

GENERAL NOTICES

NOTICE 1140 OF 2010

DEPARTMENT OF TRADE AND INDUSTRY

NOTICE OF INTENTION TO AMEND THE CODES OF GOOD PRACTICE PUBLISHED IN GAZETTE NUMBER 29617 ON 9 FEBRUARY 2007 IN TERMS OF THE BROAD - BASED BLACK ECONOMIC EMPOWERMENT ACT, 2003(Act No. 53 of 2003)

In terms of section 9(5) of the abovementioned Act I, Dr. Rob Davies, hereby publish an intended amendment of the Codes of Good Practice and grant interested persons a period of 60 days from date of publication of this Notice, to comment.

Interested parties are invited to submit comments on the proposed amendment to the BEE Unit, Private Bag X84, Pretoria, 0001, c/o BEE Unit, or on 012 394 1609 / 1869 or e-mail: bee-verification@thedti.gov.za for attention: Xolisile Zondo and/or Liso Steto.



Dr ROB DAVIES, MP
MINISTER OF TRADE AND INDUSTRY
DATE: 2/12/2010

SCHEDULE

With effect from 1 April 2011, only B-BBEE status level certificates issued by the following are valid:

1. 1.1 Verification Agencies accredited by the South African National Accreditation System (SANAS); or
- 1.2 Registered Auditors approved by the Independent Regulatory Board of Auditors (IRBA) in accordance with the approval granted by the Department of Trade and Industry.

Repeal of Government Notice 810 of 31 July 2009.

2. The Government Notice published in gazette number 810 of 31 July 2009 is hereby repealed.

Amendment of Code 000, Statement 000 - Section 10 – Framework for the Accreditation of BEE Verification Agencies

3. Section 10 of Code 000, Statement 000 is hereby amended by the deletion of section 10.

Amendment of Code Series 000, Statement 000 – General Principles and the Generic Scorecard

4. Code Series 000, is hereby amended by the addition of the following Statement:

STATEMENT 005:**BROAD BASED BLACK ECONOMIC EMPOWERMENT VERIFICATION**

Issued under section 9(1) of the Broad-Based Black Economic Empowerment Act, 53 of 2003

ARRANGEMENT OF THIS STATEMENT

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SECTION 1 - DEFINITIONS

In this Statement, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- (1) **"Accreditation Body"** means
 - (a) the South African National Accreditation System, a company registered under section 21 of the Companies Act 61 of 1973 and affiliated to the Department of Trade and Industry; or
 - (b) any other body authorised by the Minister to undertake accreditation of Verification Agencies;
- (2) **"B-BBEE"** means Broad Based Black Economic Empowerment;
- (3) **"B-BBEE Status"** has the meaning assigned in Code 000 Statement 000;
- (4) **"Enterprise"** has the meaning assigned in Code 100 Statement 100;
- (5) **"Higher Education Institutions"** has the meaning assigned in the Higher Education Act, 101 of 1997;
- (6) **"Regulatory Body"** means a Regulatory Body Approved by the Minister whose registered individual members or entities are permitted to provide B-BBEE Verification Services to measured entities;
- (7) **"Superior Contributor to B-BBEE"** is a Level One to Level Three Contributor to B-BBEE as defined in Code 000 Statement 000 or Sector Code issued in terms of Section 9(1) of the B-BBEE Act 53 of 2003;
- (8) **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- (9) **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act;
- (10) **"the dti"** means the Department of Trade and Industry;
- (11) **"the Minister"** means the Minister of the Department Trade and Industry;
- (12) **"this Statement"** means Statement 005;
- (13) **"Verification Certificate"** means a B-BBEE certificate issued in compliance with the B-BBEE Codes of Good Practice and all Sector Codes issued in terms of Section 9(1) of the B-BBEE Act 53 of 2003;
- (14) **"Verification Manual"** means the Verification Manual gazetted by the Minister on the 18 July 2008 (gazette No. 31255).
- (15) **"Verification Agency"** means a B-BBEE verification agency accredited by the accreditation body.

SECTION 2: OBJECTIVES OF THIS STATEMENT

2.1. The objectives of this Statement are to:

- a) provide interpretation of this statement;
- b) provide for the application of this statement;
- c) specify accreditation requirements;
- d) specify requirements for approval of Regulatory Bodies and Accreditation Bodies;
- e) specify terms and withdrawal of approved status of the Regulatory Bodies and Accreditation Bodies;
- f) specify the Verification Manual;
- g) specify requirements for Verification Certificates; and
- h) specify requirements for individual members or entities registered with the Regulatory Bodies and Accreditation Bodies authorised to provide B-BBEE verification services.

SECTION 3: INTERPRETATION OF THIS STATEMENT

This Statement must be interpreted in a manner that is consistent with the objectives of the Act.

SECTION 4: APPLICATION OF THIS STATEMENT

4.1. This Statement applies to:

- a) all applicants seeking to be approved as Regulatory Bodies and Accreditation Body;
- b) Regulatory Bodies and Accredited Bodies approved by the Minister;
- c) all individuals or entities registered with the approved Regulatory Bodies and Accredited Bodies who are permitted to provide B-BBEE verification services;
- d) all organs of state and public entities exercising powers in terms of section 10 of the Act;
- e) any person or entity seeking to exercise any right under this Statement.

SECTION 5: ACCREDITATION REQUIREMENTS FOR VERIFICATION AGENCIES

- 5.1. Any person or entity may apply to the approved accreditation body in order to obtain accreditation as a Verification Agency.
- 5.2. Accreditation of BEE verification agencies will be conducted in terms of the accreditation criteria that will be developed, maintained and enforced by the approved accreditation body.
- 5.3. Such Accreditation Standards govern the terms and conditions, on which the Accreditation Body may grant, refuse to grant, revoke or suspend an accreditation of a Verification Agency.
- 5.4. Those verification agencies wishing to apply for accreditation will do so in writing through the approved accreditation body.
- 5.5. The dti together with the Accreditation Body will implement such mechanisms as may be necessary to ensure that Verification Certificates are accurate and reliable.

Accreditation Bodies applying for approval in terms of this Statement must meet the following criteria to qualify:

- 5.5.1. The Accreditation Body requires any Verification Agencies seeking accreditation:
 - a) To meet the Accreditation Standards and Criteria to grant, refuse to grant, revoke or suspend an accreditation of a Verification Agency;
 - b) To have completed the educational requirements and practical experience in order to engage in B-BBEE Verification Services;
 - c) To comply with the Code of Conduct to be issued by **the dti** and enforced by the accreditation body;
 - d) To have completed training on B-BBEE Verification Services and Certification offered by Higher Education Institution as prescribed by **the dti** and to maintain relevant Continuing Professional Development (CPD) as prescribed by approved Accreditation Body;
 - e) To comply with the relevant Verification Manual, Gazette notices and any guidelines issued by **the dti**; and
 - f) To demonstrate transformation in the entity and rated as a "*Superior Contributor to B-BBEE*" (Level one to three Contributor).
- 5.5.2. The Accreditation body must provide the authorized verification agency with an approved identification reference to confirm such authorization.
- 5.6. The Accreditation Body must have the power and established processes to:
 - a) Maintain a record of those accredited verification agencies who provide B-BBEE Verification Services;
 - b) Conduct investigations of accredited verification agencies' verification engagement files for evidence of compliance with the prescribed Code of Conduct and the Verification Manual, and report on the outcome to the dti for monitoring and evaluation purposes;

- c) Monitor CPD Compliance by accredited verification agencies; and
- d) Investigate complaints against accredited verification agencies and to discipline, sanction or suspend accreditation of those individuals found guilty of negligence in the performance of their duties or conduct which brings the profession into disrepute.

SECTION 6: MINISTERIAL APPROVAL FOR ACCREDITATION BODIES

- 6.1. The Minister may, in writing, approve an Accreditation Body that submits an application in writing to the Minister that:
- a) Meets the requirements set out in 5 above;
 - b) Demonstrates transformation in the industry;
 - c) Promotes the development and maintenance of high quality and reliable B-BBEE verification services and to uphold the B-BBEE Act, the Codes of Good Practice, Sector Codes, the Verification Manual and any other relevant guidelines integral to advance B-BBEE;
 - d) Maintains constructive and ongoing interaction with the dti.
- 6.2. The Minister shall enter into a Memorandum of Agreement with the Approved Accreditation Body setting out the respective rights and obligations in accordance with this Statement for B-BBEE Verification.

SECTION 7: CRITERIA FOR REGULATORY BODIES APPLYING FOR APPROVAL

- 7.1. Regulatory Bodies applying for approval in terms of this Statement must meet the following criteria to qualify its registered individual members or entities to provide B-BBEE Verification Services:
- 7.1.1. The Regulatory Body requires its registered individual members and registered firms (or entities):
- a) To be in good standing with the Regulatory Body;
 - b) To have completed the educational requirements and practical experience in order to engage in public practice in the profession;
 - c) To comply with its prescribed Code of Conduct, Standards of Quality Control, Assurance Standards and any relevant Code of Conduct;
 - d) To have completed training in B-BBEE Verification Services and Certification offered by Higher Education Institution as prescribed by the dti and who maintain relevant Continuing Professional Development (CPD) as prescribed by the Regulatory Body;
 - e) To comply with the relevant Verification Manual, Gazette notices and any guidelines issued by the dti; and
 - f) To demonstrate transformation in the entity and rated as a "Superior Contributor to B-BBEE" (Level one to three Contributor).
- 7.1.2. The Regulatory Body must provide the authorized registered individual members and registered

firms with an approved identification reference to confirm such authorization.

7.2. The Regulatory Body must have the power and established processes to:

- a) Maintain a record of those registered individual members and firms (or entities) who provide B-BBEE Verification Services;
- b) Conduct investigations of registered firms (or entities) and individual members engagement files for evidence of compliance with the prescribed Code of Conduct, with Standards of Quality Control and Assurance Standards (including B-BBEE Verification Services) and report on the outcome to the dti for monitoring and evaluation purposes;
- c) Monitor CPD Compliance by registered members; and
- d) Investigate complaints against registered individuals and to discipline, sanction or exclude from registration those individuals found guilty of negligence in the performance of their duties or conduct which brings the regulated profession into disrepute.

SECTION 8: MINISTERIAL APPROVAL FOR REGULATORY BODIES

8.1. The Minister may, in writing, approve a Regulatory Body that submits an application in writing to the Minister that:

- a) Meets the requirements set out in 7 above;
- b) Demonstrates transformation in regulated industry or profession;
- c) Promotes the development and maintenance of high quality and reliable B-BBEE verification services and to uphold the B-BBEE Act, the Codes of Good Practice, Sector Codes, the Verification Manual and any other relevant guidelines integral to advance B-BBEE;
- d) Maintains constructive and ongoing interaction with the dti.

8.2. The Minister shall enter into a Memorandum of Agreement with the Approved Regulatory Body setting out the respective rights and obligations in accordance with this Statement for B-BBEE Verification.

SECTION 9: VERIFICATION CERTIFICATES AND INFORMATION

9.1. The dti will from time to time issue guidelines on the validity and issuance of Verification Certificates;

9.2. A Verification Certificate issued:

- a) Must record the weighting points attained by the measured entity for each element, where applicable, and the overall B-BBEE Status of an Enterprise and other relevant information regarding the identity of the Measured Enterprise, determined in accordance with the Codes of Good Practice, Sector Codes issued in terms of Section 9(1) of the Act and the Verification Manual;
- b) Must record an approved identification reference confirmed by the Regulatory and

Accreditation Body; and

- c) is valid for a period of 12 months from the date of issue.

9.3. The Approved Regulatory and Accreditation Body must require its registered members and accredited verification agencies to keep records as are necessary to:

- a) Identify the individual member who has signed the Verification Certificates and to record all Verification Certificates issued by the firm; and
- b) Maintain such documentation and records as may be necessary to support the accuracy and reliability of the rating awarded to all Scorecard categories and resultant Contributor Level reflected on the Verification Certificates; and
- c) Upload the relevant information pertaining to the certificate on the dti BEE IT Portal containing the information underlying each verification certificate issued within 5 days of issuance of the certificate.

SECTION 10: VERIFICATION MANUAL

10.1. The use of the Verification Manual is prescribed and shall be used as minimum guidelines when performing B-BBEE Verification Services; and

10.2. Any Verification Certificate issued without applying the guidelines as set out in the Verification Manual shall be deemed null and void.

SECTION 11: TERM AND WITHDRAWAL OF APPROVED OR REGISTERED STATUS

11.1. The Term of Approval of the Regulatory and Accreditation Body may be specified for a specific period or once approved continues until such time as it may be withdrawn or revoked by the Minister.

11.2. The Minister may determine conditions for approval or withdraw approval of a Regulatory and Accreditation Body that has failed to comply with the provisions of this Statement or on such grounds as appear reasonable in the circumstances.