic representation of black people as defined in the Employment Equity Act No. 55 of 1998 and Regulations, as amended, from time to time.
- 26.4. In determining an LSME score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black in accordance with the Employment Equity Act and Regulations – African, Coloured and Indian – on an equitable demographic representation and weighted accordingly.
- 26.5. Notwithstanding the provisions of paragraph 26.3, the targets for different race sub-groups in terms of the Employment Equity Act and Regulations as referred to in paragraph 26.3, are not applicable to the QSE management control scorecard.
- 26.6. Based on the nature of QSEs' management structures, the categories of management have been reduced and exclude the requirement that directors should be equity directors to obtain points.
- 26.7. An LSME measured in terms of the management control scorecard must provide the following documentary information for the purpose of measuring management control:
- 26.7.1. employment agreements and/or letters of engagement; and
- 26.7.2. any other acceptable evidence that is deemed suitable to support the existence of a management level role in the LSME.

27. REMUNERATION PARITY AND JUSTICE

- 27.1. The LSME must strive for parity in remuneration between race groups and gender at all management levels. To this end the LSME must provide full payroll access together with a copy of the payment parity report EEA4 to the B-BBEE verification agency during the verification process. In the absence of such, the staff management levels shall be declined by the B-BBEE verification agency.
- 27.2. In cases where measured entities are exempt from submitting the Department of Labour Employment Equity reports, then a remuneration parity statement, similar to form EEA4 report, must be signed by the authorised signatory of the LSME as part of the verification process. This is to ensure that a person's responsibilities and remuneration align with their job grade.

28. MEASUREMENT OF THE MANAGEMENT CONTROL CRITERIA

- 28.1. The formulae applicable for measuring the principles and indicators of the management control element in this LSC shall be the same as in the Generic Codes.

29. KEY MEASUREMENT PRINCIPLES RELATING TO SKILLS DEVELOPMENT

- 29.1. For the purposes of the LSC, the recognition of skills development expenditure on black people who are counted under the skills development element may not be counted again under any other B-BBEE element of the QSE or large enterprise scorecard.
- 29.2. The compliance targets in the skills development scorecard are based on the national and regional demographic representation of black people as defined in the Employment Equity Act No. 55 of 1998 and Regulations, as amended from time to time.

- 29.3. In determining an LSME score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black in accordance with the Employment Equity Act and Regulations, being African, Coloured and Indian – on an equitable demographic representation and weighted accordingly.
- 29.4. Notwithstanding the provisions of paragraph 29.3, the targets for different race sub-groups in terms of the Employment Equity Act and Regulations as referred to in paragraph 29.3, are not applicable to the QSE Skills Development Scorecard and to advocates in LSC 301 respectively.
- 29.5. The targets for measurement will be between the minimum of 2.5% in years 1 and 2 and the maximum of 3.5% of the leviable amount in years 3 to 5.
- 29.6. The criteria for recognition of the skills development spend by legal practitioners under this LSC must be underpinned by unique, enhancing and value-adding attributes for the targeted beneficiaries. This means that over and above a skills development spend that merely facilitates entrance into the profession such as bursaries, stipends and mandatory training programmes including those pertaining to candidate attorneys and pupils, all other training interventions that enhance the ability of targeted beneficiaries to acquire skills including in specialised areas of the law to enhance their careers, should be recognised.

Statutory and mandatory training interventions

- 29.7. The statutory and mandatory training initiatives which will not be recognised include, but are not limited to, the following:
- 29.7.1. The completion and submission of workplace skills plan and annual training report;
- 29.7.2. The report that must be submitted to the relevant Sector Education and Training Authority; and
- 29.7.3. The implementation of priority skills programmes generally, and more specifically, for black people.

Other interventions

- 29.8. The Skills Development Scorecard provides for sector-specific programmes for skills and employment of young people. However, in line with YES initiatives gazetted by the Minister in terms of Notice 640 of 2018, LSMs must be encouraged to employ young people (as defined in the Youth Services Plan), particularly in professional capacities.
- 29.9. The Charter Council may, from time to time, announce specific sector training and capacity-building initiatives to enhance the above initiatives.
- 29.10. The skills development expenditure on black people who are counted under the skills development scorecard may not be counted again under any other B-BBEE element of the QSE or large enterprise scorecard.
- 29.11. Through sub-category LSC 300.4, legal entities seeking to enhance their recognition are encouraged to implement initiatives that provide opportunities for law students and young legal practitioners for mentorships, work and employment.
- 29.12. Mentorship programmes are programmes which refer to mentoring of a junior advocate by a more senior advocate and, in the case of attorneys, of a junior attorney by a more senior attorney, to impart the necessary skills for the advancement of the careers of such junior advocates or attorneys, respectively. In the case of advocates, where the voluntary associations are for any reason unable to provide sufficient training or mentorship programmes, external training and mentorship programmes may be included for the purpose of measurement.
- 29.13. Advocates are not able to be measured under ownership and management control elements. Therefore, should they elect to be measured in terms of this LSC, their ability to make contributions to the LSTF provides an opportunity to obtain points that they would otherwise be unable to due to limited opportunities for other contributions.
- 29.14. Training programmes for advocates should not be limited to pupils or advocates who are members of their voluntary associations or Bars, respectively. Efforts should be made, where necessary or desirable, to extend mentorship and training programmes to pupils and advocates from other Bars or those who do not belong to any Bars or to independent Bars.

29.15. In instances where measurement indicators refer to expenditure, but targets are time-based, the hours or other periods should be converted to the hourly or daily rate of the legal practitioner to calculate the expenditure.

30. SKILLS DEVELOPMENT TABLES

30.1. The following tables set out the targets under the skills development element:

LSC 300 - SKILLS DEVELOPMENT ELEMENT FOR ATTORNEYS				
Measurement indicator	Monetary Threshold	Targets and Weighting Points (WP)		
		WP	Year 1	Year 3
<ul style="list-style-type: none"> In this element, any reference to target percentage (%), unless specifically indicated to the contrary, means the percentage (%) of the Legal Entity's leviable amount on an annual basis. In respect of sub-category 300.6, Large LSMs are not measured for the recognition of expenditure incurred as the result of payment of top-up monthly remuneration of black CLPs as a total number in the LSME. 			Year 5	
LSC skills development expenditure/spend during the measurement period			Year 3	Year 5
300.1 Skills development expenditure on initiatives undertaken by the LSMs on the number of black candidate legal practitioners (CLPs) who are enrolled within the LSME as a percentage of the leviable amount.				
Recognition of spend incurred on training programmes on the number of black CLPs against the total number of CLPs that are	Above R5 million but not more than R25 million	4	2.5%	3.5%

enrolled/registered within the LSME in a particular year.	Above R25 million	4	2.5%	3.5%	3.5%
300.2 Recognition of training in specialised areas of the law as defined in this LSC					
Recognition of expenditure incurred as a result of training in specialised areas of law of black CLPs and post-qualification training for black legal practitioners.	Above R5 million but not more than R25 million	4	2.0%	2.5%	3.0%
	Above R25 million	4	2.0%	2.5%	3.0%
300.3 Recognition of Expenditure for the registration of black legal practitioners for Continuous Legal Education programmes					
Number of black trainees and/or candidate attorneys registered by an LSME in any of the following programmes: • At Practice Management Training, Trial Advocacy Training and any other post-admission. courses	Above R5 million but not more than R25 million	3	2.5%	3.5%	3.5%
	Above R25 million	3	2.5%	3.5%	3.5%
300.4 Mentorship, creation of employment opportunities and sector specific interventions for skills and employment for young people					
Implementation of the following programmes for a minimum period of 1 month: Internships • Law graduates who are not candidate attorneys • Candidate attorneys who have completed their articles, but are	Above R5 million but not more than R25 million	4	2.5%	2.5%	2.5%
	Above R25 million	4	2.5%	2.5%	2.5%

<p>unable to obtain employment, provided the internship is for a minimum period of 1 year</p> <p>Vacation placement</p> <ul style="list-style-type: none"> • Law students for a period of 1 to 3 months in one measurement period 															
BONUS POINTS APPLICABLE TO 300.5 AND 300.6															
300.5 Recognition of skills development initiatives on the retention and absorption of black candidate legal practitioners as a percentage of the measured entity's total number of CLPs enrolled within a 3-year period.															
Recognition of the retention and absorption of black CLPs who are attorneys in the LSME after admission as legal practitioners.	Above R5 million but not more than R25 million	4	50% of the total number	50% of the total number	50% of the total number	50% of the total number	50% of the total number								
		Above R25 million	4	50% of the total number	50% of the total number	50% of the total number	50% of the total number	50% of the total number	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration
Recognition of expenditure incurred as the result of payment of top-up monthly remuneration/stipend of black CLPs as a total number in the LSME. (Over and above the monthly minimum stipend provided for by the SETA).	Above R5 million but not more than R25 million	3	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration	30% of the CLPs' remuneration
300.6 Recognition of enhanced levels of training for non-legal and support members of staff															
Recognition of training of persons from designated categories in areas	Above R5 million but not more than R25 million	3	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%

that enhance their ability and skills to provide efficient support services in a law firm.	Above R25 million	3	2.0%	2.5%	3.0%
	R5 to R25 million	15			
	Above R25 million	15			

LSC 301 - SKILLS DEVELOPMENT ELEMENT FOR ADVOCATES

Applicable category	Measurement Indicator	Targets and Weighting Points				
		W/P	T			
			Year 1	Year 3	Year 5	
301.1 Recognition of skills development expenditure on initiatives undertaken by advocates in the training of black junior advocates.						
Training	Expenditure incurred on recognisable training and tutoring of black junior advocates in a measurement period with special emphasis on black junior advocates from designated categories.	12	30 hours per annum spent on participation in training programmes established by a voluntary association of advocates accredited by the LPC (an accredited association)	30 hours per annum spent on participation in training programmes established by a voluntary association of advocates accredited by the LPC (an accredited association)	40 hours per annum spent on participation in training programmes established by a voluntary association of advocates accredited by the LPC (an accredited association)	40 hours per annum spent on participation in training programmes established by an
		12	30 hours per annum spent on participation in training programmes established by an accredited association	30 hours per annum spent on participation in training programmes established by an	40 hours per annum spent on participation in training programmes established by an	40 hours per annum spent on participation in training programmes established by an

	Contribution into the LSTF in lieu of expenditure incurred on recognisable training and tutoring of black junior advocates	Above R3 million but not more than R15 million	Above R15 million per annum	9	R7,000 per annum	accredited association R10,000 per annum	accredited association R10,000 per annum
		Above R3 million but not more than R15 million	Above R15 million per annum	9	of R10,000 per annum	R15,000 per annum	If a contribution into the LSTF is R15,000 per annum
301.2 Recognition of skills development expenditure on mentorship programmes for black junior advocates.							
Mentorship	Recognition of advocates spend in each year in the mentorship programme in mentoring junior black advocates, including devilling.	Above R3 million but not more than R15 million	Above R15 million per annum	10	20 hours per annum spent on mentoring programmes	20 hours per annum spent on mentoring programmes	20 hours per annum spent on mentoring programmes
		Above R15 million per annum	Above R15 million per annum	10	10 hours per annum spent on mentoring programmes	10 hours per annum spent on mentoring programmes	10 hours per annum spent on mentoring programmes
BONUS POINTS APPLICABLE TO SENIOR COUNSEL							
Monetary Contributions into the Legal Sector Transformation Fund (LSTF) by senior counsel in lieu of training provided for in 301.1 and 301.2.	Contributions specifically intended for programmes to be financed by the LSTF	Above R15 million per annum	Above R15 million per annum	5	R20,000 per annum	R25,000 per annum	R30,000 per annum
301.3 Recognition of advocacy training in specialised areas of the law							

Training in pursuit of specialised legal skills and expertise.	Initiatives established by a voluntary association that is accredited by the LPC or initiatives by an individual advocate with expertise in specialised areas of the law to train black junior advocates in specialised areas of the law.,	Above R3 million but not more than R 15 million	12	20 hours per year spent on participation in training programmes per annum	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes
		Above R15 million	12	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes
	Initiatives to ensure the training in specialised areas of the law of black junior advocates from designated categories	Above R3 million but not more than R15 million	7	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes
		Above R15 million	7	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes	20 hours per annum spent on participation in training programmes
	Total number of points	R3 – R15 million	50			
		R15 million and above	50			

31. SUB-MINIMUM AND DISCOUNTING PRINCIPLE

31.1. In order to be regarded as compliant with the skills development element, an LSME must have achieved a minimum of 40% (forty per cent) of the total weighting points excluding bonus points set out in the Skills Development Scorecard.

32. GENERAL PRINCIPLES

- 32.1. The general principles underpinning the skills development element in the LSC are that it must:
- 32.1.1. contribute to the achievement of the country's economic growth and social development goals to promote the creation of decent work and sustainable livelihoods;
 - 32.1.2. promote the development of the skills base of black legal practitioners in critical and specialised areas of law within the legal profession; and
 - 32.1.3. strengthen the skills and human resource base by encouraging the support of skills development initiatives with an emphasis on skills development and career pathing for both legal practitioners and non-legal support black staff members in support of employment creation.
- 32.2. Recognisable skills development expenditure includes any legitimate training expenses as may be recognised by the Charter Council incurred for any learning programme offered by an LSME to black people.
- 32.3. Legitimate training expenses shall include but not be limited to:
- 32.3.1. cost of training materials
 - 32.3.2. cost of trainers;
 - 32.3.3. cost of training facilities including costs of catering;
 - 32.3.4. course fees;
 - 32.3.5. accommodation and travel;
 - 32.3.6. opportunity costs;
 - 32.3.7. salaries or wages paid to an employee participating in any learnership or internship; and
 - 32.3.8. administration costs such as the organising of training including, where appropriate, the cost to the LSME of employing a skills development facilitator or a training manager.

33. MEASUREMENT OF SKILLS DEVELOPMENT INDICATORS

33.1. The formulae that are used for measurement of initiatives, criteria and indicators in the skills development element in this LSC shall be the same as the formulae in the Generic Codes.

34. PREFERENTIAL PROCUREMENT AND SUPPLIER & ENTERPRISE DEVELOPMENT SCORECARD

34.1. As a general principle, section 217(1) of the Constitution provides that:
"When an organ of state in the national, provincial or local sphere 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."

34.2. In addition, section 217(2) of the Constitution provides that:
"sub-section (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for:

34.2.1. *categories of preference in the allocation of contracts; and*

34.2.2. *the protection or advancement of persons, or categories or person, disadvantaged by unfair discrimination".*

34.3. Skewed procurement from both public and private sector which prejudices black legal practitioners has been a major problem for black practitioners.

34.4. Having regard to the content of paragraphs 34.1 and 34.2 above, the LSC must provide for a transparent measurement or mechanism that provides for an enabling environment for the state and all its arms including, but not limited to, state-owned enterprises as well as private sector entities, where applicable, to procure legal services from black legal practitioners, in line with the provisions of section 217 (2) of the Constitution.

34.5. In this LSC, due to the nature of the legal profession and the objectives of the LSC, there are 2 (two) categories within the enterprise and supplier development element – preferential procurement and enterprise development. This statement therefore seeks to specify the measurement for

preferential procurement and enterprise development programmes that will benefit all black qualifying legal practitioners in the legal profession. In the Specialised Scorecard, however, there are 2 (two) categories being preferential procurement and supplier development.

- 34.6. In addition, this LSC:
 - 34.6.1. defines the principles applicable when calculating B-BBEE procurement spend, and supplier and enterprise development spend; and
 - 34.6.2. indicates the formulae for calculating the individual criteria specified in the preferential procurement and supplier development scorecard.
- 34.7. The table below represents the criteria for deriving a score for preferential procurement, supplier development and enterprise development and/or programmes for all designated and qualifying legal practitioners.

LSC 400 - PREFERENTIAL PROCUREMENT, AND ENTERPRISE DEVELOPMENT (PSED ATTORNEYS)						
Measurement Category	Indicator	Monetary thresholds	WP	Weighting Points (WP) and Compliance Targets (T)		
				Year 1	Year 3	Year 5
Preferential Procurement						
Procurement of legal services from and briefing of advocates by LSMs						
Measurement of procurement of legal services from advocates, as a percentage of the total fee expenditure on advocates over	Measuring the procurement of legal services from a black advocate.	By LSMs in the category of above R5 million but not more than R25 million	10	40%	50%	60%
	Measuring the procurement of legal services from a black	By LSMs in the category of above R25 million	10	40%	50%	60%
		By LSMs in the category of above R5 million but not more than R25 million	8	20%	25%	30%

the LSME's last financial year	woman advocate.	By LSMes in the category of above R25 million	8	30%	35%	40%
Procurement of goods and services that support the business of LSMes						
Measurement of procurement of goods, equipment and assets that are necessary for the business of the LSME expressed as a percentage of the total measured expenditure on goods, equipment and assets.	Recognition of procurement spend from suppliers that are at least 51% black owned	By LSMes in the category of above R5 million but less than R25 Million	4	25%	30%	30%
		By LSMes in the category of above R25 million	4	25%	30%	30%
	Recognition of procurement spend from suppliers that are at least 51% black owned and are Exempted Micro - Enterprises and QSEs	By LSMes in the category of above R5 million but not more than R25 million	5	25%	30%	30%
		By LSMes in the category of above R25 million	5	25%	30%	30%
		By LSMes in the category of above R5 million but not more than R25 million	4	10%	15%	20%
		By LSMes in the category of above R25 million	4	10%	15%	20%
Enterprise Development						
Partnering, Joint Venturing and Sub-Contracting of LSMes to facilitate capacity and transfer of skills						
Measuring the	Measuring sub-	By an LSME in the category of	3	26%	28%	32%

partnering and joint ventures between large firms and ELEs or QSEs firms being the value of the contract	contracting or partnering with an ELE Level 1 or 51% black-owned LSME	above R5 million but not more than R25 million	3	30%	33%	36%
	Measuring sub-contracting or partnering with a 51% black-owned LSME or 51% LSME owned by persons from designated categories	By an LSME in the category of above R5 million but not more than R25 million	3	10%	13%	16%
		By LSMEs in the category of above R25 million	3	15%	20%	25%
Recognition of enterprise development initiatives for black-owned ELEs, new entrants, and contribution to the Legal Sector Transformation Fund						
Measuring the impact of enterprise development initiatives as outlined in this LSC	Measuring the contributions made towards the development of black-owned ELEs and new entrants as a percentage of NPAT	By an LSME in the category of above R5 million but not more than R25 million	4	1%	1%	1%
		By an LSME in the category of above R25 million	4	1%	1%	1%
Contribution to the LSTF	Measuring monetary contributions made by LSMEs to the LSTF	By an LSME in the category of above R5 million but not more than R25 million	4	R5,000	R7,500	R12,000
		By an LSME in the category above R25 million	4	R10,000	R13,000	R18,000

Total weighting points	(R5 to R25 million)	45
	(Above R25 million)	45

35. SPECIALISED SCORECARD

- 35.1. Section 10 (1) (b) of the B-BBEE Act provides that every organ of state and public entity must apply any relevant code of good practice issued in terms of the Act including in developing and implementing a preferential procurement policy.
- 35.2. This LSC is intended to apply to organs of state and public entities as well as institutions established in terms of chapter 9 of the Constitution.
- 35.3. All organs of state and public entities, procuring legal services from legal practitioners shall be measured in terms of this scorecard insofar as the procurement of legal services is concerned.
- 35.4. As a general rule and principle, all organs of state and public sector entities are generally exempted from measurement of elements except for management control, skills development and the preferential procurement, enterprise and supplier development elements in the Generic Codes. For the purpose of measuring management control and skills development and preferential procurement, enterprise and supplier development of general goods and services are concerned, all organs of state, public entities and SOEs shall apply the Specialised Scorecard in Code Series 000, Statement 004. However, for the purpose of securing and procuring legal services from legal practitioners, all organs of state, public entities and SOEs shall apply and be measured in terms of the Specialised Scorecard issued in terms of this LSC.

LSC 401 - PREFERENTIAL PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT (PSED)		
Measurement Category	Indicator	Monetary Thresholds
Preferential Procurement - Any reference to % in this scorecard refers to the annual procurement spend		Weighting Points (WP) and Compliance Targets (T)
		WP T

Procurement of Legal services by the Office of the State Attorney, public entities and organs of state		Year 1	Year 3	Year 5
Measurement of the procurement of legal services from advocates and attorneys	Measuring the procurement of legal services from a black advocate and/or LSMs that are black owned	70%	80%	80%
	Measuring the procurement of legal services from a black woman advocate and/or firms of attorneys that are black owned.	40%	45%	50%
	Measuring the procurement of legal services from a white advocate who is briefed with a black junior advocate	35%	40%	45%
Procurement of legal services from black LSMs in complex matters in specialised areas of law by organs of state, public entities and the state attorney				
Measurement of legal services procured from black LSMs including from black advocates	From black-owned LSMs in the category of ELE and level B-BBEE Level 1 or black owned QSEs above R5 million but less than R25 million	45%	50%	55%
	From LSMs owned by persons drawn from designated categories	25%	30%	35%
Supplier Development				
Partnering, Joint Venturing and Sub-Contracting of LSMs to facilitate capacity of black-owned LSMs and transfer of skills to such LSMs and black legal practitioners				
Measuring the partnering and joint ventures between large firms and ELEs or black QSEs	Allocation of work to LSMs in the category of above R25 million on condition that they partner and/or sub-contract with an LSMs that are at least 51% black owned	25%	30%	35%

Targeted procurement from designated categories of LSMEs				
Targeted procurement of certain legal services	Procurement from LSMEs owned by black legal practitioners and black women legal practitioners	10	65%	70%
Total weighting points				45

36. KEY MEASUREMENT PRINCIPLES IN DETERMINING THE SUITABILITY OF PREFERENTIAL PROCUREMENT IN THE LSC

- 36.1. Preferential procurement, supplier and enterprise development spend in terms of the LSC must always seek to ensure the following:
 - 36.1.1. facilitate preferential spend for legal commercial and specialised work from LSMEs that are 51% or 100% black owned and black advocates;
 - 36.1.2. enterprise and supplier development initiatives targeted at black-owned LSMEs and black advocates with the view to enhance their legal, operational and economic independence; and supplier development initiatives that seek to enhance businesses that are related to the business of the LSME.
- 36.2. To the extent that the LSC PESD is a priority element, non-compliance will result in the discounting of LSMEs in accordance with the provisions of paragraph 17.
- 36.3. The weighting points in this statement represent the maximum number of points possible for each of the criteria applicable in the sub-categories.
- 36.4. Where the LSME is forced to make use of a particular supplier due to tender requirements or client specifications, it may exclude such procurement.

37. THE LEGAL SECTOR TRANSFORMATION FUND

- 37.1. The stakeholders hereby agree to establish an LSTF.

- 37.2. The objective of the LSTF is to provide financial assistance and support to black legal practitioners, especially black women and other black people from designated groups.
- 37.3. The LSTF shall be administered by the Charter Council which may outsource the management of the LSTF to any entity with the requisite skills, experience and capacity subject to such entity complying with the Charter Council's directives and the aims and objectives of this LSC.
- 37.4. The Charter Council shall ensure that costs for the administration and management of the LSTF do not exceed 5% (five) per cent of the total income of the LSTF in any financial year.
- 37.5. The Charter Council will limit rollover for investment purposes and will require that any rollover is not effected for a period exceeding 3 (three) years.
- 37.6. The Charter Council shall ensure that annual financial statements of the LSTF are audited in accordance with prevailing, recognized accounting standards. Such financial statements shall be made available to stakeholders in the legal sector.
- 37.7. The LSTF will be utilised for Skills Development and Enterprise and Supplier Development initiatives including, but not limited to, the following:
- 37.7.1. Funding of black-owned LSMs, especially new entrants, including the provision of technical equipment, library facilities, office rental and training in specialised areas of law;
- 37.7.2. Providing financial assistance and support to black candidate legal practitioners during their pupillage, including the giving of stipends;
- 37.7.3. providing financial assistance, training and support to black junior advocates, including subsidising their rental and/or membership fees of voluntary associations or subscription fees;

- 37.7.4. providing financial assistance to a black junior advocate or attorney to acquire and develop skills in specialised areas of law through training and other initiatives; and
- 37.7.5. providing financial assistance and support to black women attorneys and advocates during maternity leave from their law firms and chambers, respectively.
- 37.8. The Charter Council shall, upon its establishment, develop a policy and criteria for the access of intended beneficiaries of the LSTF and the quantum of support as well as the manner of disbursement. Such policy shall be drafted after consultation with stakeholders in the legal profession and the Charter Council shall ensure that the criteria are based on the guidelines and criteria set out in the compliance monitoring framework issued from time to time by the DTIC or the B-BBEE Commission.
- 37.9. The LSTF shall also contribute to the funding of the Charter Council.

38. EFFECTIVE DATE

- 38.1. The LSC shall come into effect on the date on which it is gazetted.
- 38.2. Notwithstanding the provisions of paragraph 38.1 above, all B-BBEE verification certificates which were validly issued prior to the gazetting of this LSC in terms of the Generic Codes shall remain valid and applicable for the period of their validity, notwithstanding the date of gazetting of the LSC. In such an event, the relevant LSME will be required to apply for the relevant B-BBEE verification certificate under this LSC upon the expiry of the B-BBEE verification certificate which was issued in terms of the Generic Codes. LSMEs that had not been measured for B-BBEE compliance prior to the gazetting of this LSC, will be measured in terms of this LSC with effect from the date of its gazetting.

DEPARTMENT OF TRANSPORT

NO. 5222

20 September 2024

**PUBLICATION OF THE AERONAUTICAL AND MARITIME SEARCH AND RESCUE
BILL, 2024**

The Minister of Transport, hereby publishes that draft Aeronautical and Maritime Search and Rescue Bill and the Memorandum on the objects of the Bill for public Comments and inputs within 30 days from the date of publication of this Notice.

Comments may be sent to the Director-General, Department of Transport for the attention of Mr. Terrence Mabuella, tel. no. 012 309 3070

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