

---

8 November 2020

## **B-BBEE LEGAL SECTOR CODE: DRAFT STATEMENTS FOR CONSULTATION**

### **Background**

The Legal Practice Council (the “LPC”) established in terms of Section 4 of the Legal Practice Act, 28 of 2014, (“the Act”), has resolved to embark on a process to facilitate the development and adoption of a B-BBEE Legal Sector Code (“LSC”) in terms of Section 9 of the Broad Based Black Economic Empowerment Act no 53 of 2003 as amended, in order to advance the transformation of the legal profession.

This decision was taken in terms of the objectives of the Act, particularly, section 3 thereof which states:

*“The purpose of this Act is to:*

- a) 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 upheld.*
- b) 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.”*

Section 5 (a) of the Act provides that one of the objects of the LPC is to facilitate the realisation of a transformed and restructured legal profession that is accountable, efficient and independent, and to promote access to the legal profession in pursuit of a legal profession that broadly reflects the demographics of the Republic.

### **Introduction**

The Broad Based Black Economic Empowerment Act 2003, as amended, as well as its Generic Scorecard, were designed to provide a standardised framework for the implementation and measurement of B-BBEE in Exempted Micro Enterprises, Qualifying Small Enterprises, and Large Enterprises.

Several industry and sector codes, including the Mining Charter, Financial Sector Charter, Tourism Charter, Construction Charter, amongst others have been promulgated to accommodate the unique circumstances of the diverse sectors of the

---

South African economy and allow respective industry stakeholders to participate in shaping their own transformation roadmaps.

### **Why a Legal Sector Code?**

While the Generic Scorecard is useful, there is a need to develop a Charter for the legal sector. Some of the reasons include:

- ❖ Each industry is unique, including the legal profession;
- ❖ Often the Generic BBEE Scorecard cannot accommodate the nuances of each industry or profession;
- ❖ An industry charter, if co-developed by industry stakeholders, stands a better chance of being supported by the profession;
- ❖ An industry charter enables the industry to implement more effective interventions in certain elements of the Scorecard than others; and
- ❖ Opportunities for creative leveraging of unique features of the industry are easier.

### **B-BBEE Legal Sector Code**

The LSC will serve as the B-BBEE measurement framework for the procurement of legal work by the public sector (including the Government Departments and all its arms and public entities) as well as the private sector, once it has been finalized, submitted to the Minister of Trade and Industry and gazetted.

It is intended that the Legal Sector Code will apply to all stakeholders in the legal sector, including, but not limited to:

- ❖ The State and all its arms;
- ❖ The legal profession as defined in the Legal Practice Act;
- ❖ Legal Aid South Africa;
- ❖ The private sector, both in terms of its role in the provision of legal services as well as procurers of legal services;
- ❖ University faculties and Law Clinics; and
- ❖ Civil society organisations who provide or procure legal services.

### **Response to B-BBEE Legal Sector Code Statements**

In the process of developing a B-BBEE Legal Sector Code, the LPC invites interested parties to peruse the attached draft statements and submit comments in writing to [legalsectorcode@lpc.org.za](mailto:legalsectorcode@lpc.org.za) by 15 December 2020.

---

The following statements are attached for comment:

		<b>Page</b>
1.	Code Series 000, Statement 000: General Principles and the Generic Scorecard	4 – 23
2.	Code Series 000, Statement 100: Measurement of Black Ownership	24 – 29
3.	Code Series 200, Statement 200: General Principles for Measuring Management Control	30 – 34
4.	Code Series 300, Statement 300: General Principles for Measuring Skills Development	35 – 42
5.	Code Series LSC400, Statement LSC400: General Principles for Measuring Preferential Procurement, Supplier and Enterprise Development	43 – 51
6	Code Series LSC500, Statement LSC500: General Principles for Measuring the Socio-economic Development Element (“SED”)	52 – 54

For any queries regarding the consultation process, or to submit your comments on the draft statements, please email Melissa Murray on [legalsectorcode@lpc.org.za](mailto:legalsectorcode@lpc.org.za)

After all consultations have been completed, and all comments received and considered, a full draft code will be made available for further input and comment.

We thank you for your participation and engagement in this consultation process.

**CODE SERIES 000, STATEMENT 000**  
**DEPARTMENT OF TRADE AND INDUSTRY**  
**LEGAL SECTOR CODE (LSC)**  
**OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC EMPOWERMENT**

I, **Ebrahim Patel (MP)**, Minister of Trade and Industry hereby:

- (a) Publish the following **LEGAL SECTOR CODE (AS AMENDED CODE SERIES 000, Statement 000)** in terms of Section 9 (1) of the Broad-Based Black Economic Empowerment Act 2003, (Act No. 53 of 2003) as amended by Act 46 of 2013, for implementation effective from the date of publication of the gazette;

\_\_\_\_\_  
**EBRAHIM PATEL, MP**  
**MINISTER OF TRADE AND INDUSTRY**

\_\_\_\_ / \_\_\_\_ /2021

**AMENDED CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK  
ECONOMIC EMPOWERMENT**

**STATEMENT 000: GENERAL PRINCIPLES AND THE GENERIC SCORECARD**

**Issued under Section 9 (1) of the Broad-Based Black Economic Empowerment Act of  
2003, as amended.**

**Arrangement of this Statement**

<b>No.</b>	<b>CONTENT</b>	<b>PAGE</b>
1	Definition of concepts	
2	Preamble and Background	
3	Business case and Imperative for a sector code	
4	Undertakings and commitments by Industry Stakeholders	
5	Unique features and strategic objectives of LSC	
6	Monitoring and Compliance	
7	Scope of Application	
8	Key Measurement Principles	
9	Measures to specify the Interpretation of B-BBEE Initiatives	
10	Eligibility to qualify as an Exempted Micro Enterprise	

**1. DEFINITIONS OF CONCEPTS**

In this Legal Sector Code (“LSC”), unless the context otherwise requires, the expressions, definitions and qualifications used have the meaning assigned to them and should be read together with contents and terms in the B-BBEE generic Codes, issued in terms of section

9(1) of the Broad-Based Black Economic Empowerment Act No 53 of 2003 (“**the Act**” or “**this Act**”), unless otherwise specified hereunder:

<b>Concept</b>	<b>Definition &amp; Narrative</b>
Annual Revenue	means the income generated from legal practitioners by providing their services during their normal course of rendering their professional services.
Advocate	means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act;
Attorney	means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act;
B-BBEE	means Broad-Based Black Economic Empowerment, a national government policy that enables the participation of black people in the mainstream of the economy.
B-BBEE Commission	means the regulatory monitoring and compliance commission responsible for investigating and prosecuting B-BBEE contraventions and fronting;
B-BBEE Compliant LSM Entity	means a Legal Services Measured Entity that has achieved at least a Level 1 to Level 8 B-BBEE Status Level as per statement LSC 000;
B-BBEE Verification Regulator	means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification of professionals;
Black people	shall bear the same meaning as defined in the B-BEE Act;
Designated Groups	means black people, black women, the youth and people with disability;
DOJCD	means the Department of Justice and Constitutional Development;

DTIC	means the Department of Trade, Industry and Competition;
ESD	means Enterprise and Supplier Development Programme in the LSC ;
EAP	means Economically Active Population;
GDP	means the Growth Domestic Product;
HDI	means the Historically Disadvantaged Individuals;
JSE	means the Johannesburg Stock and Securities Exchange;
Legal Practitioner	shall bear the same meaning as defined in the Legal Practice Act;
LSC	means the Legal Sector Code, an industry sector code that will be submitted to the Minister of Trade, Industry and Competition for gazetting in terms of section 9(1) of the B-BBEE Amendment Act;
LPA	means the Legal Practice Act 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 legal practitioners.
LSME	means the Legal Sector Code Measured Entity;
LSEME	means the individual legal practitioners and/or law firms described as the Legal Sector Exempted Measured Entities, as measured in accordance with, and provided for in, clause 10 below;
Measurement Date	means the last day of the Measurement Period or such later date agreed upon with the LS Measured Entity that is as close as practically possible to the commencement of the

	<p>verification or to the date of making of the LS ME Confirmation affidavit, whichever the case may be.</p> <p>The term 'Date of Measurement' has a corresponding meaning. The 'Ownership' and 'Management Control' elements must be measured as at the Measurement Date. For the avoidance of doubt - these two elements may not be measured on different dates.</p>
NDP	means the National Development Plan;
Priority Scorecard Elements	<p>means the compulsory elements outlined in the scorecard, referring to Ownership, Skills Development, and Enterprise and Supplied Development, which shall include the following:</p> <ol style="list-style-type: none"> <li>1. Ownership – The subminimum requirements for qualification with this element is 40% of the net value based on the net value graduation factor;</li> <li>2. Skills Development – The subminimum for requirement with this element is 40% of the weighting point and target; and</li> <li>3. ESD – The subminimum requirement for qualification is the 40% of the total weighting points for each of the minimum categories of this element;</li> </ol>
QSE	means the qualifying individual legal practitioners and/or law firms described as Qualifying Small Enterprises as measured in accordance with the provisions of clause 10 below;
Qualifying Procurement Beneficiary	means a recipient that qualifies in terms of the Qualifying Supplier Development Contributions and/or criteria as determined from time to time;
SANAS	means the South African National Accreditation Agency, 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 (Act 19 of 2006);
SED	means the Socio-Economic Development elements in the LSC;
SOE	means the state-owned enterprises that are wholly or partly in the ownership of the State or any organs of the government; and
SOEPF	means the State-Owned Enterprise procurement Forum, a lobby forum of all SOE Procurement officers and officials.

## 2. PREAMBLE AND BACKGROUND

- 2.1 Despite the dawn of democracy and new dispensation in April 1994, the South African legal profession has continued to face challenges of transformation, with the top positions and roles in the sector, from senior partners of law firms, senior advocates at the Bar and the senior members of the judiciary, remain largely homogenous and dominated by white males. There are marked absence of diversity on the basis of race, gender and other marginalizing characteristics.
- 2.2 An overview of the South African legal profession shows that there are not enough black owned large legal firms in the country that can compete in size, scale and service offerings with the established white controlled practices, which, in the main, are multi-national companies with a global brand and guidance, at times, at the expense of the local transformation and empowerment policies. According to research conducted by the Centre for Applied Legal Studies and the Foundation for Human Rights, in 2014, it has been 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.”*<sup>1</sup>

---

<sup>1</sup> Transformation of the Legal Profession [2014] para 2 at page 5

- 2.3 Against this background, in 2007, prior to the establishment of the LPC, the Council of the Law Societies of South Africa, developed and adopted the Legal Sector Charter as a section 12 Transformation Charter in terms of the B-BBEE Act.
- 2.4 This represented a historic milestone in the commitment towards the transformation of the industry. The Transformation Charter was the result of an extensive process of consultations which culminated in the legal profession undertaking the responsibility for the drafting of the Sector Charter, in consultation with the DOJCD and CS. The Sector Charter embodies the profession's commitment to transformation and recognizes that a strong, independent and representative profession is essential to ensure access to justice and to promote the Bill of Rights.
- 2.5 The Sector Charter recognizes 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, undermining the aspirations of our constitutional democracy.
- 2.6 The LPC was established as a national statutory body established to, together with its provincial councils, regulate the affairs of and exercise jurisdiction over all legal practitioners in South Africa, that is, the attorney's and advocates and candidate legal professionals.
- 2.7 Amongst other things, the purpose of the LPA is to:
- “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...”*
- 2.8 The South African legal profession constitutes the cornerstone of an entrenched constitutional provision in a constitutional democracy that provides amongst other things, the promotion of access to justice which is a universally entrenched human right. Sections 34, 35 (1), (3) (g) of the Constitution of the Republic of South Africa Act No 108 of 1996, as amended (“**the constitution**”) provides that:
- “every citizen has the right to access courts, and be represented by a legal practitioner of their choice.”*
- 2.9 The following statistics from the LPC website reflects the number of Legal Practitioners in the Republic of South Africa:

Description	Number
Attorneys	28 668
Candidate Attorneys	6 575
Advocates	5 344
Senior Advocates	
Pupils	

### 3. BUSINESS CASE AND IMPERATIVES FOR A LEGAL SECTOR CODE

- 3.1 There has been lack of sufficient and/or quality legal instructions to black attorneys and advocates from both the private sector and SOEs and other organs of state. The marginalization of black legal firms and advocates manifests itself in a continuous awarding of major legal commercial and litigation instructions to white owned law firms or foreign owned and white advocates. This condemns black legal firms and advocates largely to peripheral roles, including being BEE partners than leading partners in big commercial transactions and/or litigation matters.
- 3.2 In the meantime, the Legal Professional Sector has always used the B-BBEE generic scorecard as a measure of empowerment framework, as one of the means to propel transformation in the sector. Whilst the generic B-BBEE scorecard has proven to be useful in certain ways, there continues to be a significant need for the development of a sector specific code in legal profession.
- 3.3 This is primarily important to ensure the following:
- 3.3.1 to deal with and manage the legal sector's unique features and characteristics that requires specific interventions;
- 3.3.2 to ensure that industry stakeholders, undertake and commit their support for the implementation of the legal sector code and ensure that their members are held accountable for non-compliance in terms of the sector code;

- 3.3.3 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;
- 3.3.4 to implement more effective interventions in certain elements of the scorecard than others; and
- 3.3.5 to ensure that incentives for innovation and progressive implementation of the sector code in a unique manner are promoted, encouraged and protected.
- 3.4 Having regard to the above, the LPC was established as the industry statutory body to ensure uniformity and unitary governance of both attorneys and advocates
- 3.5 It is important that in achieving the objectives of the LPA and the B-BBEE Act:
- 3.5.1 the entire legal sector (in all its forms) supports the vision and commitment for a transformed quality legal professional services there is compliance with the B-BBEE Act, which establishes a legislative framework for the promotion of B-BBEE and economic inclusiveness;
- 3.5.2 the LSC is aligned to the principles underpinning the NDP, which aims to eliminate poverty and reduce inequality at least by 2030;
- 3.5.3 the introduction of EAP targets which aims to address the unequal representation of race sub-groups participating in the industry and all other professional services categories;
- 3.5.4 the setting aside of minimum levels of procurement spend for the legal practitioners that are at least **[75% black owned or at least 51% black women owned] is effected;**
- 3.5.5 the setting aside of minimum levels of allocations of work from legal practitioners that are at least **100% black owned or at least 75% black women owned is effected;** and
- 3.5.6 the promotion, enhancement and consolidation of *pro-bono* legal work, which is a unique feature of the legal professional services that ensures that the poor, rural and disadvantaged individuals and/or communities have access to quality legal services.

- 3.6 The imperatives underpinning the transformation of the Legal Professional Sector are the following:
- 3.6.1 **providing access to justice** and outlining the responsibilities and obligations of stakeholders in addressing those challenges;
  - 3.6.2 improving the **availability of quality legal services** by ensuring the provision of continuing and sustained education and skills training;
  - 3.6.3 enhancing, developing and empowering legal professionals, and in particular the **designated groups**, in all fields of legal practice;
  - 3.6.4 addressing challenges of **entry into the legal profession**, with specific emphasis on challenges experienced by designated law students and trainees;
  - 3.6.5 ensuring the availability of **quality legal training and education** by ensuring the availability of continuing legal training and education; and providing quality workplace learnership opportunities;
  - 3.6.6 implementing measures to address the provision and availability of **pro bono services and community-based paralegal services**, thus ensuring access to affordable legal services for all people in South Africa, particularly marginalized, poor and rural communities;
  - 3.6.7 ensuring proper **access to the courts** by embodying a commitment to improving and developing the infrastructure of and the allocation of resources to the courts;
  - 3.6.8 facilitating the **transformation of the legal services** sector so as to ensure it is representative of the demographics of South Africa, ensuring that a body of well-trained and competent professional providers of legal services, are developed to enable the appointments to be made to the judiciary;
  - 3.6.9 adopting measures to promote the **equitable distribution of the legal work effectively** and meaningfully, to eliminate barriers of entry and provide equal opportunities by empowering HDIs through ensuring equal participation in the economic opportunities within the legal Services Sector;
  - 3.6.10 ensuring and enhancing **representativity in respect of ownership, management, control and** employment of legal practices;

- 3.6.11 creating conditions **conducive to ensuring that historically disadvantaged providers of legal services** are able to establish, manage and build sustainable practices; and
- 3.6.12 creating an **enabling environment to reflect the diversity of our** society and to ensure the promotion of equality and the prevention of discrimination.

#### **4. UNDERTAKINGS AND COMMITMENTS BY THE INDUSTRY STAKEHOLDERS**

- 4.1 The LPC is seeking to facilitate the publishing and gazetting of a LSC, which is the consequence and product of an industry nation-wide consultation process to ensure that the legal profession is transformed, qualitative, competitive and accessible to provide adequate legal services to the domestic economy and contribute to the GDP.
- 4.2 In view of this, the development of the LSC is based on the definitions, principles and methodologies of transformation as outlined in the B-BBEE Act and the Amended Codes of Good Practice for B-BBEE as gazetted in terms of gazette 36928 of May 2015.
- 4.3 All categories and the sub-sectors of the legal services industry/sector have committed their support and undertake to be bound by the applicable provisions of the LSC and shall ensure full compliance with the LSC scorecard.
- 4.4 The major commercial associations in the LSC commit to ensure that their members are fully supportive of the provisions of the LSC scorecard and will commit resources towards its implementation.

#### **5. UNIQUE FEATURES AND STRATEGIC OBJECTIVES OF THE LSC**

- 5.1 The LSC is premised on the principles that a B-BBEE measurement framework in the Legal Sector is necessary to address Transformation as a whole, B-BBEE in general, and the promotion of Designated Categories of beneficiaries (namely, black people, black women, rural youth and the people with disabilities) and a significant increase in the procurement of specialized legal professional services of the Designated Categories by both the private and public sectors.
- 5.2 The LSC therefore seeks to ensure that the following categories, that are unique and peculiar to the legal sector, are achieved, by means of, *inter alia*, gazetting of the LSC, including the following:

- 5.2.1 by seeking to achieve a substantial, meaningful and accelerated change in the racial and gender composition of ownership, control and management of private practices in the legal services sector;
- 5.2.2 by promoting the effective advancement of employment equity patterns in the sector and adherence to principles of non-racialism and non-sexism by addressing the underrepresentation of certain designated groups in the employment by the LSMEs;
- 5.2.3 by addressing the skills development pipeline, that accelerates the advancement of Black Legal Professionals, Professional Black Women and Professionals with disability, including learnerships, article clerkship and Pupilage, with specific reference to Legal Technical and Management Skills;
- 5.2.4 by increasing the procurement of the legal services by the private and public sector from LSMEs that are at least 100 % Black Owned, at least 75% Black Women Owned or at least 51% Designated Group-owned;
- 5.2.5 by enhancing enterprise and supplier development in the core value chain of the legal services that leads to sustainable empowerment of qualifying supplier development beneficiaries in the legal services sector;
- 5.2.6 by contributing to the creation of substantial black owned LSMEs that are independently owned by black legal professionals who would have been supported through an effective enterprise and supplier development initiatives;
- 5.2.7 by increasing preferential procurement spend on LSMEs that contribute to local job creation through the investment in some or other forms of community projects that contribute to employment opportunities;
- 5.2.8 by contributing to the provision of bursaries and financial support to the needy and deserving students from the Designated Groups in tertiary institutions who are pursuing legal studies;
- 5.2.9 by increasing on-going qualitative and quantitative methods for monitoring and evaluating the progress towards B-BBEE and thereby contribute to measures of eradicating fronting;

- 5.2.10 by fostering the promotion of the legal services, through pro bono legal services which will serve as an enhancer for access to legal services by rural and poor un-affording communities; and
- 5.2.11 by ensuring compulsory reporting and engagement with the BEE Commission to monitor progress of enterprises toward B-BBEE.

## 6. MONITORING AND COMPLIANCE

- 6.1 Subsequent to the Minister of Trade and Industry gazetting the LSC, the responsibility to monitor the compliance and to oversee its implementation shall reside with a Legal Sector Charter Council (“the Charter Council”) to be established by the Minister of Justice and Constitutional Development after consultation with stakeholders in the legal profession.
- 6.2 The Legal Sector Code shall consist of stakeholders in the legal profession. On an ongoing basis, the Charter Council shall:
  - 6.2.1 monitor compliance with this Sector Code;
  - 6.2.2 provide guidance, clarification, support and assistance with interpretation of this Sector Code;
  - 6.2.3 liaise with all government departments, agencies and other relevant stakeholders for the purpose of facilitating the implementation of this Sector Code;
  - 6.2.4 release annual reports as a to review progress in transformation in the legal profession and submitting such report to any relevant stakeholders including the Minister of Justice and Constitutional Development and the B-BBEE Commission
- 6.3 It will be compulsory for all LSMEs who fall within the designated thresholds and categories of the scope of application to be measurable in accordance with the LSC.
- 6.4 Being measured in terms of the LSC effectively means:
  - 6.4.1 that the B-BBEE verification certificate has been issued by a SANAS Accredited B-BBEE verification agency with an approved extension of scope in the Legal Service Sector.

- 6.4.2 that the B-BBEE verification certificate shall be 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;
- 6.4.3 that the information relied upon on the B-BBEE verification certificates and reports is authentically valid, reliable and can be verified;
- 6.4.4 that the B-BBEE Certificate and report is valid for a period of 12 (twelve) months from the date of issue;
- 6.4.5 that the Charter Council will be able to use the information, data and detail contained in the B-BBEE verification certificate and report to assess the performance of each LSME to provide accurate and reliable state of the industry reports to the DTI and the DOJCD and CS;
- 6.4.6 the accredited verification agencies acknowledge that the Charter Council shall provide for them a platform and framework to access the market of LSMEs that would otherwise not have existed. Therefore, the confidentiality obligations existing in the nature of contractual relationships between the verification agencies and the LSMEs do not present an obstacle and prohibition for the verification agencies in providing such information and data for measurement purposes, as and when required.
- 6.4.7 The Charter Council should, in accordance with the B-BBEE regulations and established working protocols that may be finalized with the B-BBEE Commission, report all suspected incidents of fronting and fraudulent scorecards to the office of the B-BBEE Commission to enable investigations and subsequent prosecution of any fronting and circumvention within the legal services profession.
- 6.5 the Charter Council shall ensure that:
- 6.5.1 the LSC is effectively enforced in both the public and private sector;
- 6.5.2 the relevant public sector clients and procurers of legal services set aside targeted procurements issued in accordance with the LSC.

## 7. SCOPE OF APPLICATION

The LSC shall be applicable and legally binding on the following LSMEs:

- 7.1 **the government, its organs and all its arms**

7.1.1 this refers to the government departments and all levels of government, national provincial and local, the state law offices, state owned entities and institutions established in terms of Chapter 9 of the constitution, who procure and consume the legal services in the nature and course of their function;

7.1.2 the state at all levels has the moral, political and constitutional responsibility for ensuring the right of access to justice and the right of every citizen to be treated equally before the law. The DOJCD, in particular, have the constitutional mandate to facilitate the enhancement of access to justice for all citizens; and

7.1.3 as the user and procurer of legal services, the public sector referred to above will be expected to use the LSC to ensure the equitable distribution of its legal instructions.

## 7.2 **The legal practitioners in the private sector**

this refers to legal practitioners, as defined in the LPA, who are enrolled on the non-practicing roll, falling under the following categories:

7.2.1 legal counsel who issue instructions and work;

7.2.2 heads of legal departments with legal procurement budgets; and

7.2.3 executives for legal services within legal departments of private corporates.

## 7.3 **The legal practitioners in private practice**

this refers to the legal practitioners who appear on the roll of the practicing legal practitioners as contemplated in the LPA.

## 7.4 **the private sector**

this refers to corporate entities who are listed in the JSE and those who are not listed and are both in terms of their roles, include the provision of legal services as well as procurers of legal services.

## 7.5 **Legal Aid South Africa**

This refers to independent statutory bodies that are mandated by the state to enhance access to justice by providing legal services to those who cannot afford such services.

## 7.6 **paralegals**

this refers to non-profit, community-based organisations and individuals providing legal services to the poor and rural communities, as defined in the LPA;

#### 7.6 **university law clinics**

this refers to institutions that provides legal training and education, including access to legal services through the operation of law clinics.

### 8. **KEY MEASUREMENT PRINCIPLES**

8.1 The fundamental principles for measuring B-BBEE compliance in any LSME is that substance takes precedence over legal form;

8.2 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;

8.3 The basis for measuring B-BBEE initiatives under the LSC shall;

8.3.1 for the ownership and management control elements – shall be the B-BBEE Compliance of the LSME **at the date** of measurement (Measurement Date as defined), and

8.3.2 for skills development, ESD and SED elements – shall be B-BBEE Compliance of the LSME **over and throughout** the Measured Period.

8.4 initiatives which split, separate or divide an LSME with the intent of ensuring eligibility as an LS EME, a Qualifying Small Enterprise or a Start-Up Enterprise will constitute an offense and will be dealt with in accordance with the provisions as set out in the B-BBEE Act, as amended.

8.5 any representation made by an LSME about 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 will not receive any recognition for that initiative.

8.6 throughout the interpretation of the LSC, effect shall be given to the following underlying principles:

8.6.1 in the event that there is uncertainty, or conflict, any reasonable interpretation consistent with the objectives of the B-BBEE Act as amended and the B-BBEE Strategy must take precedence; and

8.6.2 any misrepresentation or attempt to misrepresent an LSME's true B-BBEE status will be dealt with in accordance with the provisions as set out in the B-BBEE Act as amended, and may lead to the disqualification of the entire scorecard of the entities concerned.

## 9. INTERPRETATION OF B-BBEE INITIATIVES IN THE LSC

9.1 LSMEs are only measurable against 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.

9.2 Where an LSME referred to in paragraph 9.1 above, is the holding entity in a consolidated verification, then any of its subsidiaries are subject to measurement in terms of a set of codes (sector or general) other than that which governs the LSME, then such subsidiary will not be able to tender the consolidated verification certificate of the LSME as its own, notwithstanding the fact that it formed part of the consolidated verification.

9.3 The LSC is a relevant, binding and applicable sector code for all activities listed in section 10 of the B-BBEE Act. This means that all LSMEs, unless where exemptions are applicable, are obliged to be measured in terms of the LSC.

## 10. ELIGIBILITY TO QUALIFY AS AN LSEME

10.1 For the purposes of measurement in terms of the LSC, an enterprise will qualify as an **LSEME** only under the circumstances set out in clause 10, which are based on their annual revenue:

10.2 Any LSMEs with a total annual revenue between **R 0 and 5 million for Attorneys and R 0 and R 3 million for Advocates**, who elect not to be measured in terms of the BLACK OWNESHIP provisions, is dealt with in accordance with the provisions of 10.4 and consequent provisions.

10.3 an LSME (which is an Attorneys firm) with the black ownership levels referred to in paragraph 10.2 above, calculated using the flow-through principle, is deemed to have the following B-BBEE Level Status:

10.3.1 if less than 30% Black Owned (Ownership and Management control) then the LSME is deemed to be a B-BBEE "**Level 4 (Four) Contributor**" having a B-BBEE recognition level of 80%;

10.3.2 if it has at least 30% Black Owned but less than 51% Black Owned then the LSME is deemed to be a B-BBEE “**Level 3 (three) Contributor**” having a B-BBEE recognition level of 100%;

10.3.3 if it has at least 51% Black Owned but less than 100% Black Owned, then the LSME is deemed to be a “**Level 2 (two) Contributor**” having a B-BBEE recognition level of 125%; and

10.3.4 if it has 100% Black Ownership, then the LSME is deemed to be a “**Level 1 (One) Contributor**” having a B-BBEE recognition level of 135%.

10.4 Measurement of EMEs and QSE Sole Proprietaries (SP) and Individuals Legal Sector Practitioner will be in accordance with the following:

<b>Firms of attorneys</b>		
<b>(Including single practitioners, also known as sole proprietaries, associations and partnerships)</b>		
R 0 – 5 million	R 5 – 10 million	R 10 million and above
<b><u>Fully Exempted</u></b> Notwithstanding the provisions of paragraph 10.4.1.1 or 10.4.1.2	<b><u>Partially Exempted</u></b> Notwithstanding, this means that the LSME is only required to comply with the provisions of paragraph 10.4.2	<b><u>Must comply fully with the LSC</u></b>  The firm/individual complies with all the elements of the LSC scorecard.
<b>Advocates as Sole Proprietaries</b>		
<b>R 0 – 3 million</b>  This means that an advocate is exempted from compliance with any provision of the LSC and is, for	<b>R 3 – 10 million</b>  <b><u>Partially Exempted</u></b>  This means that an advocate will comply with some of	<b>R 10 million and above</b>  This means that the advocate is fully compliant with all the priority elements of the LSC (except for ownership) including :

<p>purposes of the LSC, also referred to as LSEME.</p>	<p>the comply the 3 priority (which means these are compulsory) elements.</p> <p>It also means that an advocate shall have the status of an Qualifying Small Enterprise (QSE).</p> <p style="text-align: center;"><b><u>And/or</u></b></p> <p>Skills Development (facilitating training of Black beneficiaries)</p>	<p>Skills development (Enrolment of a designated category beneficiary as Junior Counsel),</p> <p style="text-align: center;"><b><u>And/or</u></b></p> <p>Enrolment of a designated beneficiary as Pupillage)</p>
--	---	--

#### 10.4.1 Measurement of Exempted Firms of Attorneys (R 0 – 5 million)

10.4.1.1 Although exempted, the LSEME is expected to comply with at least 1 (one) of the following skills development initiatives:

10.4.1.1.1 registration of a black female candidate attorneys;

10.4.1.1.2 registration of two designated learnerships; and/or

10.4.1.1.3 bursary contribution/s for two students at any tertiary institution.

10.4.1.2 Where such an LSEME is unable to comply with any of the above, the LSEME shall continue to receive recognition in terms of the above provisions, provided that they invest in the training of:

10.4.1.2.1 paralegals;

10.4.1.2.2 legal secretaries; and/or

10.4.1.2.3 any other suitable training output (to be approved by the LSC).

**10.4.2 Measurement of Partially Exempted firms of attorneys (R 5 – 10 million)**

10.4.2.1 Although partially exempted, the firms shall be expected to comply with 1 (one) of the following 3 (three) priority elements:

10.4.2.1.1 ownership;

10.4.2.1.2 skills Development; and/or

10.4.2.1.3 ESD.

10.4.2.2 ESD intervention will include initiatives that contribute towards smaller goods/service supplier whose business compliments the core business of a firm.

**END**

---

**CODE SERIES 000, STATEMENT 100**  
**DEPARTMENT OF TRADE AND INDUSTRY**  
**LEGAL SECTOR CODE (LSC)**  
**OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC EMPOWERMENT**

**STATEMENT 000: MEASUREMENT OF BLACK OWNERSHIP**

Issued under Section 9 (1) of the Broad-Based Black Economic Empowerment Act of  
2003, as amended.

**Arrangement of this Statement**

<b>No.</b>	<b>CONTENT</b>	<b>PAGE</b>
1	Objectives of the statement	
2	The Ownership Scorecard	
3	Key Measurement Principles	
<b>1.</b>	<b>OBJECTIVES OF THE STATEMENT</b>	
1.1	The objectives of this statement are to specify the scorecard for measuring the Ownership of BBBEE of the Legal Sector Measured Entities, Sole Proprietaries and Individuals as the thresholds may be applicable as the case may be.	
1.2	To define key measurement principles applicable in such measurements,	
1.3	Specify the measurement principles applicable in the various Measured Entities, Sole Proprietaries and Individuals,	
1.4	Where applicable, specify the formula for measuring voting rights, economic interests and realization points,	
<b>2.</b>	<b>THE OWNERSHIP SCORECARD</b>	
2.1	The Legal Sector Code Ownership Element of the scorecard is subject to the following table:	

Measurement of Black Ownership			
Attorneys Firms (Individuals and Sole Proprietaries)			
Threshold	R 0 – 5 million	R 5 – 10 million	R 10 million and above
<b><u>Fully Exempted from compliance with the LSC</u></b>	<b><u>Partially Exempted from compliance.</u></b>  The Firm /Individual MUST comply with one of the 3 priority/compulsory elements.  Has the status of an Qualifying Small Enterprise (QSE).  These are;  Black Ownership  And/or  Skills Development Spend (provided the Firm/Individual employs at least 5 full-time employees fulfilling a core function in the firm's business)  And/or  ESD intervention on a smaller goods/service supplier whose business compliments the core business of a firm.		<b><u>Must comply fully with the LSC</u></b>  The Firm/Individual complies with all elements of the LSC scorecard.

Attorneys Firms (Only firms who must comply with LSC)				
Threshold	Between R 10 and 60 million (LSCQSE)	Between R60 million and above (LSCLE)		
Indicator / Description	Weighting Points	Targets	Weighting Points	Targets
<b><u>Ownership voting Rights</u></b>  (Exercisable Voting Rights in the hands of black participants in general)	5	40%	3	45%
(Exercisable voting Rights in the hands of Designated Categories of beneficiaries) in particular black women	3	20%	2	30%
<b><u>Ownership Economic Interests</u></b>  (Economic Interests in the Measured Entity vesting in the hands of Black Practitioners in general)	2	10%	2	10%
(Economic Interests in Measured Entity vesting in the hands of Designated Categories	4	15%	3	15%

of beneficiaries) in particular black women				
<p><b><u>Ownership</u></b></p> <p><b><u>Realization Points</u></b></p> <p>Realization Points must always accrue in the hands of black participants, designated categories beneficiaries and trainees with disabilities</p>	6	15%	10	10%
<p>Ownership Bonus Points</p> <p>(No bonus points will be recognized in the LSC)</p>	0	0%	0	0%
Total	20	100%	20	100%
<b>Advocates operating as such</b>				
<b>R 0 – 5 million</b>	<b>R 5 – 10 million</b>		<b>R 10 million and above</b>	
Fully Exempted from compliance with the LSC	<p><b><u>Partially Exempted</u></b></p> <p>Taking Black advocates as juniors, with either the following complying:</p> <p>One priority/compulsory element</p> <p><b><u>And/or</u></b></p>		<p>Choice of black Advocate as junior, becomes fully compliant with all the priority elements, including :</p>	

	<p>Skills Development (Enrolment of a designated category beneficiary as junior counsel),</p> <p><b><u>And/or</u></b></p> <p>Enrolment of designated category beneficiary as pupillage</p>	<p>Skills development (appointment of a designated category beneficiary as Junior Counsel),</p> <p><b><u>And/or</u></b></p> <p>Enrolment of a designated beneficiary as Pupillage)</p> <p><b><u>And/or</u></b></p> <p>A Legal Education Trust for bursaries and scholarships for University students drawn from rural areas to the value of no less than R150 000 per annum,</p> <p><b><u>And/or</u></b></p> <p>A legal Education Trust for bursaries and scholarship for the benefit of</p>
--	--	--

		black youths, black women drawn from rural
--	--	---

**3. KEY MEASUREMENT PRINCIPLES**

The fundamental principles for measuring BBBEE compliance in any LSME is that substance takes precedence over legal form.

**END**

---

DRAFT

**CODE SERIES LSC 200:**

**MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED  
BLACK ECONOMIC EMPOWERMENT**

**LEGAL SECTOR CODE (LSC)**

**OF BROAD BASED BLACK ECONOMIC EMPOWERMENT**

**OF STATEMENT 200: THE GENERAL PRINCIPLES FOR MEASURING MANAGEMENT  
CONTROL**

Issued under section 9(1) of the Broad-Based Black Economic Empowerment Act of 2013

**Arrangement of this statement**

**CONTENT**

**PAGE**

1. Objectives of this statement
2. Management Control Scorecard
3. Key Measurement Principles
4. Remuneration parity and justice
5. Measurement of the Management Control Criteria

**1. OBJECTIVE OF THIS STATEMENT**

1.1 The objective of this statement is:

1.1.1 to specify the scorecard for measuring Management Control contributions to B-BBEE Scorecard in this LSC;

1.1.2 to define the key measurement principles for measuring the Management Control contributions to B-BBEE Scorecard; and

1.1.3 in addition, the statement is intended to define the formula for calculating the score for management control element in the B-BBEE scorecard.

1.2 It is recorded that, due to the unique nature of the advocates practices, some of the provisions of this statement may not apply equally and/or similarly to the advocates as they may apply to the attorneys. To this extent, and where applicable, the advocates shall accordingly be excluded from the application of this statement.

## 2. **MANAGEMENT CONTROL SCORECARD**

2.1 The following table represents the criteria used for deriving a score for the management control element under this statement.

2.2 In view of the unique features prevalent in the legal sector and profession, the measurement of LSMEs will not take the usual form of categories of management as found in other commercial entities and/or business.

2.3 Having regard to the above, the following management categories shall be applicable on the LSMEs:

2.3.1 board participation with emphasis on the following:

2.3.1.1 equity participation in the ownership, control and distribution of assets (including profits);

2.3.1.2 decision-making powers; and

2.3.1.3 the allocation and/or distribution of work and/or other resources.

2.3.2 Executive/senior management;

2.3.3 Designated categories of legal practitioners;

2.3.4 Specialist legal practitioners (with emphasis on the legal services that require specialised training, knowledge, expertise and/or qualifications.

2.4 The following table represents the criteria used for deriving a score for the management control under this statement in respect of practicing attorneys (*W* represents the *Weighting points*, whilst *T* represents *targets*):

	<b>Measurement Category &amp; Criteria</b>	<b>Black legal practitioners</b>		<b>Black women legal practitioners</b>	
		<i>W</i>	<i>T</i>	<i>W</i>	<i>T</i>
2.4.1	<b>Board Participation</b>				
2.4.1.1	Equity participation of black legal practitioners in the ownership, control and distribution of profits.	3	60%	2	50%
2.4.1.2	Decision-making powers of black legal practitioners in relation to the total number of members of the board of directors, management committee, executive committee and/or any other decision-making structures within the LSME.	2	30%	3	60%
2.4.1.3	The allocation and distribution of work and/or resources.	2	50%	3	60%
2.4.2	<b>Executive/senior management</b>				
2.4.2.1	Black legal practitioners in executive/senior management as a percentage of all senior legal practitioners in the LSMEs.	4	80%	N/A	N/A
2.4.2.2	Black female legal practitioners, as a percentage of senior legal practitioners in the LSME.	N/A	N/A	3	30%
2.4.3	<b>Designated categories of the legal practitioners</b>				
2.4.3.1	Number of black legal practitioners with disabilities as a total percentage of all the legal practitioners in the LSME.	2	2%	N/A	N/A

2.4.3.2	Number of specialist legal practitioners as a total percentage of the legal practitioners in the LSME.	1	1%	N/A	N/A
2.4.3.3	Number of young legal practitioners drawn from rural areas as a total number of the legal practitioners.	1	1%	N/A	N/A
<b>TOTAL POINTS</b>		15	15%		

2.5 The following table represents the criteria used for deriving a score for the advocates, under this statement:


### 3. KEY MEASUREMENT PRINCIPLES

3.1 An LSME will only receive points for its achievement towards the targets for participation of black people and black women at the board, executive management, senior/top management, designated categories of employees and other specialist professionals.

3.2 An LSME measured in terms of the management control in this element will receive points for making use of the following documentary information in support of their evidence of every spend:

3.2.1 the current payroll data and salary advices as at measurement date in calculating its score under the management control scorecard;

3.2.2 employment contracts and/or letters of engagements;

3.2.3 an LSME must strive for parity in remuneration between race groups and gender at all applicable management levels. To this extent, the LSME must provide full payroll

access together with a copy of the payment parity report, or EEA4 to the verification agency during the verification process; and

- 3.2.4 any other acceptable evidence that is deemed suitable to support the existence of a management level role in the LSME.

#### **4 REMUNERATION PARITY AND JUSTICE**

4.1 If an LSME is, for any practical reasons whatsoever, unable to distinguish between the various forms of management categories as provided for in paragraph 2.3 above, then the LSME will be measurable in terms to the applicable management categories. The respective weightings of these two indicators will be split accordingly to arrive at the relevant conclusion.

4.2 The LSME must strive for parity in remuneration between race groups and gender at all management levels. To this end the measured entity must provide full payroll access together with a copy of the payment parity report EEA4 to the verification agency during the verification. In the absence of such, the staff management levels will be declined by the verification agency.

4.3 In cases where measured entities are exempt from submitting the Department of Labour Employment Equity reports, then a remuneration parity statement, similar in form to the EEA4 report, must be signed by the authorised signatory of the measured entity as part of the verification process. This is to ensure that a person's responsibility and remuneration are in line with their job grade.

#### **5 MEASUREMENT OF THE MANAGEMENT CONTROL CRITERIA**

The formulae applicable in measuring the principles of the management control element will be aligned to the generic scorecard issued by the DTIC.

**CODE SERIES LSC 300:  
MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF THE LEGAL  
SECTOR CODE (LSC)  
OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT IN THE LEGAL  
SECTOR**

**STATEMENT LSC 300:  
THE GENERAL PRINCIPLES FOR MEASURING SKILLS  
DEVELOPMENT**

Issued under section 9(1) of the Broad-Based Black Economic  
Empowerment Act, 2013 as amended

<b>No.</b>	<b>CONTENT</b>	<b>PAGE</b>
1	Objectives of this statement	
2	The skills development element scorecard	
3	Key measurement principles	
4	Subminimum and discounting principle	
5	General principles	
6	Legitimate training expenses	
7	Measurement of skills development indicators	

**1. OBJECTIVE OF THIS STATEMENT**

- 1. The objective of this statement is:
  - 1.1.1 to specify the measurement of the skills development spend in the LSC element for B-BBEE in the legal sector;
  - 1.1.2 to define the key measurement principles associated with the skills development element; and
  - 1.1.3 indicate the formula for measuring the skills development element.
- 1.2 It is recorded that, due to the unique nature of the advocates practices, some of the provisions of this statement, may not apply equally and/or similarly to the advocates as they may apply to the attorneys. To this extent, and where applicable, the advocates shall accordingly be excluded from the application of this statement.

**2. SKILLS DEVELOPMENT ELEMENT SCORECARD**

- 2.1 The table below represents the criteria used for deriving a score for skills development applicable to attorneys:
- 2.2 Under this table: *W* means *Weighting points*, and *T* means *target*.

Category	Skills Dev Element	Attorneys		
		W	T	
2.1.1	<b>Skills development expenditure/spend on initiatives undertaken by LSMEs that are partially and fully compliant with skills development, which are specified on the training matrix as a percentage (%) of black legal practitioners in the LSME as part of the leviable amount</b>			
2.1.1.1	Skills development expenditure/spend on black trainees as a % of the LSME leviable amount in the total training budget allocated by the LSME in a year.	R0 – R10 million	3	3.0%
		R10 – R60 million	3	3.0%
		R60 million and above	6	6.0%

2.1.2	<b>Recognition for the proportion of skills development expenditure/spend on black candidate attorneys by the LSME applying the adjusted recognition for gender expended on the following categories of black legal practitioners:</b>			
2.1.2.1	Points allocated for initiatives directed on designated categories of beneficiaries (aligned to the national statistics outlined in the EAP definitions and allocations), by LSMEs with a national footprint.	R0 – R10 million	2	3.0%
		R10 – R60 million	2	3.0%
		R60 million and above	3	6.0%
2.1.2.2	Training initiatives directed towards black professionals for managerial expertise (executive and senior management) and training on public law clinics and institutions by senior counsel.	R0 – R10 million	3	3.0%
		R10 – R60 million	3	3.0%
		R60 million and above	5	5.0%
2.1.2.3	Recognition for the expenditure/spend on training on specialized professional categories of training.	R0 – R10 million	2	2.0%
		R10 – R60 million	2	2.0%
		R60 million and above	3	3.5%
2.1.2.4	Bursaries and scholarships where beneficiaries are black youths, black women and persons with disabilities	R0 – R10 million	1	3.0%
		R10 – R60 million	1	3.0%

	registered in any recognized South African and/or international university.	R60 million and above	1	3.0%
2.1.3	<b>Recognition of learnerships, internships, and candidacy programmes</b>			
2.1.3.1	Number of black trainees/candidate attorneys registered by an LSME in any of the following programmes:  <ul style="list-style-type: none"> <li>• learnership programmes;</li> <li>• candidate attorneys' registration; and</li> <li>• continuous legal education (practical legal training).</li> </ul>	R0 – R10 million	1	3.0%
		R10 – R60 million	1	3.0%
		R60 million and above	3	3.0%
2.1.3.2	Investment in any training initiative that enhances community legal training in designated areas.	Law Clinics / Public Law Institutions	W	
			10	
		R 0 – 10 million	2	2 %
		R10–R60 million	2	2 %
	R 60 million and above	2	5 %	
2.1.4	<b>Recognition for the recruitment of the candidate attorneys for positions as legal practitioners by LSME, in the following categories</b>			

2.1.4.1	Black legal practitioners	R0 – R10 million	2	2%
		R10 – R60 million	2	2%
2.1.4.2	Black female legal practitioners	R0 – R10 million	3	3%
		R10 – R60 million	3	3%
Mentorships and employment Opportunities				
	Implementation of an approved and verifiable mentorship programme implemented by a senior attorney or advocate where beneficiaries are in the designated categories (especially students in tertiary institutions)	By all categories of the annual thresholds.	2	2.0%
	Y.E.S initiatives which seek to promote the employment of non-professional young people.	By all categories of the annual thresholds.	2	2.0%

2.3 The following table represents the criteria used for deriving a score for skills development applicable to advocates, under this statement:


**3. KEY MEASUREMENT PRINCIPLES**

- 3.1 The following criteria must be fulfilled in order for the LSME to qualify for point under the skills development element of the scorecard:
  - 3.1.1 the completion and submission of workplace skills plan, an annual training report and pivotal report which have been submitted to the SETA; and
  - 3.1.2 implementation of priority skills programmes generally, and more specifically for black people.
- 3.2 In line with the Youth Employment Services (“Y.E.S”) initiatives, gazetted by the Minister of Trade and Industry in terms of Notice 640 of 2018, LSMEs must be encouraged to enrol the employment young people (as defined in the Youth Services Plan) who are not necessarily pursuing professional legal studies.
- 3.3 If less than 100% (one hundred percent) of the trainees referred to in 2.2.2.2, then the LSME will be allowed to carry over the spend into the next financial year.
- 3.4 The Legal Sector Charter Council shall, from time to time, on invitation by interested stakeholders, announce specific sector training and capacity building initiatives to enhance the above initiatives.
- 3.5 Skills development expenditure on black people that 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.

**4. SUBMINIMUM AND DISCOUNTING PRINCIPLE**

- 4.1 In order to have complied with this element, an LSME must have achieved a minimum of 40% (forty percent) of the total weighting points set out in the skills development scorecard.

4.2 Non-compliance with the threshold targets will result in the overall achieved B-BBEE status level being discounted in accordance with the above.

## 5. GENERAL PRINCIPLES

5.1 The general principles underpinning the skills development element in the LSC is that it must:

5.1.1 contribute to the achievement of the country's economic growth and social development goals that will promote the creation of decent work and sustainable livelihoods;

5.1.2 promote the development of the skills base in critical sectors of the economy and value-added in the legal profession; and

5.1.3 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 all working people in order to support employment creation.

5.2 Recognisable skills development expenditure includes any legitimate training expenses incurred for any learning programme offered by a measured entity to black people.

## 6. LEGITIMATE TRAINING EXPENSES

6.1 The following are the legitimate training expenses, which should include but is not necessarily limited to:

6.1.1 costs of training materials;

6.1.2 costs of trainers;

6.1.3 costs of training facilities including costs of catering;

6.1.4 scholarships and bursaries;

6.1.5 course fees;

6.1.6 accommodation and travel;

6.1.7 administration costs such as the organization of training including, where appropriate, the cost of the measured entity of employing a skills development facilitator or a training manager; and

6.1.8 funding and support of research at tertiary institutions aimed at improving performance of the LSC.

## 7. MEASUREMENT OF SKILLS DEVELOPMENT INDICATORS

The formulae and example that explains the method of measurement of the criteria in the skills development scorecard will be aligned to the formulae in the DTI&C generic codes.

DRAFT

**CODE SERIES LSC400:  
MEASUREMENT OF PREFERENTIAL PROCUREMENT AND SUPPLIER DEVELOPMENT  
ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT IN THE LEGAL SECTOR  
CODE**

**STATEMENT LSC400: GENERAL PRINCIPLES FOR MEASURING  
PREFERENTIAL PROCUREMENT, SUPPLIER/ENTERPRISE  
DEVELOPMENT**

Issued under in terms of Section 9(1) of the Broad-Based Black Economic  
Empowerment Act No: 53 of 2003, as amended ("**B-BBEE Act**")

**TABLE OF CONTENTS**

1. INTRODUCTION AND OBJECTIVES OF THIS STATEMENT
2. PREFERENTIAL PROCUREMENT AND SUPPLIER AND ENTERPRISE DEVELOPMENT
3. KEY MEASUREMENT PRINCIPLES IN DETERMINING THE SUITABILITY OF THE PREFERENTIAL PROCUREMENT IN THE LEGAL SECTOR
4. TOTAL MEASUREMENT INCLUSIONS
5. TOTAL MEASUREMENT EXCLUSIONS
6. SUPPLIER ENTERPRISE DEVELOPMENT INITIATIVES

**1 INTRODUCTION AND OBJECTIVES OF THIS STATEMENT.**

- 1.1 As a general principle, section 217(1) of the Constitution of the Republic of South Africa Act No: 108 of 1996 ("**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",*

to ensure that there is equitable distribution of access to procurement

- 1.2 In addition, section 217(2) of the Constitution provides that:

*"subsection (1) does not prevent the organ of state or institutions referred to in that subsection from implementing a procurement policy providing for:*

- (a) *categories of preference in the allocation of contracts; and*
- (b) *the protection or advancement of persons, or categories or person, disadvantaged by unfair discrimination”.*

- 1.3 In line with the principles set out in code series 000 of the LSC, the skewed procurement of the legal services from black legal practitioners and designated categories of the legal practitioners, particularly black women legal practitioners, has been a course for concern, which has largely necessitated the drafting of the transformation and empowerment sector code.
- 1.4 Having regard to the content of paragraph 1.1 above, the LSC must provide for a transparent measurement or mechanism, that will provide for an enabling environment for the state and all its arms, including but not limited to the state owned enterprises, the public and private sector entities, to procure commercial legal work from the legal practitioners, in line with the provisions of section 217 of the Constitution.
- 1.5 This statement therefore seeks to specify the measurement for preferential procurement, supplier/enterprise development and/or programmes that will benefit all designated and qualifying legal practitioners in the legal profession.
- 1.6 It will further outline the key measurement principles applicable in calculating preferential procurement and enterprise and/or supplier development spend (also known as contributions) as contemplated in section 217(2) of the Constitution.
- 1.7 In addition, this statement:
  - 1.7.1 defines the principles applicable when calculating B-BBEE procurement spend and supplier/enterprise development spend; and
  - 1.7.2 indicate the formulae for calculating the individual criteria specified in the preferential procurement and supplier development scorecard.

## 2 **PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT**

- 2.1 The table set out below represents the criteria for deriving a score for **preferential procurement, supplier/enterprise development and/or programmes** for all designated and qualifying legal practitioners in the legal profession.
- 2.2. For the purpose of the said table, **W** means *weighting points*, **T** means *target*, **SC** means *Senior Counsel*, **BWSC** means *Black Woman Senior Counsel*, **JC** means *Junior Counsel* and **BWJC** means *Black Woman Junior Counsel*.
- 2.3 LSC ESD Scorecard for attorneys.

Measurement Category	Procurer	Attorneys	
		W	T
<b>2.3.1 Procurement of legal work</b>		W	T
<b>2.3.1.1 By the State and all its arms (Specialized Entities)</b>			
2.3.1.1.1 Procurement spend from the LSMEs that are at least 75% black owned	All state organs, the state law office, including law clinics and chapter 9 institutions.	8	60%
2.3.1.1.2 Procurement from LSMEs that are at least 51% black women owned	All state organs, the state law office, including law clinics and chapter 9 institutions.	5	30%
<b>2.3.1.2 By Private Corporate Entities</b>			
2.3.1.1.3 Procurement spend from LSMEs that are at least 75% black owned	All private sector entities	6	50%
2.3.1.1.4 From LSMEs that are at least 51% black women owned	All private sector entities	3	30%
<b>2.3.2 Supplier /Enterprise Development of Designated LSMEs</b>			
<b>2.3.2.1 By all users and consumers of legal services</b>			
2.3.2.1.1 Recognition of procurement spend on all LSMEs that are either EMEs in line with paragraph 10.2.2 in code series 000 (in the category of <b>R0-5 million</b> annual threshold) or at least 75% black owned in line with paragraph 3.5.4 in code series 000, based on the applicable B-BBEE procurement recognition levels with the intention to enable supplier and/or enterprise development of those LSMEs.	By all LSMEs that are in the annual threshold category of <b>R10 million</b> and above in line with paragraph 10.2.2 of code series 000	5	80%

2.3.2.1.2	Recognition of procurement spend from all LSMEs that are partially exempted in line with paragraph 10.2.2 of code series 000 (in the category of <b>R 10-5 million</b> annual threshold) based on the applicable B-BBEE procurement recognition levels with the intention to enable supplier and/or enterprise development of those LSMEs.	By all LSMEs that are in the annual threshold of <b>R60 million</b> and above in line with paragraph 10.2.2 of code series 000.	3	30%
<b>2.3.3 Supplier Development Initiatives that enhance the economic participation of black businesses that are related to the business of a legal practitioner</b>				50%
2.3.3.1	Supplier development spend from black owned suppliers that are at least 75% owned by black legal professionals, including <b>but not limited</b> to secretarial, accounting/auditing, ICT and courier services.		5	
2.3.3.2	Supplier development spend from black owned suppliers that are at least 51% owned by black legal professionals, including <b>but not limited</b> to secretarial, accounting/auditing, ICT and courier services.		3	
2.3.3.3	Supplier development spend from black owned suppliers that are at least 35% owned by black legal professionals, including <b>but not limited</b> to secretarial, accounting/auditing, ICT and courier services.		2	
Total weighting points			40	

#### 2.4 LSC ESD scorecard for advocates

Measurement Category	Procurer	Advocates		
<b>2.4.1 Procurement of legal work</b>		<i>W</i>	<i>T</i>	
<b>2.4.1.1 By the State and all its arms (Specialized Entities)</b>				
2.4.1.1.1	Procurement from Advocates who are Black South Africans	By all state organs, the state law office, including law clinics and chapter 9 institutions.	6	The advocate must be SC, supported by 3 (three) JCs, of

			which one is a black woman
2.4.1.1.2 Procurement from Advocates who are White South Africans	By all state organs, the state law office, including law clinics and chapter 9 institutions.	3	The Advocate must be SC, supported by two JCs, of which 1 (one) is a black woman
<b>2.4.1.2 By Private Corporate Entities</b>			
2.4.1.2.1 Procurement from Advocates who are Black South Africans	From all private sector entities	6	The advocate must be SC, supported by 3 JCs, of which one is a black woman
2.4.1.2.2 Procurement from Advocates who are White South Africans	From all private sector entities	3	The Advocate must be SC, supported by 2 (two) JCs, of which 1 (one) is a black woman
<b>2.4.2 Legal services supply in support of in forma pauperis matters</b>			
2.4.2.1 by all Advocates			
2.4.2.1.1 Recognition of legal services hours dedicated in providing legal support to matters where litigants do not have the financial resources to institute/defend them.		10	300 hours per annum
<b>2.4.3 Legal services in support of supplier development initiatives that enhance the economic participation of black businesses that are related to the business of a legal practitioner</b>			
2.4.3.1 Supplier development hours in support of black owned businesses that are at least 75% owned by black legal professionals, including <b>but not limited</b> to secretarial, accounting/auditing, ICT and courier services.		5	50%

2.4.3.2 Supplier development hours in support of black owned businesses that are at least 51% owned by black legal professionals, including <b>but not limited</b> to secretarial, accounting/auditing, ICT and courier services.	5	40%
2.4.3.3 Supplier development spend from black owned suppliers that are at least 35% owned by black legal professionals, including <b>but not limited</b> to secretarial, accounting/auditing, ICT and courier services.	2	30%
Total weighting points	40	

### 3 KEY MEASUREMENT PRINCIPLES IN DETERMINING THE SUITABILITY OF PREFERENTIAL PROCUREMENT IN THE LEGAL SECTOR

- 3.1 Preferential procurement, supplier/enterprise development spend in terms of the LSC must always seek to ensure the following:
- 3.1.1 facilitate preferential spend for legal commercial/qualitative work from the legal practitioners who are black and previously disadvantaged;
  - 3.1.2 enterprise / supplier development initiatives of small black legal practitioners with the view to enhance their legal, operational and economic independence; and
  - 3.1.3 enterprise/ supplier development initiatives that seek to enhance businesses that are related to the business of the legal practitioner.
- 3.4 Non-compliance with the LSC ESD will result in the discounting of LSMEs that have been expected to qualify with this statement.
- 3.5 The weighting points in this statement represents the maximum number of points possible for each of the criteria applicable in the sub-categories.
- 3.6 LS MEs that procures legal services from designated LSMEs, that are either fully or partially exempted are encouraged to ensure that a recipient qualifying beneficiaries:
- 3.6.1 are registered with the LPC;
  - 3.6.2 must have at least a minimum of 3 years in practice; and
  - 3.6.3 has at least 51% black ownership and is not a development beneficiary with any other measured entity.

### 4. TOTAL MEASUREMENT INCLUSIONS

In the LSC, measurable procurement spend shall include, but not limited to the following:

4.1 **cost of sales**

all goods and services procured that comprise the cost of the sales of the LSME;

4.2 **operational expenditure**

all goods and services procured that comprise the operational expenditure of the LSME;

4.3 **capital expenditure**

all capital expenditure incurred by the LSME;

4.4 **public and private sector procurement**

all professional legal services sourced by organs of state and all its arms, the private and specialized entities shall be recognized as procurement spend. However, the procurement of an LSME by a local government authority or university law clinics will be recognized as measurable against the scorecard of that specific public entity;

4.5 **labour brokers and independent contractors**

any procurement of the LSME that is outsourced labour expenditure shall be included as a procurement spend;

4.6 **pension and medical aid contributions**

payments made to any post retirement funding scheme or to a medical aid or similar medical insurer by a LSME for its employees, excluding any portions of such payments which are a contribution to a capital investment of the employee. The scheme or insurer must issue a certificate dividing payments between the capital investment portion and the balance to establish the amount that is measurable within total measured procurement spend;

4.7 **empowerment related expenditure**

all goods and services procured in carrying out B-BBEE initiatives in related economic activities;

4.8 **imports**

all goods and services that are imported and/or procured from a non-South African source; and

4.9 **remuneration**

all salaries, wages and/or allowances paid to non-legal employees.

5. **TOTAL MEASUREMENT EXCLUSIONS**

The following shall constitute a non-exhaustive list of matters that will not be recognized in the total measurement procurement spend:

5.1 **taxation**

this is any amount payable to any person which represents a lawful tax or levy imposed by an organ of state authorised to impose such tax or levy, including rates imposed by a municipality or other local government;

5.2 **salaries, wages, remunerations and emoluments**

any amount payable to South African employees as an element of their salary or wage and any emolument or similar payment paid to a director or partner of LSME;

5.3 **pass- through third- party procurement**

all procurement for a third-party or a client that is recorded as an expense in the third-party or client's annual financial statements but is not recorded as such in the measured entity's annual financial statements;

5.4 **empowerment related procurement**

5.4.1 investments in or loans to an associated enterprise; and

5.4.2 investments, loans or donations qualifying for recognition under any of the business activities in this LSC; and

5.5 **non-discretionary procurement**

where the LSME is forced to make use of a particular supplier due to tender requirements or client specifications it may exclude such procurement.

6. **SUPPLIER ENTERPRISE DEVELOPMENT INITIATIVES**

The LSC supplier/enterprise development initiatives may include the following is a non-exhaustive list:

6.1 investments in QB-LSME;

6.2 loans made to QB-LSME;

6.3 guarantees given or security provided on behalf of the QB-LSME;

6.4 credit facilities made available to a QB-LSME;

6.5 grant contributions to QB-LSME;

6.6 direct costs incurred by an LSME in assisting and hastening development of qualifying beneficiary entities;

6.7 overhead costs of a LSME directly attributable to qualifying supplier development contributions;

- 6.8 preferential credit terms granted by a LSME to qualifying beneficiary entities;
- 6.9 preferential terms granted by a LSME in respect of its supply of goods and services to QB-LSME:
- 6.10 contributions made towards the settlement of the cost of services relating to the operational or financial capacity and/or efficiency levels of a qualifying beneficiary entity including, without limitation:
  - 6.10.1 professional and consulting services;
  - 6.10.2 statutory licensing and/or registration fee;
  - 6.10.3 industry specific levies and/or other fees;
  - 6.10.4 IT services; and
  - 6.10.5 payment for BBEE verification of MEM companies, that is done by approved verification agencies;
- 6.11 discounts given to QB-LSME in relation to the acquisition and maintenance costs associated with the grant to those qualifying beneficiary entities of franchise, licence, agency, distribution or other similar business rights;
- 6.12 access to credit facility facilitating access to credit for QB - LSME without access to traditional credit facilities owing to a lack of credit history, high-risk or lack of collateral on the part of the QS-LSME would qualify as an LS ESD intervention and initiative;
- 6.13 early payment period settlement of accounts or bill of statement with a qualifying beneficiary LSME over a shorter period of time (earlier than the normal/standard period), in relation to the measured entity's normal payment period, provided the shorter period is no longer than 15 days after date of invoice, will qualify as an early payment period for purposes of the ESD contribution; and
- 6.14 preferential payment terms that extend beyond 15 days will not qualify as qualifying supplier development contributions.

**END**

---

**CODE SERIES LSC500:  
MEASUREMENT OF THE SOCIO-ECONOMIC DEVELOPMENT ELEMENTS OF  
BROAD-BASED BLACK ECONOMIC EMPOWERMENT IN THE LEGAL SECTOR  
CODE**

**STATEMENT LSC500: THE GENERAL PRINCIPLES FOR MEASURING THE SOCIO-  
ECONOMIC DEVELOPMENT ELEMENT (“SED”)**

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act No 53 of 2003,  
as amended (“**B-BBEE Act**”)

**TABLE OF CONTENTS**

- 1. INTRODUCTION AND THE OBEJECTIVES OF THE SED STATEMENT .....
- 2. THE SED SCORECARD FOR ATTORNEYS AND ADVOCATES .....
- 3. KEY MEASUREMENT PRINCIPLES AND INDICATIVE FACTORS .....

**1 INTRODUCTION AND OBJECTIVES OF THE SED STATEMENT**

- 1.1 Whereas the legal sector is predominantly a professional services sector which is made up of the legal practitioners as defined in the Legal Practitioners Act No: 28 of 2014 of (“**LPA**”), practicing as such, on their own account and through firms and partnerships, however, firmly rooted and existing within their respective communities, that is, in urban, semi-rural and rural areas. The impact of the contributions and/or role played by the legal practitioners, especially in the rural and semi-rural areas is hugely significant in facilitating access to justice by poor and vulnerable communities, as envisaged by the Constitution of the Republic of South Africa Act No: 108 of 1996 as amended (“**the Constitution**”).
- 1.2 In the main, the rural communities rarely have access to quality and affordable legal services, prompting institutions such as the Legal Resources Centre, the University Law Clinics and Legal Aid South Africa, to set up centres around these areas.
- 1.3 The SED element in the LSC therefore seeks to facilitate a comprehensive response of initiatives and measures to ensure that the rural and poor communities receive access to justice, through quality and affordable legal services.
- 1.4 This statement further outlines some key measurement principles that are applicable when certain specific SED initiatives, as contemplated in the LSC, are being assessed and evaluated.

**2 THE SED SCORECARD FOR ATTORNEYS AND ADVOCATES**

2.1 In view of the inherent differences in the operational nature of the attorneys and advocates practices, the targets for the SED scorecard shall be based on the average time spend/billed (which is converted into hourly rates) by the LSME, over a **[three (3)]** financial year period that precedes the first date of the LSME being measured.

2.2 SED measurement scorecard for attorneys.

<b>Socio-Economic Development Measurement Criteria</b>		<b>Attorneys</b>	
<b>Pro bono services</b>		<i>W</i>	<i>T</i>
2.2.1	Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients from semi-rural and rural areas.	2	300 hours per annum
2.2.2	Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients in community legal centres.	2	200 hours per annum
2.2.3	Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients who require legal commercial and contractual assistance for the enhancement of small businesses.	2	150 hours per annum
Total Weighting Points		6	

2.3 SED measurement scorecard for advocates.

<b>Socio-Economic Development Measurement Criteria</b>		<b>Practicing Advocates</b>	
<b>Pro bono services</b>		<i>W</i>	<i>T</i>
2.3.1	Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients	2	300 hours per annum

	represented by a 75% black owned LSME.		
2.3.2	Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients represented by a 51% black owned LSME.	2	200 hours per annum
2.3.3	Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients represented by a Legal Resources/Community Legal Centre in the benefit of a rural community.	2	150 hours per annum
Total Weighting Points		6	

**[Draft note: please note that it is proposed that the advocates can prepare additional matters that can be measured]**

### 3 KEY MEASUREMENT PRINCIPLES AND INDICATIVE FACTORS

- 3.1 For purposes of measurement and verification, LSMEs will only receive recognition for any Qualifying Socio-Economic Contributions (“QSEDs”) and initiatives that are, albeit in hourly rates, quantifiable as a monetary value using generally accepted standards of valuation methods.
- 3.2 QSEDs and initiatives of any LSME are recognisable ONLY on an annual basis and cannot be ceded nor apportioned in favour of another LSME.
- 3.3 Notwithstanding the provisions of paragraphs of 3.1 and 3.2 above, QSEDs and initiatives by any LSME may consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by an LSME with the specific objective of facilitating sustainable access to justice for the targeted beneficiaries.
- 3.4 LSMEs are encouraged to prioritise communities in areas where they operate.
- 3.5 The full value of QSEDs and initiatives by any LSME given to the beneficiaries is recognisable if at least 100% of the value directly benefits black people.