

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

### **PRACTICE GUIDE 02 of 2016**

#### **BROAD-BASED BLACK ECONOMIC EMPOWERMENT CERTIFICATES WITH REGARD TO EXEMPTED MICRO ENTERPRISES AND QUALIFYING SMALL ENTERPRISES**

1. The Broad Based Black Economic Empowerment Commission (“B-BBEE Commission”) is an entity established by the Broad-Based Black Economic Empowerment Act 53 of 2003 as amended by Act 46 of 2013 (“the Act”), to oversee the implementation of the Act, which includes provision of explanatory notices, non-binding advisory opinions and clarification services to improve the understanding of the Act.
2. This Practice Guide is issued as a non-binding guide purely to assist with the interpretation to ensure consistency in the application of the Act. This Practice Guide does not constitute a legal document or a ruling of the B-BBEE Commission on the issue concerned. Further, although this Practice Guide is not binding on the B-BBEE Commission, it does set out the approach in terms of the B-BBEE Act and implementation thereof by the B-BBEE Commission on any matter relating to the issuance of the B-BBEE certificates to Exempted Micro Enterprises (EMEs) and Qualifying Small Enterprises (QSEs).
3. Section 9 (1) of the Act empowers Minister of Trade and Industry to issue Codes of Good Practice (“the Codes”) B-BBEE to promote the purposes of the Act. The Codes as amended are underpinned by the need to drive inclusive economy, and must at all times be interpreted and applied in a manner that is consistent with the objectives and purposes of the Act, and in compliance with the Constitution.

4. The amended Codes in Code Series 000 states that an EME is only required to obtain a sworn affidavit or Companies and Intellectual Property Commission (“CIPC”) Certificate on an annual basis. The purpose of this intervention is to reduce the cost of compliance and the cost of doing business for small businesses in South Africa. The EME is merely required on an annual basis to state under oath its B-BBEE credentials or obtain a CIPC Certificate to that effect for as long as the annual turnover is below R10 million.
5. However, it is important to note that should the empowerment status of the entity change anytime after it has made such an affidavit or obtaining the certificate from CIPC, the entity is obligated to disclose that fact when submitting its B-BBEE status to any person, organ of state or public entity, and desist from knowingly submitting an affidavit or CIPC certificate with incorrect or false information as that would amount to non-compliance with the Act, and perjury.
6. The sworn affidavit must be signed by the Commissioner of Oaths as per the requirements in the Justices of Peace and Commissioners of Oaths Act, 1963 (Act No. 61 of 1963). Thus, a verification professional has the responsibility and duty to provide entities with proper advice, and guide these EMEs to the correct channels to obtain the CIPC Certificate, or to use the template provided by the Department of Trade and Industry (“**the dti**”) on its website.
7. Thus, there is no requirement for EMEs to be subjected to a verification process that may attract costs that the legislative prescripts sought to prevent and avoid. Further, the National Treasury issued a directive to all organs of state advising them not to require B-BBEE certificates from EMEs. Further, Accounting Officers are not allowed to issue B-BBEE certificates to EMEs and QSEs as it was the case under the 2007 Codes.
8. Similarly, in Para 5.3 of amended Code Series 000, 51% and 100% black controlled and owned QSEs are only required to obtain a sworn affidavit. A template of the sworn affidavit has also been made available on **the dti** website.

9. Also, in keeping with this principle, **the dti** issued a communique to all verification professionals through SANAS and IRBA advising that no verification professional is authorised to issue a level 1 or 2 B-BBEE certificate to an EME or black controlled and owned QSEs.
10. Thus, there is expectation that all organs of state would adhere to this requirement and comply with the legislation prescripts and to promote intentions of the legislation. Therefore, organs of state are required to desist from undermining the intent and spirit of the legislation and to align their procurement processes including economic activities which require entities to submit a B-BBEE certificate with those of the B-BBEE Act to minimise confusion, bureaucracy and unnecessary costs for small businesses.
11. However, in terms of section 6.4 in Code Series 000, enterprises would be required to submit generic scorecards for contracts of R50 million or more. It is only under such circumstances though such a requirement would apply in terms of the legislation.
12. In terms of section 13O (2) a verification professional, procurement officer or any official of an organ of state or public entity who becomes aware of the commission of, or attempt to commit, any offence referred to under section 13O (1) and fails to report it, is guilty of an offence.
13. In terms of section 13F (1) (d) read with section 13J of the Act, the B-BBEE Commission has the power to investigate, either on its own initiative or in response to a complaint received, any matter concerning B-BBEE.
14. If an entity is found to have violated the Act, an entity could be fined up to 10% of its annual turnover, and individuals involved could be imprisoned for up to 10 years, and or fined. Specifically, an offence under section 13O (2) could lead to imprisonment of up to 12 months, or a fine, or both the fine and imprisonment.
15. Further, it is important to note that should any verification professional continue to issue certificates to EMEs and QSEs contrary to the B-BBEE Act as further clarified in this Practice Guide, the B-BBEE Commission will ensure that the matter is pursued to the extent of having

the accreditation of the verification professional withdrawn or cancelled, so that he or she cannot practice as a verification professional in future.

16. This Practice Guide is issued as a guide purely to assist with the interpretation and application of Code Series 000 with regard to EMEs and QSEs, and as indicated, it does not constitute a legal document or ruling of the B-BBEE Commission.
17. This Practice Guide may be updated anytime by the B-BBEE Commission if there are any material changes arising from developments in the application of Code Series 000. In such an instance, an amended version will be published to replace this one.
18. For any queries or further clarity on this Practice Guide, kindly feel free to contact us at the following contact details:

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Issued by the B-BBEE Commission

29 August 2016