

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NOTICE 1165 OF 2022****CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

I, Ebrahim Patel, Minister of Trade, Industry and Competition by virtue of the powers vested in me in terms of section 9 (5) of the Broad-Based Black Economic Empowerment Act, (B-BBEE Act No. 53 of 2003) as amended by the Act No.46 of 2013 ('the Act'), hereby issue the following **Draft Legal Sector Code** for public comment upon recommendation by the Minister of Justice and Correctional Services.

**Background**

1. In 2007, prior to the establishment of the Legal Practice Council, the Council of the Law Society of South Africa, developed and adopted a non-binding Legal Sector Charter as a Transformation Charter in terms of section 12 of B-BBEE Act. It came about as a result of an extensive process of consultations which culminated in the legal profession undertaking the responsibility for the drafting of the Legal Sector in consultation with the DOJ.
2. In 2020, the Legal Practice Council, which exercises jurisdiction over all legal practitioners and candidate legal practitioners and has a mandate to facilitate transformation in the legal profession, initiated the process for the development of a transformation sector code. The process was guided by the B-BBEE Act as well as the Amended Codes of Good Practice and it culminated in the adoption of the proposed sector code in February 2021.
3. The proposed sector code was submitted to the Minister of Trade, Industry and Competition for consideration in terms of the Broad-Based Black Economic Empowerment Act. The Minister, prior to submitting the proposed Code for review and discussion by Cabinet, seeks the views of interested parties on the content of the Code.

**Purpose**

4. The Draft Legal Sector Code ("Draft LSC") aims to address inequities resulting from the systematic exclusion of black people from meaningful participation in the economy to access South Africa's productive resources, economic development, employment creation and poverty eradication.
5. The objectives of the Draft LSC are to facilitate the transformation of the legal sector to ensure that it is representative of the demographics of South Africa, ensuring that a body of well-trained

and competent providers of legal services are developed and also to enable equitable and representative appointments to be made to the judiciary.

6. The Draft LSC seeks to eliminate barriers of entry and provide equal opportunities by empowering Black practitioners - especially persons from designated categories - through ensuring equal participation in the economic opportunities within the legal sector; and also by implementing measures to address the provision and availability of pro bono services and community-based legal services, thus ensuring access to affordable legal services for all people in South Africa, particularly marginalized, poor and rural communities

### **Consultation and development of the Sector Codes**

7. The Legal Practice Council undertook extensive consultations with sector stakeholders, including the establishment of a steering committee with representation from across the legal fraternity and received approximately 140 submissions from legal practitioners and other interested parties, culminating in the development and adoption of a Draft Legal Sector Code in February 2021.
8. The LPC-established steering committee consisted of representatives from a number of major commercial associations across the legal sector, including: the Black Lawyers Association (“BLA”); Pan African Bar Association of South Africa (“PABASA”); National Association of Democratic Lawyers (“NADEL”); National Bar Council of South Africa (“NBCSA”); General Council Bar of South Africa (“GCBSA”); Law Society of South Africa (“LSSA”); Black Conveyancers Association (“BCA”); The Corporate Counsel Association of South Africa (“CCSA”); Advocates for Transformation (“AFT”); and the South African Woman Lawyers Association (“SAWLA”).
9. The Legal Sector Code Steering Committee supported by the Minister of Justice and Correctional Services submitted an application to the Minister of Trade, Industry and Competition requesting approval of the Draft Legal Sector Code.
10. The Draft Legal Sector Code sets out a new framework for determining B-BBEE compliance in the legal sector, which reflects the unique characteristics of the industry. As such, the Draft Legal Sector Code have deviated from the amended B-BBEE Codes of Good Practice on compliance targets and weighting points to address specific peculiarities in the sector and profession. In particular the draft codes have specified deviation in the following areas of interest:
  - a. the thresholds for determining qualifying enterprises;
  - b. the targets to be achieved under each element of the codes;
  - c. the weighting of each element of the codes; and
  - d. the targets pertaining to public organs of state in respect of the procurement of legal services.

11. The Draft LSC proposes the establishment of a Charter Council, established by the Minister of Justice and Correctional Services after consultation with stakeholders in the legal profession, and consisting of stakeholders in the legal profession.

### **Deviations from the Generic Codes**

12. The Draft LSC proposes a number of targets and weightings which differ from the generic codes. In addition, the Draft LSC established its own thresholds for the determination of qualifying and exempt entities in the sector.

13. In terms of overall structure, the Draft LSC includes the same five elements as are present in the generic codes, namely (i) ownership; (ii) management control; (iii) skills development; (iv) enterprise and supplier development; and (v) socio-economic development; however the Draft LSC proposes different weightings and overall points tally when compared to the generic scorecards.

14. In terms of thresholds for qualifying entities, the Draft LSC proposes unique thresholds for three categories, namely: attorneys, advocates and start-ups. These are specific to the Draft LSC and reflect the specific structure of the legal services profession.

15. In terms of ownership (20 points out of 104), the Draft LSC is applicable to attorneys only and sets higher targets for the ownership element and lower weighting points; the total weighting points is 20 compared to 25 points set in the Amended Generic Codes of Good Practice. The main deviation under the ownership element is that the target is set at 30% in year 1 (one), 35% in year 2 (two) and 40% in year 3 (three), whilst the Amended Codes of Good Practice sets a target of 25% + 1 vote.

16. In terms of management control (16 points), the Draft LSC is applicable to attorneys only and is made up of total weighting points of 16 for Large LSMs compared to the 19 points set in the Amended Generic Codes of Good Practice. The percentage of equity participation of black women legal practitioners as a percentage of board members is set at 35% in year 1, 40% in year 2 and 45% in year 3, which is higher, by 10 percentage points than the 25% in the Amended Generic Codes of Good Practice for exercisable voting rights of black female board members as a percentage of all board members.

17. In terms of skills development (20 points), the Draft LSC is applicable to both attorneys and advocates and sets higher targets compared to the 3.5% set in Amended Generic Codes of Good Practice by reserving 6.5% in the 1st year, 7.0% in the 2nd year and 7.5% in the 3rd year for a range of skills development programmes aimed at young black professionals in the sector. The LSC has also added a sub-element targeted at the training and tutoring of black junior advocates for 40 hours per annum in programmes established by an association of advocates accredited by the Legal Practice Council and through mentorship and cash contributions.

18. In terms of enterprise and supplier development (40 points), the Draft LSC is applicable specifically to attorneys and sets a 50% target and a higher percentage for procurement spend from suppliers that are at least 75% Black owned and at least 51% Black women Owned. (These ownership thresholds are higher than the generic codes which specify a 51% threshold for black-owned businesses, and 30% black women-owned businesses.)

19. In terms of socio-economic development (6 points), the Draft LSC is applicable to both attorneys and advocates, and introduces new measurement indicators and targets, which are a deviation from the Amended Codes of Good Practice, which target 1% of Net Profit After Tax (NPAT). The LSC makes provision for contributions to socio economic development by recognising pro bono legal services which are measured hourly with an option of a financial contribution to community organisations or charitable entities in lieu of pro bono legal services.

### **Request for public comment**

20. The Minister of Justice and Correctional Services has reviewed the Draft Legal Sector Code, and has written to me in support of draft codes and the proposed framework.

21. It is upon this basis that I publish these Draft Legal Sector Codes for public comment, in terms of Section 9(5) of the Act.

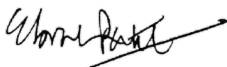
Interested parties (in both the public and private sector) are requested to forward their comments in writing within 60 days from the date of this publication, for the attention of **Ms Lindiwe Mavundla** or **Ms Kumbe Mhlongo** to the following address below:

E-mail: [legal@dtic.gov.za](mailto:legal@dtic.gov.za)

or

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Pretoria  
0002



**Ebrahim Patel**  
**Minister of Trade, Industry and Competition**

**DRAFT**

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT LEGAL SECTOR CODE ISSUED IN TERMS OF  
SECTION 9 (5) OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT NO: 53 OF 2003, AS  
AMENDED BY ACT 46 OF 2013**

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## 1. BACKGROUND

- 1.1 The history of apartheid in the Republic of South Africa is well documented. The apartheid legislation, policies and practices have created inequalities and injustice in the socio-economic and political landscape of the Republic of South Africa. Such legislation, policies and practices have created high levels of poverty amongst black people and resulted in racial inequalities in South Africa. They have also excluded, by and large, black people from meaningful participation in the economy of the country. The fundamental objective of apartheid legislation, policies and practices was to ensure that black people, who constitute the majority of the people in the Republic of South Africa, should only provide unskilled labour to their white counterparts. This has resulted in a shortage of skills and expertise among black people. The consequences of such legislation, policies and practices remain in the democratic era with the economy largely owned and controlled by whites while black people have a minimal role therein.
- 1.2 There was a change in the political dispensation with the adoption and promulgation of the new <sup>1</sup>Constitution (“**the Constitution**”) of the Republic of South Africa and the establishment of democracy. However, the legacy of apartheid requires a robust legislative intervention. The adoption of the Constitution assisted in the eradication of the apartheid laws and in the promotion of the important principles of democracy and values including recognizing the human dignity of the majority of the people in the country. The Constitution further seeks to improve the quality of life of persons who were disadvantaged by the unfair discriminatory legislation, policies and practices under apartheid.
- 1.3 The right for all South Africans to fully participate in the economy of South Africa, is enshrined in the Constitution. This is not only a fundamental right, but it is also an important tool designed to assist the government to grow the economy of the country. It is in this context that the government of the Republic of South Africa promulgated the Broad-Based Black Economic Empowerment Act No.: 53 of 2003, as amended, to address the imbalances created by the apartheid laws, policies and practices and to promote socio-political equality and equal participation in the economy of the country.
- 1.4 Members of the legal profession, do not have a sector code to guide them in addressing imbalances and inequality within the legal profession. Reliance has been placed on the principles of the Codes of Good Practice issued under Government

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<sup>1</sup> the Constitution of the Republic of South Africa Act No.: 108 of 1996, as amended

Gazette No: 36928 of May 2015 (“the **Generic Codes**”), which are generic in nature and apply broadly and therefore do not address the unique nature of the legal profession as a sector in the economy. The Legal Sector Code (“**LSC**”) is therefore intended to address this.

## **2. VISION**

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

## **3. MISSION**

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

## **4. INTERPRETATION AND DEFINITIONS**

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

Concept	Definitions
advocate	means a legal practitioner who is admitted and enrolled as such in terms of the LPA;
annual revenue	means the income generated by an LSME in providing its services in the course of rendering professional services as regulated by the LPA;
associate	means an attorney employed in such a capacity, by an LSME in terms of an employment agreement concluded by these parties;
associate director	means an attorney employed in that capacity by an LSME, in terms of an employment agreement, ranking above a position of a senior associate or senior professional assistant and below a position of a director or partner, as the case may be, in that LSME;
attorney	means a legal practitioner who is admitted and enrolled as such in terms of the LPA;
B-BBEE Act	means the Broad-Based Black Economic Act No.: 53 of 2003, as amended;
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 LSME	means legal services measured entity that has achieved a level 1 to level 8 B-BBEE status level as set out in the B-BBEE Act;
B-BBEE verification agency	means an entity which has been confirmed, approved and classified as such, by the B-BBEE verification regulator, to verify compliance with the LSC in terms of the provisions of the B-BBEE Act;
B-BBEE verification certificate	means any certificate prepared and issued by a B-BBEE verification agency verifying compliance with the LSC by the LSME in terms of the provisions of the B-BBEE Act;
B-BBEE verification regulator	means a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals;
black people	shall for the purposes of the LSC means black people as defined in the B-BBEE Act;
board of directors	means, in respect of an incorporated LSME, a body that is constituted by the directors of such LSME, and in respect of a partnership, a body which is constituted by the partners of such an LSME, which, in each event, is responsible for the executive management decisions and/or strategic direction of such an LSME;
candidate attorney	this term shall the same meaning as defined in the LPA;

Charter Council	means the Legal Sector Code Charter Council to be established by the Minister to oversee and implement the LSC, as set out in paragraph 10 of this LSC;
Companies Act	means Companies Act No.: 71 of 2008, as amended;
continuous legal education	means the practical legal training, which is intended to improve the practical knowledge and skills of the practitioners (including the skills and knowledge of the candidate attorneys and pupils);
designated categories	means black women, black youth, black people with disabilities and/or from the rural, as contemplated in this LSC;
director	this term shall bear the same meaning as defined in the Companies Act;
discretion	means the unfettered and absolute discretion;
DOJ&CD	means the Department of Justice and Constitutional Development;
DTIC	means the Department of Trade, Industry and Competition;
EAP	means the economically active population, comprising persons between the ages of 15 and 65, as may be determined, from time to time, by the quarterly labour force survey published periodically by Statistics South Africa. The operative EAP for the purposes of any calculation under the LSC shall be the most recently published EAP statistics;
economic interest	means a legal practitioner's right to a share in the profits and liabilities of an LSME, receive distributions from that LSME, representing a return on ownership similar in nature to a dividend right and to receive distributions from that LSME;
ELE	means an exempted law firm or an advocate as the case may be, as contemplated in the LSC;

employment agreement	means any written agreement concluded between an LSME and an attorney for the employment of the attorney by the LSME;
ESD	means an enterprise and supplier development programme as set out in this LSC;
equity partner/director	means a partner or a director, the latter, notwithstanding the definition ascribed to that term in the Companies Act who has an ownership interest in an LSME and shares in the profits of that LSME and is liable for the expenses and liabilities of such an LSME;
executive management	for the purposes of this LSC, executive management shall be constituted by the various sub-committees established by the board, to carry out and implement specific functions and/or duties, as may be delegated to such sub-committees, by the board, from time to time;
GDP	means gross domestic product;
goods and services	for the purpose of this LSC, goods and services shall without limiting the generality thereof refer to and include, text books, technology hardware and software, furniture, accounting services and electrical equipment and services and all other goods and services that are essential for the carrying on of legal practices.
incorporated LSME	means an LSME constituted, organised and incorporated by one or more attorneys, in accordance with the provisions of the Companies Act, and registered and established as a law firm with the LPC, in terms of the provisions of the LPA;
in-service training	means practical training which is intended to improve and enhance the skills and knowledge of the support staff in any relevant LSME;

junior management	for the purposes of this LSC, shall be constituted by associates and/or professional assistants, within an LSME with no specific management duties and/or responsibilities, unless the board determines otherwise;
large enterprise	means an LSME with more than 15 directors and/or partners and which generates a total revenue of more than R15 million per annum;
law firm	means an LSME which has been established by one or more attorneys and is duly registered with the LPC, in terms of the provisions of the LPA, for the purposes of engaging in the business and practice of law in South Africa;
legal entity	shall, for purposes of this LSC, have similar meaning as a law firm, and the two terms may be used interchangeably throughout this LSC;
legal practitioner	shall bear the meaning ascribed to that term in the LPA, but for the purposes of the LSC, it shall include only: <ul style="list-style-type: none"> <li>• attorneys registered with the LPC and practicing as such; and</li> <li>• advocates, registered with the LPC and practicing as such.</li> </ul>
LPA	means the Legal Practice Act No.: 28 of 2014, as amended;
LPC	means the Legal Practice Council, which is a national, statutory body established in terms of section 4 of the LPA. The LPC and its provincial councils regulate the affairs of and exercise jurisdiction over all legal practitioners (attorneys and advocates) and candidate attorneys and pupils;
LSC	means this Legal Sector Code, gazetted in terms of section 9(1) of the B-BBEE Act;

LSME	means a legal sector measured entity in the form of a law firm in the case of attorneys whether as sole practitioner, partnership or incorporated legal entity or an individual advocate;
LSTF	means the Legal Sector Transformation Fund, to be established in terms of paragraph 31 of this LSC, by the Charter Council, for the purpose of receiving and administering contributions made by LSMs and EEs in terms of this LSC, to provide financial assistance and support to black legal practitioners and for related purposes as may be determined by the Charter Council from time to time;
measurement date	means the last day of the measurement period (or such later date agreed upon with the LSME) that is as close as practically possible to the commencement of the verification or to the date of making of the LSME confirmation affidavit, whichever the case may be;
medium enterprise	means an LSME with a minimum of 4 partners or directors but not more than 15 partners or directors, with an annual revenue of not less than R3 million and not more than R15 million;
middle management	means an associate directors), (or) senior associates and/or senior professional assistants, where applicable, within any LSME, who carry out and/or implement any decisions, functions and/or management duties, as may be delegated to them by directors, partners or practice group heads from time to time;
Minister	means the Minister of Trade, Industry and Competition of the government of the Republic of South Africa;
Minister of Justice	means the Minister of Justice and Constitutional Development of the government of the Republic of South Africa;



NDP	means the National Development Plan which is a set of proposals devised by the government of South Africa aimed at eliminating poverty and reducing inequality by 2030;
organs of state	means any of the following institutions: <ul style="list-style-type: none"> <li>• a national or provincial department as defined in the Public Finance Management Act No.: 1 of 1999, as amended;</li> <li>• a municipality as contemplated in section 151 of the Constitution; and</li> <li>• a constitutional institution listed in schedule 1 of the Public Finance Management Act No.: 1 of 1999, as amended.</li> </ul>
partner	means an attorney who has been employed in such capacity, by an LSME, who is entitled to the profits of such LSME and is liable for its expenses and losses;
partnership	means an LSME other than an incorporated LSME established and constituted by two or more attorneys, registered with the LPC, in accordance with relevant provisions of the LPA, to manage and oversee the business operations of such LSME and share the profits and liabilities of such LSME;
PGL	means practice group leaders, who are generally equivalent and have the same rank as the heads of departments, within the LSME, and carry out the same mandate and/or functions, as heads of departments, as the case may be, within an LSME;
priority scorecard elements	means the compulsory elements that must be complied with in terms of the LSC, as outlined in the scorecards, referring to ownership, skills development and enterprise and supplier development;
professional assistant	this term shall bear a similar meaning as an associate, unless the context indicates otherwise;

PSED	means procurement, supplier and enterprise development element as a measurement statement as contained in this LSC;
pupil	this term shall bear the same meaning as defined in the LPA;
public entities	means enterprises that are listed as public entities in Schedule 2 or 3 of the Public Finance Management Act No.: 1 of 1999, as amended;
QPB	means a qualifying procurement beneficiary who is a recipient that qualifies, in terms of the qualifying enterprise and supplier development contributions and interventions, as set out in this LSC;
QSE	means a qualifying small measured LSME or an advocate, as the case may be, which or who for the purposes of this LSC, is measured as such in terms of the LSC;
QSED	means qualifying supplier enterprise development initiatives that are intended to benefit communities and/or individuals, measured in monetary value or hourly rates, using generally accepted standards of valuation methods, as may be approved by the Charter Council from time to time;
rural areas	means for the purposes of this LSC, low population density geographical areas which are located outside towns and cities, and are recognised as such by the Statistics SA, and have limited access to ordinary public services, such as water, sanitation, infrastructure and/or economic opportunities;
salaried director	means, for the purposes of this LSC, and notwithstanding the definition ascribed to that term in the Companies Act, an attorney employed in that capacity by an LSME who does not participate in the profits of the LSME nor has a legal

	entitlement to such profits and is not liable for the expenses and liabilities of such LSME;
SANAS	means the South African National Accreditation 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 No. 19 of 2006, as amended;
SED	means the socio-economic development element as contained in this LSC;
senior associate	means an attorney employed by an LSME, in that capacity, who is at a senior level above an associate but who is not a partner or a director at such LSME;
senior management	for the purposes of this LSC, shall be constituted and refer to the heads of departments or PGLs, as the case may be, of the various departments, within a relevant LSME, who are the leaders of such departments, and oversee the performance, effectiveness and efficiency of such departments;
senior professional assistant	this term shall bear a similar meaning as a senior associate, unless the context indicates otherwise;
SOEs	means the state-owned enterprises which are entities that are wholly or partly owned by the state or any organs of state;
sole practitioner	means an LSME, in case of attorneys, a law firm which has been established and registered by a single attorney, as a law firm, with the LPC, in terms of the provisions of the LPA;

specialised areas of law	<p>means those areas of law where black people have been historically excluded from and remain largely excluded or have limited exposure to, including, but not limited to the following:</p> <ol style="list-style-type: none"> <li>1. corporate and commercial law;</li> <li>2. intellectual property law;</li> <li>3. information technology ;</li> <li>4. maritime law;</li> <li>5. regulatory law;</li> <li>6. conveyancing and property law;</li> <li>7. pension law;</li> <li>8. aviation law;</li> <li>9. entertainment law;</li> <li>10. arbitration and mediation;</li> <li>11. insolvency and business rescue;</li> <li>12. banking law;</li> <li>13. initial public offerings and the securities exchange;</li> <li>14. business and corporate tax law;</li> <li>15. assets restructuring;</li> </ol>
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	16. mergers, acquisitions and take overs; 17. competition law; 18. mining, energy and natural resources; 19. international trade; 20. corporate governance; 21. due diligences and compliance; 22. forensic and fraud investigation; 23. transaction advisory services; 24. environmental law; 25. project finance; 26. corporate finance; 27. structured finance; 28. construction and engineering law; 29. media law; 30. telecommunication law; 31. sports law; and 32. B-BBEE transaction advisory and related services.
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Statistics SA or Statistics South Africa	means the Department referred to in section 4 of the Statistics Act No.: 6 of 1999, as amended;
Steering Committee	<p>means a committee which has been established by the LPC, in terms of the B-BBEE Act, to facilitate and co-ordinate the drafting and the gazetting of the LSC and which is constituted by major commercial associations in the legal profession, including the following:</p> <ul style="list-style-type: none"> <li>• Black Lawyers Association (“<b>BLA</b>”);</li> <li>• Pan African Bar Association of South Africa (“<b>PABASA</b>”);</li> <li>• National Association of Democratic Lawyers (“<b>NADEL</b>”);</li> <li>• National Bar Council of South Africa (“<b>NBCSA</b>”);</li> <li>• General Council Bar of South Africa (“<b>GCBSA</b>”);</li> <li>• Law Society of South Africa (“<b>LSSA</b>”);</li> <li>• Black Conveyancers Association (“<b>BCA</b>”);</li> <li>• Department of Justice and Constitutional Affairs (“<b>DOJ&amp;CD</b>”);</li> <li>• Department of Trade, Industry &amp; Competition (“<b>DTIC</b>”);</li> <li>• The Corporate Counsel Association of South Africa (“<b>CCSA</b>”);</li> <li>• Advocates for Transformation (“<b>AFT</b>”)</li> <li>• Legal Aid South Africa (“<b>Legal Aid SA</b>”); and</li> <li>• South African Woman Lawyers Association (“<b>SAWLA</b>”).</li> </ul>

targeted procurement	means procurement from preferred categories of bidders, such as persons previously disadvantaged by unfair discrimination, provided that such procurement (a) does not compromise the value for money requirement; and (b) is an incentive for recognising and rewarding genuine innovators in the case of unsolicited proposals, provided that such incentives do not compromise the competitive bidding process and (c) complies with the provisions of the Preferential Procurement Policy Framework Act 5 of 2000;
top management	refers to a board of directors, in case on an incorporated LSME, or a board of partners, in case of a partnership, constituted by equity directors or partners and salaried directors or partners, as a case may be, who participate in the overall strategic direction of an LSME and have the final decision-making powers in relation to the professional and business affairs of such relevant LSME; and
voting rights	the term shall have similar meaning as defined in the Companies Act.

## 5. INTRODUCTION AND PREAMBLE

- 5.1 As indicated above, despite the dawn of democracy and the new dispensation in April 1994, the South African legal profession has continued to face challenges in achieving transformation. The top positions and roles in this sector, from senior partners and directors of law firms, to senior advocates, remain largely homogenous and are mainly occupied by white male practitioners. There is a marked absence of diversity on the basis of race and gender.
- 5.2 Although there have been pockets of improvement, an overview of the South African legal profession shows that despite an increase in the numbers of admitted black legal practitioners, there are still not enough black-owned large legal firms in the country that can compete in size, scale and service offerings with the traditionally large established white-controlled law firms. Many of these large firms have become multi-national firms with global brands and guidance, at times, at the expense of the local transformation and empowerment policies.

- 5.3 According to research conducted by the Centre for Applied Legal Studies and the Foundation for Human Rights, in 2014, it was established that:
- “South Africa’s corporate law firms are still dominated by white men, especially in the upper echelons: 80 percent of the chief executives of the 12 firms canvassed in the survey were white men, as were 72 percent of all managing partners. The picture at the CEO/managing partner level was replicated in the ownership and remuneration structures of the firms: 53 percent of all equity partners were also white and males.”*<sup>2</sup>
- 5.4 Furthermore, in his research for the Masters Business Administration programme, submitted to the Faculty of Commerce, Law and Management, of the University of the Witwatersrand, in 2018, Boitumelo Shalliamo Phungwayo<sup>3</sup> submits, at page 8, that:
- “The systematic, structural and social-economic inequalities that were prevalent under the apartheid government distorted the ability of the people in accessing courts, legal services and legal work on the basis of race, gender and disability (Roopram, 2007). The socio-economic status and geographic location factors were further hindrances for black people from being able to gain access to legal services. In their media release on 29 November 2007, the co-chairpersons of the LSSA acknowledged “that although much had been done to improve the structural and systematic issues of the past; inequality and discrimination still prevailed in the new democratic dispensation” (Ramathodi, 2010). According to the meeting report shared at the LSSA briefing on legal profession transformation, statistics showed that there were 24% fully female-owned attorney practices, 60% fully male-owned practices and 9.1% practices which were gender mixed (Law Society of South Africa, 2007). Ramathodi (2010) in his briefing further advised that 80% of the practices were fully owned by whites, only 6.5% fully owned by Africans, 6.2% by Indians, 1.4% by coloureds and 6.5% had mixed ownership (Ramathodi, 2010).”*
- 5.5 Against this background, in 2007, prior to the establishment of the LPC, the Council of the Law Society of South Africa, developed and adopted a Legal Sector Charter as a Transformation Charter (“**the Transformation Charter**”) in terms of section 12 of B-BBEE Act. The Transformation Charter represented an historic milestone in the commitment towards the

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

<sup>3</sup> South African Broad-Based Black Economic Empowerment and the Provision of Legal Services in the Financial Services Sector, Johannesburg, 2018, protocol number WBS/BA1738718/952



transformation of the legal profession of the legal profession. It came about as a result of an extensive process of consultations which culminated in the legal profession undertaking the responsibility for the drafting of the Legal Sector Charter (“**the Legal Sector Charter**”), in consultation with the DOJ&CD. The Legal Sector Charter embodies the profession’s commitment to transformation and recognises that a strong, independent and representative profession is essential to ensure access to justice and to promote the Bill of Rights, as contained in the Constitution.

- 5.6 The Legal Sector Charter recognised that, whereas significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations and values underpinning the country’s constitutional democracy.
- 5.7 The LPC was established as a national statutory body to, together with its provincial councils, regulate the affairs of and exercise jurisdiction over all legal practitioners in South Africa, that is, attorneys, advocates and candidate legal practitioners.
- 5.8 The purpose of the LPA is to, *inter-alia*:
- (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 held...”*
  - (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;*
- 5.9 Section 5 (a) of the LPA provides that one of the objects of the LPC is to facilitate the realisation of a transformed and restructured legal profession.
- 5.10 Section 6(1) (b) (v) of the LPA further enjoins the Council to develop programmes to empower black legal practitioners as well as candidate legal practitioners.
- 5.11 The development of the LSC should be seen in this context as well as in the context of the legal profession as one of the cornerstones of a constitutional democracy.

## 6. BUSINESS CASE AND IMPERATIVES FOR THE LSC

- 6.1 There has been a lack of sufficient and/or quality legal instructions to black attorneys and advocates from the private sector, and organs of state and public entities. The marginalisation of black law firms and advocates manifests itself in the continuing award of major instructions in specialised areas of law and litigation to white-owned law firms or foreign-owned or associated law firms and white advocates. This condemns black law firms and advocates to fulfilling largely peripheral roles and to areas of law such as criminal and personal injury cases or being black economic empowerment partners rather than as leading partners in such large transactions and/or litigation matters.
- 6.2 Until now, law firms have used the generic scorecards contained in the Generic Codes to measure their compliance with the provisions of the B-BBEE Act and commitment to empowerment. Whilst the Generic Codes have proven to be useful in certain ways, there is a need for a sector specific code in the legal profession that recognises the specific unique features and characteristics of the industry. For example advocates cannot, because of the nature of their practice, be measured under ownership and management control.
- 6.3 It is important to ensure that the following outcomes and objectives of the LSC, are achieved:
- 6.3.1 to deal with and manage the legal sector's unique features and characteristics that require specific measurements and interventions;
- 6.3.2 to ensure that industry stakeholders commit to the implementation of the LSC;
- 6.3.3 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;
- 6.3.4 to implement more effective interventions in certain elements of the scorecard; and
- 6.3.5 to ensure that incentives for innovation and progressive implementation of the LSC in a unique manner are promoted, encouraged and protected.

- 6.4 It is important that in achieving the objectives of the LPA and the B-BBEE Act:
- 6.4.1 the entire legal sector in all its forms supports the vision of and commitment to a transformed, quality legal profession in compliance with the B-BBEE Act, which establishes a legislative framework for the promotion of B-BBEE and economic inclusiveness;
- 6.4.2 the LSC is aligned to the principles underpinning the NDP, which aims to, *inter alia*, eliminate poverty and reduce inequality at least by 2030;
- 6.4.3 the introduction of EAP targets which are aimed at addressing the unequal representation of racial sub-groups participating in the industry, based on regional and demographic representations, being Africans, Coloured and Indians (“ACI”);
- 6.4.4 the setting aside of minimum levels of procurement spend and the procurement of work from LSMs having regard to racial and gender demographics at a national level, with specific reference to LSMs that are at least 75% black owned or at least 51% black women owned;
- 6.4.5 the setting aside of minimum levels of allocations of work for LSMs that are, having regard to the racial and gender demographics at a national level, with specific reference to LSMs that are at least 75% black owned or 51% black women owned are affected; and
- 6.4.6 the promotion, enhancement and consolidation of *pro-bono* legal work, which is a unique feature of the legal profession that ensures that the poor, rural and disadvantaged individuals and/or communities, which as a result of past discrimination are primarily black, have access to quality legal services.
- 6.5 At all relevant and material times, the implementation of the LSC should be underpinned by the following objectives:
- 6.5.1 **ensuring that black women are equitably** represented in the management and ownership structures of legal practices;
- 6.5.2 **providing access to justice** and outlining the responsibilities and obligations of stakeholders in addressing those challenges;

- 6.5.3 improving the **availability of quality legal services** by ensuring the provision of continuing and sustained education and skills development;
- 6.5.4 enhancing, developing and empowering legal professionals, and in particular **designated categories**, in all fields of legal practice especially specialised areas of law;
- 6.5.5 addressing challenges of **entry into the legal profession**, with specific emphasis on challenges experienced by law students and trainees from designated categories;
- 6.5.6 ensuring the availability of **quality legal training and education** by ensuring the availability of continuing legal training and education; and providing quality in-service training and learnership opportunities;
- 6.5.7 implementing measures to address the provision and availability of **pro bono services and community-based legal services**, thus ensuring access to affordable legal services for all people in South Africa, particularly marginalized, poor and rural communities;
- 6.5.8 facilitating the **transformation of the legal services** sector so as to ensure that it is representative of the demographics of South Africa, ensuring that a body of well-trained and competent providers of legal services are developed to enable equitable appointments to be made to the judiciary;
- 6.5.9 adopting measures to promote the **equitable distribution of all areas of legal work effectively** and meaningfully, to eliminate barriers of entry and provide equal opportunities by empowering black legal practitioners especially persons from designated categories through ensuring equal participation in the economic opportunities within the legal sector;
- 6.5.10 ensuring and enhancing demographic **representativity in respect of ownership, management, control and** employment within legal practices;
- 6.5.11 creating conditions **conducive to ensuring that providers of legal services** are able to establish, manage and build sustainable practices; and
- 6.5.12 creating an **enabling environment to reflect the diversity of our society** and to ensure the promotion of equality and the prevention of discrimination.

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

- 7.1 The LPC facilitated the process of developing the LSC and provided the necessary resources and technical support to the process. This included the establishment of the steering committee, consisting of representatives of stakeholders in the legal sector and the co-ordination of the consultations with stakeholders in the legal profession and other affected and interested parties and the drafting of the LSC.
- 7.2 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 Generic Codes, and is necessitated by the prevailing conditions and the need to foster equitable representation from all races.
- 7.3 All stakeholders within the legal profession represented on the Steering Committee committed their support for, and undertook to be bound by, the applicable provisions of the LSC and compliance with the LSC scorecard.

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

- 8.1 The LSC is premised on the recognition that a B-BBEE measurement framework in the legal sector is necessary to address transformation as a whole, B-BBEE in general, and the promotion of black persons as well as the need for a significant increase in the fair and equitable procurement of specialised areas of law by black practitioners from both the private and public sectors.
- 8.2 The LSC therefore seeks to ensure that the continuing adverse consequences of past discriminatory practices for black practitioners are addressed by providing for certain measures, including the following:
- 8.2.1 seeking to achieve a substantial, meaningful and accelerated change in the racial and gender composition of ownership, control and management of legal practices in the legal services sector;
- 8.2.2 promoting employment patterns in the sector that adhere to the principles of non-racialism and non-sexism by addressing the underrepresentation of black practitioners in many LSMs;
- 8.2.3 addressing the shortage and lack of relevant skills and increasing the skills pipeline in order to accelerate the advancement of black legal practitioners, black women legal practitioners and practitioners with disabilities, including

legal internships, learnerships, employment of candidate attorneys and pupils with specific reference to legal technical and management skills;

- 8.2.4 increasing the procurement of the legal services from the private and public sectors by LSMs that are at least 75% black owned and/or 51% black women owned;
- 8.2.5 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;
- 8.2.6 contributing to the creation of sustainable LSMs that are majority or wholly owned by black legal professionals through effective enterprise and supplier development initiatives;
- 8.2.7 increasing preferential procurement spend on LSMs that contribute to local employment creation through the investment in various forms of community projects that contribute to employment opportunities;
- 8.2.8 by increasing on-going qualitative and quantitative methods for monitoring and evaluating the progress towards realising the goals of this LSC and B-BBEE in general and thereby contributing to measures of eradicating fronting and other mechanisms for circumventing such goals;
- 8.2.9 promoting access to quality legal services, through *pro bono* legal services to rural and under resourced communities and individuals; and
- 8.2.10 ensuring reporting to the Charter Council in order to monitor progress of LSMs toward implementing the provisions of B-BBEE as reflected in this LSC.

## 9. SCOPE OF APPLICATION

- 9.1 In terms of section 10 of the B-BBEE Act every organ of state and public entity must apply any relevant code of good practice issued under that Act. In terms paragraph 4 of Statement 003 a sector code enjoys equal status with that of any other code. In terms of paragraph 3 of Statement 000, any enterprise that undertakes any business with any organ of state or public entity and any other enterprise which undertakes any business with such enterprise and which seeks to establish its own B-BBEE compliance are measurable under the relevant Codes of Good Practice, including this LSC.

- 9.2 This LSC shall accordingly be applicable to and binding on all organs of state and public entities to the extent set out in paragraph 9.4 herein as well as on the following private entities and advocates who elect to be measured in terms of and benefit from the provisions of the B-BBEE Act and B-BBEE policies and therefore to establish their compliance with this LSC:
- 9.2.1 **attorneys**  
except in the case of ELEs in defined categories, all law firms registered with the LPC whether they are sole practitioners, partnerships, or incorporated legal entities; and
- 9.2.2 **advocates**  
all advocates who are enrolled and registered on the roll of practicing advocates with the LPC and practicing as such.
- 9.3 All references in this LSC to LSMEs shall be to those which have elected to be measured in terms of and benefit from the provisions of the B-BBEE Act and B-BBEE policies and practices.
- 9.4 The following organs of state and public entities shall be measured under this LSC:
- 9.4.1 office of the state attorney and all organs of state and public entities whose primary focus is the procurement of legal services on behalf of the state from law firms and advocates;
- 9.4.2 all organs of state other than those referred to in paragraph 9.4.1 of this LSC which procure legal services from law firms and advocates; and
- 9.4.3 Legal Aid South Africa.
- 9.5 Notwithstanding anything to the contrary contained herein, all private sector entities that provide legal services to the public or procure legal services and notwithstanding that they are measured in terms of a different industry sector code, may nevertheless elect to submit their reports to the Charter Council reflecting the extent to which their procurement of legal services comply with this LSC.
- 9.6 It is specifically recorded herein that this LSC shall not apply and be binding on:

- 9.6.1 private sector entities that are measured in terms of a different industry sector code; and
- 9.6.2 save for the provisions of paragraph 9.5, legal practitioners who are not enrolled and registered as practising legal practitioners with the LPC.

## 10. RESPONSIBILITY FOR MONITORING THE IMPLEMENTATION OF THE LSC

- 10.1 Subsequent to the Minister gazetting the LSC, the responsibility to monitor compliance with it and to oversee its implementation shall reside with the Charter Council.
- 10.2 The Charter Council shall be established by the Minister of Justice after consultation with stakeholders in the legal profession.
- 10.3 The Charter Council shall consist of stakeholders in the legal profession and shall be constituted in terms of the relevant provisions of the B-BBEE Act.
- 10.4 The Charter Council shall have executive authority and shall be supported by administrative staff.
- 10.5 The establishment, operations and/or activities of the Charter Council shall be jointly funded by the LSTF, DOJ&CD and the LPC, in proportions and manner to be agreed to by such parties from time to time or as may be regulated by the B-BBEE Act.
- 10.6 On an ongoing basis, the Charter Council shall:
  - 10.6.1 monitor compliance with the LSC;
  - 10.6.2 subject to guidance and directives from the DTIC, provide clarification, support and assistance in the interpretation and implementation of the LSC and on B-BBEE insofar as it relates to the legal sector;
  - 10.6.3 liaise with all government departments, agencies and other relevant stakeholders for the purpose of facilitating the implementation of the LSC;



- 10.6.4 initiate and supervise revisions to the LSC; and
- 10.6.5 publish annual reports reviewing progress in the transformation of the legal profession and submit such reports to all relevant stakeholders including the Minister, the Minister of Justice, and the B-BBEE Commission.
- 10.7 The following provisions shall apply to the measurement of all LSMEs in terms of this LSC:
- 10.7.1 an ELE is only required to obtain a sworn affidavit confirming the following:
- 10.7.1.1 annual total revenue of R3,000,000 (three million Rand) or less; and
- 10.7.1.2 level of black ownership.
- 10.7.1.3 any misrepresentation in terms of paragraph 10.6.1 above constitutes a criminal offence as set out in the B-BBEE Act.
- 10.7.2 Any B-BBEE verification certificate submitted by LSMEs 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;
- 10.7.3 the information relied upon for providing the B-BBEE verification certificates and reports must be accurate, correct and verifiable by suitable evidence;
- 10.7.4 B-BBEE verification certificates and reports are valid for a period of 12 (twelve) months from the date of issue;
- 10.7.5 the Charter Council shall 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 DTIC and the DOJ&CD;
- 10.7.6 no contractual obligations between the B-BBEE verification agencies and the LSMEs shall preclude the B-BBEE verification agencies from providing such information and data as the Charter Council may require from time to time for measurement purposes; and

- 10.7.7 the Charter Council must, in accordance with the provisions of the B-BBEE Act and established working protocols that may be finalised with the B-BBEE Commission, report all suspected incidents of fronting and fraudulent scorecards to the office of the B-BBEE Commission to enable investigation of any fronting and circumvention practices within the legal services profession.
- 10.8 The Charter Council shall ensure that:
- 10.8.1 the LSC is effectively complied within both the public and private sector; and
- 10.8.2 the relevant public sector clients and procurers of legal services achieve targeted procurement as set out in this LSC.
- 10.9 Notwithstanding anything to the contrary contained herein, the role of the Charter Council shall not override that of the B-BBEE Commission and in the event of any ambiguities in interpretation, the decisions and/or directives of the B-BBEE Commission shall be final and binding. The obligation to file reports to the Charter Council shall be in addition to the obligation to file reports with the B-BBEE Commission not in substitution.

## 11. PRIORITY ELEMENTS AND SUB-MINIMUM

- 11.1 The priority elements are as follows:
- 11.1.1 **ownership**  
the sub-minimum requirement for ownership is 40% of net value points;
- 11.1.2 **skills development**  
the sub-minimum requirement for skills development is 40% of the total weighting points for skills development; and
- 11.1.3 **enterprise and supplier development**  
the sub-minimum requirement for enterprise and supplier development is 40% for each of the enterprise and supplier development elements.

- 11.2 enterprise and supplier development**  
the sub-minimum requirement for enterprise and supplier development is 40% for each of the enterprise and supplier development elements.
- 12. KEY MEASUREMENT PRINCIPLES**
- 12.1** The fundamental principle for measuring B-BBEE compliance by any LSME is that substance takes precedence over legal form.
- 12.2** 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.
- 12.3** The basis for measuring B-BBEE initiatives under the LSC shall:
- 12.3.1** for the ownership and management control elements, be the B-BBEE compliance of the LSME at the date of measurement (as defined); and
- 12.3.2** for skills development, ESD and SED elements, be B-BBEE compliance of the LSME throughout the measured period.
- 12.4** Initiatives which split, separate or divide an LSME with the intent of ensuring eligibility as an LSME, a QSE or a start-up enterprise shall constitute an offence and shall be dealt with in accordance with the provisions of the B-BBEE Act.
- 12.5** 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 shall not receive any recognition for that initiative.
- 12.6** Throughout the interpretation of the LSC, effect shall be given to the following underlying principles:
- 12.6.1** in the event that there is uncertainty, or conflict, any reasonable interpretation consistent with the objectives of the B-BBEE Act must take precedence; and

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

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

13.1 LSMEs are only measurable in respect of their South African operations and not their global operations and partnerships. This applies to the measurement of all the elements and indicators of the scorecard. The LSC is a relevant, binding and applicable sector code for all activities listed in section 10 of the B-BBEE Act. This means that all LSMEs are, unless exempted, obliged to be measured in terms of this LSC.

13.2 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 are, unless exempted, obliged to be measured in terms of this LSC.

13.3 The requirement to submit data to the Department of Labour under the Employment Equity Act 55 of 1998 is only applicable to 'designated employers' who employ 50 or more employees. However, for the purpose of measurement in terms of this LSC both large enterprises and QSEs that employ less than 50 employees are required to submit sufficient evidence for verification purposes.

### 14. ELIGIBILITY TO QUALIFY AS AN ELE

14.1 For the purposes of measurement in terms of the LSC, an LSME shall qualify as an ELE based on the criteria set out below, for both attorneys and advocates, which are based on the annual revenue and the number of years after being admitted as attorneys and advocates, respectively.

14.2 Any LSME with a total annual revenue set out in the relevant categories in this LSC for attorneys and advocates respectively, shall comply with the elements of the LSC scorecard.

**The following tables set out the exempted legal entities;**

<b>LSC 000 - EXEMPTED LEGAL ENTITIES</b>							
<b>ELEs – Attorneys</b>							
Applicable to law firms registered with the LPC either as sole practitioners, partnerships and/or incorporated law firms							
Monetary Annual Threshold	Number of Partners / Directors & type of Firm	Number of years in existence as a law firm	Indicator	B-BBEE Level Contributor Status	Level of Black Ownership	Suitable Evidence	
For attorneys generating R0 up to R3 million annual revenue	1 – 3	Less than 3 years	Fully exempted from the LSC	B-BBEE Level 1	100% Black or 51% Black Women owned	Confirmatory Affidavit	
			Partially exempted <i>Can choose any one of the following</i>	Enhanced recognition for other categories of ELEs	B-BBEE Level 4	Only if the firm is owned by less than 51% Black persons	B-BBEE Certificate where enhancement is elected otherwise confirmatory affidavit
					B-BBEE Level 5	if the firm is owned by less than 35% black persons	B-BBEE Certificate where enhancement is elected otherwise confirmatory affidavit
			<ul style="list-style-type: none"> <li>LSTF for this purpose.</li> <li>LSC 300 contribution</li> <li>LSC 500 contribution</li> </ul>	B-BBEE Level 5	Is a start-up and new entrant as	Independent confirmation of status	

				defined in paragraph 15 of this LSC
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- *The exempted legal entities scorecard applies to at least 84.6% of the total number of legal practices in South Africa.*
- *Enhanced Recognition above means that an otherwise white or majority white owned ELE that is either a B-BBEE level 4 or 5 may enhance itself one level up if they implement at least one of the three indicators, namely;*
  - 1) *contribution to LSTF;*
  - 2) *training in specialized areas of law for black legal practitioners; or*
  - 3) *any contribution towards either the enterprise or supplier development element.*
- *Notwithstanding anything to the contrary contained herein, it is recorded that any law firm with 3 or less partners/directors with less than 3 years in existence but which has exceeded the monetary threshold, shall be excluded from this exemption and shall be measured in accordance to the applicable measurement, depending on monetary threshold achieved.*

**LSC 001 - EXEMPTED LEGAL ENTITIES**

**ELE- Advocates**

All advocates who have an annual revenue of R0 –R3 million and have practiced for less than 3 years are exempted from complying with the LSC. An advocate who is so exempted and is black, qualifies for elevation to Level 1 Contributor and an advocate who is so exempted and is white, qualifies for elevation to Level 4 Contributor.

Monetary Threshold	Practicing for their own account as such	Number of years in practice	Applicable scorecard	This therefore means (B-BBEE Contributor Status)	Suitable Evidence

Fully Exempted			B-BBEE Level 1	Only if the advocate is black	Confirmatory Affidavit
For advocates with an annual revenue of <b>R 0 - R 3 million</b>	Junior Advocates	Less than 3 years	Fully exempted from the LSC	Only if the advocate is white	Confirmatory Affidavit
		Fully exempted from the LSC			Confirmatory Affidavit

- *Notwithstanding anything to the contrary contained herein, it is recorded that any advocate with less than 3 years in practice but who has exceeded the monetary threshold of R3 million, shall be excluded from this exemption and shall be measured in accordance to the applicable measurement, depending on monetary threshold achieved.*

## 15. START - UP LSMEs

- 15.1 For the purposes of this LSC, a start-up LSME shall constitute a new entrant and shall, for purposes of measurement, constitute a recently formed, constituted, established or incorporated law firm or an advocate who has been in practice for less than 3 years and generates not more than R3 million in annual revenue.
- 15.2 However a start-up LSME does not include any newly formed, constituted, established or incorporated LSME which is merely a continuation or a breakaway of a pre-existing LSME or a newly established or incorporated law firm which is constituted established or incorporated by legal practitioners who have been in practice for a period of more than 3 (three) years and/or turns over more than R3 million per annum.
- 15.3 A start-up LSME, unless it is black owned or a black advocate, shall qualify as an automatic B-BBEE level 5 LSME, in accordance with the provisions of this LSC. Consequently, a start-up LSME shall qualify to be measured as an ELE, in terms of this LSC. In order to qualify as a Start-up LSME, the LSME must provide an independent confirmation of its status.
- 15.4 Despite the provisions of this paragraph, a start-up LSME shall be required to submit a QSE scorecard B-BBEE verification certificate when tendering for legal services with a value higher than R10 million ( ten million Rand) but less than R50

million (fifty million Rand). In the event that the value of the legal services exceeds R50 million, then in that event, such L-SME shall be deemed to be a large enterprise.

## 16. B-BBEE RECOGNITION LEVELS

### 16.1 FOR ATTORNEYS IN THE LSC

B-BBEE Status	B-BBEE Qualification	B-BBEE Recognition Level
Level One (1)	Has reached the minimum of 100 weighting points	135%
Level Two (2)	Has achieved the minimum of 95 but no more than 100 weighting points	125%
Level Three (3)	Has achieved the minimum of 90 but no more than 95 weighting points	110%
Level Four (4)	Has achieved the minimum of 80 but no more than 90 weighting points	100%
Level Five (5)	Has achieved the minimum of 75 but no more than 80 weighting points	80%
Level Six (6)	Has achieved the minimum of 70 but no more than 75 weighting points	60%
Level Seven (7)	Has achieved the minimum of 55 but no more than 70 weighting points	50%



Level Eight (8)	Has achieved the minimum of 40 but no more than 55 weighting points	10%
Non-Compliant Contributor	Has achieved less than 40 points in the measurement scorecard	0%

## 16.2 FOR ADVOCATES IN THE LSC

<b>B-BBEE Status</b>	<b>B-BBEE Qualification</b>	<b>B-BBEE Recognition Level</b>
Level One (1)	Has reached the minimum of 50 weighting points	135%
Level Two (2)	Has achieved the minimum of 45 but no more than 100 weighting points	125%
Level Three (3)	Has achieved the minimum of 40 but no more than 95 weighting points	110%
Level Four (4)	Has achieved the minimum of 35 but no more than 90 weighting points	100%
Level Five (5)	Has achieved the minimum of 30 but no more than 80 weighting points	80%
Level Six (6)	Has achieved the minimum of 25 but no more than 75 weighting points	60%

Level Seven (7)	Has achieved the minimum of 20 but no more than 70 weighting points	50%
Level Eight (8)	Has achieved the minimum of 15 but no more than 55 weighting points	10%
Non-Compliant Contributor	Has achieved less than 10 points in the measurement scorecard	0%

### 17. THE SUMMARY OF THE SCORECARDS

In this LSC, the following is the summary of the scorecards assigned to each element of the LSC:

Code Series	Relevant Scorecard	Categories	Weighting Points
LSC 000	ELE	Attorneys	N/A
		Advocates	N/A
LSC 100	Ownership	QSE	20
LSC 001		Large	20
LSC 200	Management Control	QSE	21
LSC 201		Large	16

LSC 300	Skills Development	Attorneys	Above <b>R3 million</b> but not more than <b>R15 million</b>	20
		Advocates	Above <b>R3 million</b> but not more than <b>R15 million</b>	44
		Attorneys	Above R15 million	20
		Advocates	Above R15 million	44
LSC 400	PSED	QSE	Above <b>R3 million</b> but not more than <b>R15 million</b>	40
		Large	Above R15 million	40
LSC 500	SED	Attorneys	Above <b>R3 million</b> but not more than <b>R15 million</b>	6
		Advocates	Above <b>R3 million</b> but not more than <b>R15 million</b>	6
		Attorneys	Above R15 million	6
		Advocates	Above R15 million	6
LSC 401	Specialized Scorecard	For organs of state and public entities		46

**18. THE OWNERSHIP SCORECARD**

**Key measurement principles relating to ownership**

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

**LSC 100 - OWNERSHIP SCORECARD FOR QSEs**

<b>Attorneys ownership scorecard – Qualifying Small Entities (QSEs)</b>			
Applicable to LSMEs registered with the LPC as partnerships and incorporated LSMEs			
<b>Monetary Threshold</b>	<b>Number of Partners /</b>	<b>B-BBEE element</b>	<b>Measurement</b>
			<b>Compliance Targets</b> <i>Weighting Points (WP)</i>

Directors & type of Firm		Measurement Indicators	WP	Targets (T)		
				Year 1	Year 2	Year 3
For LSMEs generating over <b>R3 million</b> but not more than <b>R15 million</b>	Ownership	Voting Rights	7	30%	35% %	40%
		Exercisable voting rights held by black legal practitioners	4	20%	25%	35%
		Economic Interest	4	30%	35%	40%
	Bonus Points	Economic Interest held by black women legal practitioners	3	20%	25%	35%
		Exercisable voting rights held by black legal practitioners with disabilities	1	0.5%	0.6%	0.7%
Total Weighting Points			<b>20</b>			

- For the purposes of the above scorecard, an LSME with less than 4 directors/partners, but which exceeds the monetary threshold of R3 million, shall be deemed to be a QSE.
- The QSE ownership scorecard applies to LSMEs made up of 4 -15 partners/directors accounting for at least 14.6% of the total number of legal practices in South Africa.

**LSC 001- OWNERSHIP SCORECARD FOR LARGE ENTITIES**

**Attorneys Ownership Scorecard – Large LSME**

Applicable to LMSE registered with the LPC as partnerships and incorporated LSMEs

Monetary Threshold	Number of Partners / Directors & type of Firm	B-BBEE element	Measurement	WP	Compliance Targets			
					Weighting Points (WP) Targets (T)			
					Year 1	Year 2	Year 3	
For LSMEs generating more than <b>R15 million</b> per annum	More than 15 partners / directors	Ownership	Voting Rights	Exercisable voting rights held by black legal practitioners	8	40%	45%	50%
				Exercisable voting rights held by black women legal practitioners	3	25%	30%	35%
		Economic Interest	Economic Interest held by black legal Practitioners	Economic Interest held by black legal Practitioners	4	40%	45%	50%
				Economic Interest held by black women legal practitioners	3	25%	30%	35%

			Bonus Points	Exercisable voting rights held by black legal practitioners with disabilities	1	0.5%	0.6%	0.7%
			Economic interest held by black legal practitioners with disabilities		1	0.5%	0.6%	0.7%
			<b>Total Weighting Points</b>		<b>20</b>			

- For the purposes of the above scorecard, an LSME with less than 15 directors/partners, but exceeds the monetary threshold of R15 million shall be deemed to be a large enterprise LSME.
- The ownership scorecard for large enterprises applies to approximately 97 LSMEs made up of more than 15 partners accounting for approximately 0.6% of the total number of legal practitioners in South Africa.

## 19. MANAGEMENT CONTROL SCORECARD

- 19.1 In view of the unique features of the legal sector and profession, the measurement of LSMEs shall not take the usual form of categories of management as found in other commercial entities and/or sectors or as they may apply in the generic scorecard.
- 19.2 The following table represents the criteria used for deriving a scorecard for the management control element under this LSC in respect of practicing attorneys (W represents the weighting points, while T represents targets).

### LSC 200 - MANAGEMENT CONTROL STATEMENT – QSE

<b>Attorneys</b> Applicable to LSMEs made up of attorneys whether as partnerships or incorporated LSMEs				
Monetary Threshold	Number of Partners / Directors	Applicable Sub-element	Measurement Indicator	Compliance targets Weighting Points (WP) Targets (T)

For LSMES generating over <b>R3 million</b> but not more than <b>R15 million</b> per annum	between 4 - 15 partners / directors	<b>Board Participation</b>	Measures the percentage of equity participation of black legal practitioners as a percentage of board members	WP	T			
					Year 1	Year 2	Year 3 >>	
					4	40%	45%	50%
					2	25%	30%	35%
<b>Executive Management</b>	Measures the percentage of equity participation of black legal practitioners as a percentage of top management	3	30%	35%	40%			
		2	20%	25%	30%			
		2	40%	45%	50%			
<b>Senior Management (HoDs or PGL)</b>	Measures the percentage of black legal practitioners as a total number of members of senior management/heads of departments within the LSME.	2	20%	25%	30%			
		2	20%	25%	30%			



			senior management/ heads of functions within the LSME.	1 Black legal practitioners as a total of senior associates in the LSME Persons from designated categories as a total of senior associates in the LSME	20%	22%	27%	
Middle Management	Senior Associates /Senior Professional Assistants	1 Black legal practitioners as a total of associates/pr ofessional assistants in the LSME Persons from designated categories who are associates or professional assistants in the LSME	20%	22%	27%			
Junior Management	Associates/Pr ofessional Assistants	1 Black legal practitioners as a total of associates/pr ofessional assistants in the LSME Persons from designated categories who are associates or professional assistants in the LSME	5%	7%	09%			

		<b>Support and consulting management role of people who are not legal practitioners</b>	Measures the appointment of black people in support roles within the LSME	1	06%	09%	13%
			Measures the appointment of persons from black designated categories in support roles within the LSME	1	03%	06%	10%
<b>Total Weighting Points</b>				<b>21</b>			

**LSC 201 - MANAGEMENT CONTROL STATEMENT – Large LSME**

**Attorneys**

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

Monetary Threshold	Number of Partners / Directors	Applicable Sub-element	Measurement Indicator	Compliance targets Weighting Points (WP) Targets (T)			
				W	P	T	T
				Year 1	Year 2	Year 3	>>
<b>Above R15 million</b>	More than 15 partners / directors	<b>Board participation</b>	Measures the percentage of equity participation of black legal practitioners as a percentage of board members	3	50%	55%	60%
			Measures the percentage of equity participation of black women legal practitioners as a percentage of board members	2	35%	40%	45%
		<b>Executive Management</b>	Measures the percentage of black legal practitioners as a total number of members of executive management within the LSME.	1	35%	40%	45%

		Measures the percentage of persons from designated categories as a total number of members of executive management within the LSME.	1	10%	13%	16%
<b>Heads of Departments (HoDs) (senior management)</b>		Measures the number of black legal practitioners as a percentage of HoDs and PGLs in the LSME.	1	20%	25%	30%
		Measures the number of persons drawn from black designated categories of legal practitioners as a percentage HODs and/or PGLs appointed in the LSME.	1	12%	15%	18%
	<b>Middle Management</b>		Black legal practitioners as a total of seniors associates in the LSME	1	25%	30%
		Black legal practitioners from designated categories as a total of senior associates in the LSME	1	12%	15%	18%
<b>Junior Management</b>		Black legal practitioners as a total of associates or professional assistants in the LSME	1	25%	30%	35%
		Black legal practitioners from designated categories who are associates in the LSME	1	12%	15%	18%
<b>Support and Other Consulting</b>		Measures the appointment of black people in the support roles within the LSME	1	06%	09%	13%

			Measures the appointment of persons from designated categories in the support roles within the LSME	1	03%	06%	10%
<b>Total Weighting Points</b>				<b>16</b>			

**20. KEY MEASUREMENT PRINCIPLES RELATING TO MANAGEMENT CONTROL**

- 20.1 An LSME shall only receive points for its achievement towards the targets for participation of black legal practitioners and black women legal practitioners at board, senior management, middle management, senior management and junior management.
- 20.2 The compliance targets for executive senior, middle and junior management in the management control scorecard are based on the national and regional demographic representation of black people as defined in the Regulations of the Employment Equity Act no.55 of 1998 as amended from time to time.
- 20.3 In determining an LSME score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black in accordance with the Employment Equity Act, being African, Coloured and Indian on an equitable demographic representation and weighted accordingly.
- 20.4 An LSME measured in terms of the management control must provide the following documentary information for the purpose of measuring management control:
  - 20.4.1 employment agreements and/or letters of engagement; and
  - 20.4.2 any other acceptable evidence that is deemed suitable to support the existence of a management level role in the LSME.

## **21. REMUNERATION PARITY AND JUSTICE**

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

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

## **22. MEASUREMENT OF THE MANAGEMENT CONTROL CRITERIA**

The formulae applicable in measuring the principles of the management control element shall be aligned to the Generic Codes.

## **23. SKILLS DEVELOPMENT SCORECARD**

### **The key measurement principles relating to skills development**

23.1 The criteria for recognition of skills development spend by legal practitioners under this LSC must be underpinned by unique, enhancing and value-adding attributes for the targeted beneficiaries. This means that over and above the skills development spend that merely facilitates entrance into the profession, such as bursaries, stipends and mandatory training programmes including in relation to candidate attorneys and pupils, all other training interventions that enhance the ability of candidates/targeted beneficiaries, subject to the approval by the Charter Council, should be recognised.

### **Statutory and mandatory training intervention**

23.2 The statutory and mandatory training initiatives which shall not be recognised shall include, but not be limited to the following:

23.2.1 the completion and submission of workplace skills plan, an annual training report;

- 23.2.2 the report that needs to be submitted to the relevant Sector Education and Training Authority; and
  - 23.3 the implementation of priority skills programmes generally and more specifically, for black people.
- Other interventions**
- 23.4 In line with the YES initiatives, gazetted by the Minister in terms of Notice 640 of 2018, LSMs must be encouraged to employ young people (as defined in the Youth Services Plan) in particular in professional capacities.
  - 23.5 The Charter Council may, from time to time, announce specific sector training and capacity building initiatives to enhance the above initiatives.
  - 23.6 The 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.
  - 23.7 The following tables set out the targets under the skill development element:

**LSC 300 - SKILLS DEVELOPMENT ELEMENT FOR ATTORNEYS**

Measurement indicator	Monetary Threshold	Targets and Weighting Points (WP)			
		W	Compliance Target		
Skills development expenditure /spend Any reference to % target means the % of the leviable amount spent by the LSME		P	Year 1	Year 2	Year 3 >
<b>Skills development expenditure/spend on initiatives undertaken by the LSMs in pursuing training of a percentage (%) of black candidate attorneys within the LSME as part of the leviable amount.</b>					
spend incurred on recognizable programmes on the percentage of black candidate attorneys as a	Above R3 million but not more than R15 million	3	6.5%	7.0%	7.5%
	Above R15 million	2	7.5%	8.0%	8.5%

total number in the LSME in a particular year.	spend incurred on recognizable training programmes (essential) on the percentage of persons from designated categories as a total number in the LSME in a particular year.	3	6.5%	7.0%	7.5%
	Above R3 million but not more than R15 million	3	6.5%	7.0%	7.5%
<b>Recognition of skills development expenditure on black candidate attorneys and junior black legal practitioners from designated categories as a percentage of the measured entity's annual training budget</b>					
Points allocated for the recruitment or training initiatives directed at black candidate attorneys as a total number in the LSME	Above R3 million but not more than R15 million	3	6.0%	6.5%	7.0%
	Above R15 million	3	6.0%	6.5%	7.0%
Points allocated for recruitment or training initiatives directed at black candidate attorneys drawn from black designated categories	Above R3 million but not more than R15 million	2	5.5%	6.0%	6.5%
	Above R15 million	3	6.5%	7.0%	7.5%
<b>Recognition for specialised areas of the law as defined in this LSC</b>					
Recognition for expenditure on training in specialised areas of law for candidate black legal practitioners and post-qualification training for black legal practitioners.	Above R3 million but not more than R15 million	3	2.0%	2.5%	3.0%
	Above R15 million	5	2.0%	2.5%	3.0%

<b>Registration of Learnerships and continuous legal training</b>						
Number of black trainees and/or candidate attorneys registered by an LSME in any of the following programmes: <ul style="list-style-type: none"> <li>SASSETA through the learnership programmes for a period of no more than 12 months.</li> <li>At any legal training institute for pursuing compulsory training for qualification as attorneys.</li> </ul>	Above <b>R3 million</b> but not more than <b>R15 million</b>	2	3.0%	3.5%	4.0%	
	Above <b>R15 million</b>	2	2.5%	3.0%	3.5%	
<b>Recognition of enhanced levels training for non-legal and support members of staff</b>						
Recognition of training of persons from designated categories in areas that enhances their functionality to provide efficient support in a law firm (such as debt collection, forensic and other areas of legal functionality)	Above <b>R3 million</b> but not more than <b>R15 million</b>	2	1.0%	2.0%	3.0%	
	Above <b>R15 million</b>	2	2.0%	2.5%	3.0%	
<b>Mentorship and creation of employment opportunities</b>						
Implementation of an approved and verifiable mentorship programme implemented by an attorney where beneficiaries are in the black designated categories.	By all categories of the LSMs.	2	2.0%	4%	5.5%	



	R3 - R15 million	20			
	Above R15 million	20			

**LSC 301 - SKILLS DEVELOPMENT ELEMENT FOR ADVOCATES - QSES**

Applicable Category	Measurement Indicator	Targets and Weighting Points			
		W	Year 1	Year 2	Year 3 >
<b>Recognition of skills development expenditure on initiatives undertaken by advocates in the training of black junior advocates of not more 5 years experience</b>					
Training	Expenditure incurred on recognisable training and tutoring of black junior advocates in a one year	10	40 hours per annum spent on participation in training programmes established by an association of advocates accredited by the LPC (an accredited associatio)	45 hours per annum	50 hours per annum
		Generating above R 3 million but not more than R 15 million	40 hours per year spent on participation in training programmes	45 hours per annum	50 hours per annum
	Generating more than R 15 million per annum	10	40 hours per year spent on participation in training programmes	45 hours per annum	50 hours per annum

					established by an accredited association			
	Spent incurred on recognisable training and tutoring of black junior advocates from <b>designated categories</b> in a one year	Generating above <b>R 3 million</b> but not more than <b>R 15 million</b>	8	A contribution to the LSTF of not less than R20 000 per annum	A contribution to the LSTF of not less than R30 000 per annum	A contribution to the LSTF of not less than R40 000 per annum		
	Generating more than <b>R 15 million</b> per annum	8	contribution to the LSTF of not less than R30 000 per annum	A contribution to the LSTF of not less than R40 000 per annum	A contribution to the LSTF of not less than R50 000 per annum			
<b>Recognition of skills development expenditure/spend on mentorship programmes for black junior advocates of not more 5 years experience</b>								
Mentorship	Recognition of Advocates spend in each year in the mentorship programme in mentoring junior black advocates who have no more than <b>5 years'</b> experience.	Generating above <b>R 3 million</b> but not more than <b>R 15 million</b>	8	50 hours per annum spent on mentoring programmes	50 hours per annum spent on mentoring programmes	50 hours per annum spent on mentoring programmes		
	Generating more than <b>R 15 million</b> per annum	8	50 hours per annum spent on mentoring programmes	50 hours per annum spent on mentoring programmes	50 hours per annum spent on mentoring programmes			
Contribution to the Legal Sector	Monetary contribution into the LSTF	Generating above <b>R 3 million</b> but not	6	R20 000 per annum	R30 0000 per annum	R40 000 per annum		

Transformation Fund (LSTF)	more than <b>R 15 million</b>	6	R50 000 per annum	R 60 000 per annum	R70 000 per annum
	Monetary contribution into the LSTF	Generating more than <b>R 15 million</b> per annum	Participation in at least 2 lectures or training sessions per year supervised by an accredited association	At least 3 lectures or training sessions per annum	At least 3 lectures or training sessions per annum
<b>Recognition of advocacy training, including training in specialised areas of the law</b>					
Training in pursuit of specialized legal skills and services	Initiatives established by an accredited association to train black junior advocates in specialised areas of the law, [with special emphasis on the training of female black junior advocates and advocates from designated categories]	Generating above <b>R 3million</b> but not more than <b>R 15 million</b>	7	At least 2 lectures or training sessions per year supervised by an accredited association	At least 3 lectures or training sessions per annum
	Initiatives to ensure the training in specialized areas of the law of black junior with special emphasis	Generating above <b>R 3 million</b> but not more than <b>R 15 million</b>	5	At least 2 black junior advocates,	at least 2 black junior advocates

	on Black junior and "advocates from designated categories	Generating more than R 15 million per annum	5	at least 2 black junior advocates	at least 2 black junior advocates	at least 2 black junior advocates
	<b>Total number of points</b>	<b>R 3 – R 15 million</b>	<b>44</b>			
		<b>R15 million &amp; above</b>	<b>44</b>			

**24. SUB-MINIMUM AND DISCOUNTING PRINCIPLE**

- 24.1 In order to have complied with this element, an LME must have achieved a minimum of 40% (forty percent) of the total weighting points set out in the skills development scorecard.
- 24.2 non-compliance with the threshold targets shall result in the overall achieved B-BBEE status level being discounted in accordance with the above.

**25. GENERAL PRINCIPLES**

- 25.1 The general principles underpinning the skills development element in the LSC are that it must:
  - 25.1.1 contribute to the achievement of the country's economic growth and social development goals that shall promote the creation of decent work and sustainable livelihoods;
  - 25.1.2 promote the development of the skills base of black legal practitioners in critical and specialised areas of law within the legal profession; and

- 25.1.3 strengthen the skills and human resource base by encouraging the support of skills development initiatives with an emphasis on skills development and career pathing for both legal practitioners and non-legal support staff in order to support employment creation.
- 25.2 Recognisable skills development expenditure includes any legitimate training expenses, as may be recognised by the Charter Council as such, incurred for any learning programme offered by an LSME to black people.
- 25.3 The legitimate training expenses, shall include but not be limited to the following:
- 25.4 costs of training materials
- 25.4.1 costs of trainers;
- 25.4.2 costs of training facilities including costs of catering;
- 25.4.3 course fees;
- 25.4.4 accommodation and travel; and
- 25.4.5 administration costs such as the organization of training including, where appropriate, the cost of the LSME of employing a skills development facilitator or a training manager.

## 26. MEASUREMENT OF SKILLS DEVELOPMENT INDICATORS

The formulae and example that explains the method of measurement of the criteria in the skills development scorecard shall be aligned to the formulae in the Generic Codes.

## 27. PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT SCORECARD

- 27.1 As a general principle, section 217(1) of the Constitution provides that:

*“when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”*,

to ensure that there is an equitable distribution of access to procurement.

- 27.2 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”*.
- 27.3 Skewed procurement from both public and private sector which prejudices black legal practitioners has been a cause for concern, which has been one of the reasons for the development of this LSC.
- 27.4 Having regard to the content of paragraphs 27.1 and 27.2 above, the LSC must provide for a transparent measurement or mechanism that shall 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 legal services from black legal practitioners, in line with the provisions of section 217 (2) of the Constitution.
- 27.5 There are 3 (three) categories, within the enterprise and supplier development element, namely, preferential procurement, supplier and enterprise development. This statement therefore seeks to specify the measurement for preferential procurement, supplier and enterprise development and/or programmes that shall benefit all black qualifying legal practitioners in the legal profession.
- 27.6 It shall further outline the key measurement principles applicable in calculating preferential procurement and enterprise and/or supplier development spend.
- 27.7 In addition, this LSC:

- 27.7.1 defines the principles applicable when calculating B-BBEE procurement spend and supplier/enterprise development spend; and
- 27.7.2 indicate the formulae for calculating the individual criteria specified in the preferential procurement and supplier development scorecard
- 27.8. The table set out below represents the criteria for deriving a score for preferential procurement, supplier development and enterprise development and/or programmes for all designated and qualifying legal practitioners.

**LSC 400 - PREFERENTIAL PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT (PSED ATTORNEYS**

Measurement Category	Indicator	monetary thresholds	Weighting Points (WP) and Compliance Targets (T)			
			W	Year 1	Year 2	Year 3
<b>Preferential Procurement</b>						
Procurement of legal services and briefing of advocates by LSMs						
Measurement of legal services from advocates, as a percentage of the total fee expenditure on advocates over the LSMs last financial year	Measuring the procurement of legal services from a black advocate.	By LSMs in the category of above R3 million but not more than R15 million	10	60%	70%	80%
			10	60%	70%	80%
			8	30%	35%	40%

	Measuring the procurement of legal services from a black woman advocate.	<b>R3 million</b> but not more than <b>R15 million</b> By LSMs in the category of above <b>R15 million</b>	7	40%	45%	50%
<b>Procurement of goods and services that support the business of a legal practitioner</b>						
Measurement of goods, equipment and assets that are core to the business of the LSME, as a percentage of the total expenditure on goods, equipment and assets.	Recognition of procurement spend from suppliers that are at least 75% black owned	By LSMs in the category of above <b>R3 million</b> but not more than <b>R15 million</b>	5	35%	40%	45%
	Recognition of procurement spend from suppliers that are at least 51% owned by persons from designated groups.	By LSMs in the category of above <b>R15 million</b>	6	50%	55%	60%
		By LSMs in the category of above <b>R3 million</b> but not more than <b>R15 million</b>	6	25%	30%	35%
<b>Supplier /Enterprise Development</b>						
<b>Partnering, Joint Venturing and Sub-Contracting of LSMs to facilitate capacity and transfer of skills</b>						
Measuring the partnering and joint ventures between large	Measuring sub-contracting or partnering with an ELE	By an LSME in the category of above <b>R3 million</b> but not	2	26%	28%	32%



firms and ELES or QSEs firms	level 1 or 75% black owned LSME	more than <b>R15 million</b>						
		By an LSMEs in the category of above <b>R15 million</b>	2	30%	33%	36%		
	Measuring sub-contracting or partnering with a 75% black owned LSME or 51% LSME owned by persons from designated categories	By an LSME in the category of above <b>R3 million</b> but not more than <b>R15 million</b>	3	10%	13%	16%		
		By LSMEs in the category of above <b>R15 million</b>	3	15%	20%	25%		
<b>Recognition of enterprise or supplier development initiatives for black owned ELES, Start-ups and contribution to the Legal Sector Transformation Fund</b>								
Measuring the impact of supplier development initiatives as outlined in this LSC.	Measuring the contributions made towards the development of black owned ELES and start-ups.	By an LSME in the category of above <b>R3 million</b> but not more than <b>R15 million</b>	3	10%	13%	16%		
		By an LSMEs in the category of above <b>R15 million</b>	3	10%	13%	16%		
Contribution to the LSTF	Measuring monetary contributions made by LSMEs to the LSTF	By an LSME in the category of above <b>R3 million</b> but not more than <b>R15 million</b>	3	R5000	R7500	R12,000		

	By an LSME in the category above R15 million	3	R10 000	R13,000	R18000
Total weighting points	(R3 – R15 million)	40			
	(above R15 million)	40			

**28. SPECIALISED SCORECARD**

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

**LSC 401 - PREFERENTIAL PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT (PSED)**

Measurement Category	Indicator	monetary thresholds	Weighting Points (WP) and Compliance Targets (T)			
			W	Year 1	Year 2	Year 3
<b>Preferential Procurement - Any reference to % in this scorecard refers to the annual procurement spend and budget</b>						
Procurement of Legal services by the Office of the State Attorney, public entities and organs of state						
Measurement of the procurement of legal services from advocates	Measuring the procurement of legal services from a black advocate.		6	65%	70%	80%
	Measuring the procurement of legal services from a black woman advocate.		5	40%	45%	50%
	Measuring the procurement of legal services from a white advocate who is briefed with a black junior advocate		4	35%	40%	45%
Procurement of legal services from black LSMs in complex matters in specialised areas of law by organs of state, public entities and the state attorney						
Measurement of legal services procured from black LSMs	From black owned LSMs in the category of ELE and level B-BBEE level 1 or black owned QSEs above <b>R3 million but not more than R15 million</b>		7	45%	50%	55%
	From LSMs owned by persons drawn from designated categories in the category of above <b>R15 million</b>		4	25%	30%	35%
<b>Supplier /Enterprise Development</b>						

Partnering, Joint Venturing and Sub-Contracting of LSMES to facilitate capacity of black owned LSMES and transfer of skills to such LSMES and black legal practitioners				
Measuring the partnering and joint ventures between large firms and ELEs or Black QSEs	Allocation of work to LSMES in the category of above <b>R15 million</b> on condition that they partner and/or sub-contract with an LSMES that are at least <b>75% black owned</b>	10	25%	30%
<b>Targeted procurement from designated categories of LSMES</b>				
Targeted procurement of certain legal services	Procurement from exclusively LSMES owned by black legal practitioners and black women legal practitioners	10	65%	70%
<b>Total weighting points</b>		<b>46</b>		

## 29. KEY MEASUREMENT PRINCIPLES IN DETERMINING THE SUITABILITY OF PREFERENTIAL PROCUREMENT IN THE LEGAL SECTOR CODE

- 29.1 Preferential procurement, supplier and enterprise development spend in terms of the LSC must always seek to ensure the following:
- 29.1.1 facilitate preferential spend for legal commercial and specialised work from LSMES that are black-owned;
- 29.1.2 enterprise and supplier development initiatives targeted at small black owned LSMES and black advocates with the view to enhance their legal, operational and economic independence; and
- 29.1.3 enterprise/ supplier development initiatives that seek to enhance businesses that are related to the business of the LSME.
- 29.2 To the extent that the LSC ESD is a compulsory element, non-compliance with it shall result in the discounting of LSMES.

- 29.3 The weighting points in this statement represent the maximum number of points possible for each of the criteria applicable in the sub-categories.
- 29.4 **Total measurement inclusions under ESD**  
In the LSC, measurable procurement spend shall include, but not limited to the following:
- 29.4.1 **operational expenditure**  
all goods and services procured that comprise the operational expenditure of the LSME;
- 29.4.2 **capital expenditure**  
all capital expenditure incurred by the LSME; and
- 29.4.3 **pension and medical aid contributions**  
payments made to any post-retirement funding scheme or to a medical aid or similar medical insurer by an LSME for legal practitioners employed and other non-legal 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 payment between the capital investment portion and the balance to establish the amount that is measurable within total measured procurement spend.
- 29.5 **Total measurement exclusions under the ESD**  
The following shall constitute a non-exhaustive list of matters that shall not be recognised in the total measurement procurement spend:
- 29.5.1 **taxation**  
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;
- 29.5.2 **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;

- 29.5.3 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;
- 29.5.4 empowerment related procurement**
- 29.5.4.1 investments in or loans to a black owned entity;
- 29.5.4.2 investments, loans or donations qualifying for recognition under any of the business activities in this LSC; and
- 29.5.5 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.
- 30. SUPPLIER & ENTERPRISE DEVELOPMENT INITIATIVES AND INTERVENTIONS**
- 30.1 The LSC supplier and enterprise development initiatives may include the following, which is a non-exhaustive list:
- 30.1.1 support with rentals and overheads for ELEs and start-ups;
- 30.1.2 interest free loans made to a QPB for the payments of salaries, purchase of stationery and related tools of trades;
- 30.1.3 guarantees given or security provided on behalf of QPBs for operational costs;
- 30.1.4 credit facilities made available to a QPB;
- 30.1.5 support with the purchase of a library, subscription to precedents and case law;
- 30.1.6 direct costs incurred by an LSME in assisting and hastening development of the QPB;
- 30.1.7 overhead costs of a LSME directly attributable to qualifying supplier development contributions;

- 30.1.8 preferential credit terms granted by an LSME to a QPB;
- 30.1.9 preferential terms granted by an LSME in respect of its supply of goods and services to a QPB contributions made towards the settlement of the cost of services relating to the operational or financial capacity and/or efficiency levels of a QSE including, without limitation:
  - 30.1.10 professional and consulting services;
  - 30.1.11 statutory licensing and/or registration fee;
  - 30.1.12 industry specific levies and/or other fees;
  - 30.1.13 IT services;
  - 30.1.14 payment for B-BBEE verification costs of a dedicated QPB;
  - 30.1.15 discounts given to a QPB in relation to the acquisition and maintenance costs associated with the operations and management of such QPBs;
  - 30.1.16 access to credit facility facilitating access to credit for a QPB that would not have access to traditional credit facilities owing to a lack of credit history, high-risk or lack of collateral on the part of the QPB;
  - 30.1.17 early settlement of accounts or invoices (at least within 14 days) issued by black LSMs or in relation to the normal payment period, issued to organs of state, entities and even private clients; and
  - 30.1.18 payment of candidate attorney subscription fees on behalf of the QPBs.

### **31. THE LEGAL SECTOR TRANSFORMATION FUND**

- 31.1 The stakeholders hereby agree to set up a LSTF.

- 31.2 The objective of the LSTF is to provide financial assistance and support to black legal practitioners especially black women and black people with disabilities.
- 31.3. The LSTF shall be administered by the Charter Council which may outsource the management of the LSTF to any entity with the requisite skills, experience and capacity subject to such entity complying with the Charter Council's directives and the aims and objectives of this LSC.
- 31.4. The Charter Council shall ensure that costs for the administration and management of the LSTF not exceed 5% (five) per cent of the total income of the LSTF in any financial year.
- 31.5. The Charter Council shall limit roll over for investment purposes and shall procure that any roll over not be effected for a period exceeding 3 years.
- 31.6. The LSTF shall be utilised for Skills Development and Enterprise and Supplier Development initiatives, including but not limited to the following:
- 31.6.1. Funding Black owned LSMEs, especially start-ups, including through the provision of technical equipment, library facilities, office rental and training in specialised areas of law;
- 31.6.2. Providing financial assistance and support to black pupils during their pupillage, including the giving of stipends;
- 31.6.3. providing financial assistance, training and support to black junior advocates, including subsidising their rental and/ or membership fees of Bar or subscription fees;
- 31.6.4. providing financial assistance to a black junior advocate or attorney to acquire and develop skills in specialised areas of law through training and other initiatives; and
- 31.2.1 31.6.5. providing financial assistance and support to black women attorneys and advocates during maternity leave from their law firms and chambers respectively.
- 31.3 31.6.6. The Charter Council shall upon its establishment develop a policy and criteria for the access of intended beneficiaries of the LSTF and the quantum of support as well as the manner of disbursement. Such policy shall be drafted after consultation with stakeholders in the legal profession and the Charter Council shall ensure that the criteria are based



on the guidelines and criteria set out in the compliance monitoring framework issued from time to time by the DTIC or B-BBEE Commission.

31.7. The LSTF shall also contribute to the funding of the Charter Council.

### 32. INCLUSION OF RURAL AREAS

32.1 The role played by legal practitioners, especially in the rural areas is significant in facilitating access to justice by poor and vulnerable communities, as envisaged by the Constitution. This is in the main because 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.

32.2 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.

32.3 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.

### 33. THE SED SCORECARD FOR ATTORNEYS AND ADVOCATES

33.1 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.

33.2 SED measurement scorecard for attorneys.

#### **LSC 500 - SOCIO-ECONOMIC DEVELOPMENT (ATTORNEYS AND ADVOCATES)**

Socio-Economic Development	Weighting Points (WP) & Targets (T)
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Measurement Category & Indicator	Monetary Threshold	W	T
<b>Pro bono services and community work</b>			
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 rural areas.	By an <b>LSME (attorneys)</b> in the category above <b>R3 million</b> but not more than <b>R15 million</b>	2	At least 24 hours per annum implemented by each Legal practitioner within an LSME
	By an <b>LSMEs attorneys</b> in the category above <b>R15 million</b>	2	At least 24hours per annum implemented by each LSME
	By all <b>LSMEs advocates</b> of above <b>R3 million</b> category	2	At least 24 hours per annum implemented by the Advocate
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.	By an <b>LSME attorneys</b> in the category of above <b>R3 million</b> but not more than <b>R15 million</b>	2	At least 24 hours per annum implemented by each Legal practitioner in the LSME
	By an <b>LSMEs attorneys</b> in the category above <b>R15 million</b>	2	At least 100 hours per annum implemented by each LSME
	By all <b>LSMEs advocates</b> in the category above <b>R3 million</b>	2	At least 100 hours per annum implemented by the advocate
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	By an <b>LSME attorneys</b> in the category of above <b>R3</b> but not above <b>R15 million</b>	2	At least hours 100 per annum implemented by each Legal practitioner
	By an <b>LSMEs attorneys</b> in the category above <b>R15 million</b>	2	At least 100 hours per annum implemented by each Legal practitioner
	By all <b>LSMEs advocates</b> in the category of above <b>R3 million</b>	2	At least 100 hours per annum implemented by the advocate
Total Weighting Points	R3 – R15 million LSMEs – Attorneys	6	
	R15 and above LSMEs – Attorneys	6	

	R 3 million and more LSMs – Advocates	6	
<b>ALTERNATIVE SED PROVISIONS</b>			
<b>For legal practitioners who wish to invest monetary contributions instead of pro bono hours</b>			
Recognizable contributions into a community NGO, a community development fund or charitable entity	By an <b>LSME attorneys</b> in the category above R3 but not more than <b>R15 million</b>	2	Any contribution not less than R20 000 per annum
	By an <b>LSMEs attorneys</b> in the category above <b>R15 million</b>	2	Any contribution not less than R30 000 per annum
Recognizable contributions into initiatives that enhances economic community's development initiatives	By all <b>LSMEs advocates</b> in the category above <b>R3 million</b>	2	Any contribution not less than R20 000 per annum
	By an <b>LSME Attorneys</b> in the category above R3 million but not more than <b>R15 million</b>	2	Any contribution but not less than R20 000 per annum
	By an <b>LSMEs attorneys</b> in the category above <b>R15 million</b>	2	Any contribution not less than R 30 000 per annum
	By all <b>LSMEs advocates</b> in the category above <b>R3 million</b> category	2	Any contribution not less than R20 000 per annum
	R3 – R15 million LSMs – Attorneys	6	
	Above R15 LSMs – Attorneys	6	
	R 3 million and more LSMs – Advocates	6	

- Pro bono services may be rendered in respect of each of the 3 categories above or in any combination for example to clients from rural areas or in community legal centres or those requiring commercial or contractual assistance or any combination.

The Charter Council may amend the pro bono hours having regard to any regulations relating to community service that may be promulgated in terms of the LPA.

### 34. KEY MEASUREMENT PRINCIPLES AND INDICATIVE FACTORS

- 34.1 For purposes of measurement and verification, LSMs shall only receive recognition for verifiable initiatives.

- 34.2 QSEs and initiatives of any LSME are recognisable only on an annual basis and cannot be ceded nor apportioned in favour of another LSME.
- 34.3 Notwithstanding the provisions dealing with enterprise and supplier development initiatives referred to in this LSC, 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.
- 34.4 LSMEs are encouraged to prioritise communities in areas where they operate.
- 34.5 The full value of QSEs and initiatives by any LSME given to the beneficiaries is only recognisable if 100% of the value directly benefits black people.

### **35. EFFECTIVE DATE**

- 35.1 The Sector Code shall come into effect on the date on which it is gazetted.
- 35.2 Notwithstanding the provisions of paragraph 35.1 above, all B-BBEE verification certificates which were validly issued prior to the gazetting of this LSC in terms of the Generic Codes shall remain valid and applicable for the period of their validity notwithstanding the date of gazetting of the LSC. In such event, the relevant LSME shall be required to apply for the relevant B-BBEE verification certificate under this LSC upon the expiry of the B-BBEE verification certificate which was issued in terms of the Generic Codes. LSMEs that had not been measured prior to the gazetting of this LSC shall be measured in terms of this LSC upon its gazetting.
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