

## **CLARIFICATION NOTICE: CN01 of 2025**

**ISSUED BY THE LEGAL SECTOR CHARTER COUNCIL IN ACCORDANCE WITH THE PROVISIONS OF PAR 13.6.2 OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT LEGAL SECTOR CODE OF GOOD PRACTICE**

**SUBJECT: MISCELLANEOUS CLARIFICATIONS**

**DATE OF ISSUE: 30 JUNE 2025**

### **1. INTRODUCTION**

1.1. The Legal Sector Code (LSC) was gazetted on 20 September 2024. The LSC provides for the establishment of a Charter Council by the Minister of Justice and Constitutional Development. The Charter Council was established in November 2024 by the Minister of Justice and Constitutional Development. However, the appointment letters only reached members at the end of February 2025 due to the changeover of ministers. Paragraph 13.7 of the LSC sets out the responsibilities of the Charter Council. These include:

- monitoring compliance with the LSC; and
- providing clarification, support and assistance in the interpretation and implementation of the LSC.



- 1.2. Prior to the establishment of the Charter Council, the Department of Trade, Industry, and Competition (DTIC), the Legal Practice Council (LPC), and the Steering Committee which had developed the LSC, received a number of enquiries from stakeholders including verification agencies and B-BBEE consultancies. In order to assist such stakeholders, and in the absence of a Charter Council, the Steering Committee met with verification agencies and B-BBEE advisory companies on 4 February 2025 to offer guidance on the interpretation of the LSC in response to queries submitted. The DTIC and Department of Justice (DoJ) also attended this meeting.
- 1.3. Subsequent to the 4 February meeting and based on the queries submitted, the Steering Committee issued a Frequently Asked Questions document on 19 February 2024 which provided a number of clarifications on the proper interpretation of the LSC.
- 1.4. Subsequent to its establishment, the Charter Council reviewed these clarifications and incorporated them into this Clarification Notice which is issued in terms of Paragraph 13.7.2 of the LSC. This Clarification Notice also incorporates clarifications in response to some queries submitted to the Charter Council to date.
- 1.5. Stakeholders must therefore use these clarifications for the purpose of compliance and measurement.

## 2. KEY PRINCIPLES

- 2.1. It is important to bear in mind the key principles set out below when interpreting the provisions of the LSC for purposes of compliance and measurement.
- 2.2. The LSC is a sector-specific B-BBEE measurement code. Therefore, the interventions contained therein are based on the unique characteristics of the legal profession. It therefore, of necessity, differs from the Generic Codes of Good Practice (Generic Codes) in certain respects as a result of such unique characteristics.
- 2.3. Based on the challenges experienced by Black legal practitioners as set out in Paragraph 6 and the objectives set out in Paragraph 9 of the LSC respectively, Black legal practitioners are the principal beneficiaries of the measurement elements in the LSC. Reference to various categories of beneficiaries in the LSC scorecard, whether in the ownership or management control elements, refers to **Black Legal Practitioners** in general, and specific categories of **legal practitioners** in particular. Where the LSC is intended to apply to employees who are not legal practitioners, such as the support staff or suppliers that provide goods and services in support of the business of legal entities, such will be specifically mentioned. It is therefore important to note that in relation to **board, executive, senior, middle, and junior management,**

only legal practitioners are recognised for weighting points. It is accepted that in certain instances there would be **non-legal practitioners** in law firms who are in management positions such as, for example, in finance and human resources roles. These would be catered for in the category outlined on page 50, in their capacity as support staff, and therefore are distinct from the above management categories, which are only intended to count and measure legal practitioners.

- 2.4. Paragraph 3.1.6 of Statement 003 (Gazette no 38766), approved by the Minister of Trade and Industry in 2015, states amongst other things, that a sector code developed in terms of this Statement must set targets which are “*over and above*” the minimum targets set out in the Generic Codes of Good Practice.
- 2.5. To the extent that the **Economically Active Population** (EAP) targets apply to indicators, please note that par 28.1 of the LSC states that the formulae for measuring the principles in the LSC shall be the same as that in the Generic Codes of BBEE. Please note the provisions of Paragraphs 26.3 and 26.4.
- 2.6. Paragraph 18.1 of the LSC provides that, when interpreting and measuring B-BBEE compliance of any LSME in terms of this sector code, substance must take precedence over legal form. The **Economically Active Population** (EAP) targets The EAP does not apply to a board of directors in a Large LSME but does apply to executive management and all the lower levels of management.

### 3. SCOPE OF APPLICATION

- 3.1. Compliance with the provisions of the LSC is elective for law firms and advocates who are registered with the LPC, and choose to be measured in terms of, and benefit from, the provisions of the B-BBEE Act and B-BBEE. If they so elect, then they will be measured in terms of the LSC as provided for in paragraph 12.3 as read with paragraph 12.4.
- 3.2. All law firms whose annual revenue is below **R5 million** and an advocate whose annual turnover is below **R3 million**, are exempted from complying with the LSC, and are, for the purposes of the LSC, referred to as Exempted Legal Entities (ELEs). Statement LSC 000 enables those ELEs who wish and elect to enhance their B-BBEE contribution levels to do so by choosing one of the three initiatives mentioned there. However, an otherwise ELE which elects to enhance its B-BBEE contribution level must be measured and issued with a B-BBEE certificate and report and must comply with the QSE scorecard.
- 3.3. It is important to note that organs of state will require a B-BBEE certificate from Legal Sector Measured Entities (LSMEs) that wish to transact with the state. Some private sector companies may also require the same.
- 3.4. The LSC is binding on Organs of State insofar as it relates to the Enterprise and Supplier Development element as provided for in LSC 401.

- 3.5. LSC 401 only relates to the measurement of procurement of legal services from law firms and advocates by state organs and institutions as set out in paragraphs 35.3 and 35.4. For the other elements of their spend, organs of state are measured in terms of the Specialised Scorecard in Code Series 000, Statement 004.
- 3.6. The measurement in terms of LSC 401 may be included in the verification certificate as an annexure. Organs of state will also include this in their annual report filed with the Legal Sector Charter Council.

#### 4. MEASUREMENT PERIOD

- 4.1. The determination of the first and subsequent measurement periods of an LSME in terms of the LSC shall be determined as set out below.
- 4.2. The LSC was gazetted on **20 September 2024**. Paragraph 3.1.11 of Statement 003 states that there shall be no transitional period for purposes of the implementation of the LSC, read together with paragraph 38.1 of the LSC. In practical terms, and for the avoidance of doubt, any LSME whose financial year commences on or after the date of gazetting, is subject to the LSC as from the date of the commencement of such financial year. For example, since the LSC came into effect on **20 September 2024**, if the financial year of an LSME commences on **1 September 2024**, then an LSME must be measured in terms of the LSC from **1 September 2025 to 31 August 2026** and for all financial years thereafter.

An entity whose financial year starts on **1 January 2025**, must be measured in terms of the LSC from **1 January 2025** to **31 December 2025** and for all financial years thereafter. Where an entity's financial year commences on **1 March 2025**, it will be measured in terms of the LSC from that date until the end of the consecutive 12 months ending **28 February 2026**.

4.3. The *principles* underpinning any verification are that:

4.3.1. The verification of LSMEs is always based on the compliance spend that would have occurred in the previous 12 months. Therefore, in practical terms, depending on the commencement of the financial year periods, verification in terms of the LSC will only occur in 2026.

4.3.2. In terms of paragraph 38.2 of the LSC, all verification certificates issued prior to the gazetting of the LSC shall remain valid for the period for which they were issued.

4.3.3. Given the above, LMSEs and advocates must file their annual report referred to in Paragraph 13.10 of the LSC on the first anniversary of the commencement of the Measurement Period. For example, if an LSME's financial year commences on 1 March 2025, it must file its annual report on 1 March 2026.

## **5. MEASUREMENT OF LAW FIRMS WITH DIFFERENT BRANCHES**

- 5.1. For the purposes of measurement in the LSC, whether or not a law firm has more than one branch, does not affect the status of its measurement. This applies even in instances where the law firm has more than one practice number for different branches or where each branch has a separate trust and and/business account number but the same equity directors in the case of large LSMEs and directors/partners in the case of QSEs.
- 5.2. In instances of a firm with more than one branch, the consolidated annual financial statements of the LSMEs must be utilised.

## **6. DETERMINATION OF DATE OF APPLICABLE TARGET CHANGES**

- 6.1. The annual targets in the LSC are set in line with the anniversary of the gazetting of the LSC As indicated in paragraph 4 above, for practical purposes in relation to the measurement period and in order to avoid an overlap, annual target changes as provided for in the LSC, should coincide with the commencement of the respective measurement periods. For example, if an LSMEs financial year commences on 1 January 2025 and ends on 31 December 2025, year 1 targets will be applicable for this period. Similarly, compliance with year 2 targets will commence on 1 January 2026 and end on 31 December 2026, and year 3 targets will commence on 1 January 2027 and so on in subsequent years of measurement.

## 7. NEW ENTRANTS

- 7.1. The provision relating to New Entrants in the LSC is designed to benefit new entrants to the legal profession. Paragraph 20.4.1. provides as follows:
- “For the purposes of this LSC, an LSME shall constitute a new entrant and shall, for purposes of measurement, constitute a recently formed, constituted, established or incorporated law firm in practice for less than 3 (three) years or an advocate who has been in practice for less than 3 (three) years.”*
- 7.2. Independent proof of a new entrant status referred to in LSC 000 consists of confirmation from an auditor, LSC exemption letter and CPIC incorporation certificate (if incorporated).
- 7.3. Please note the exclusions in Paragraph 20.4.2.
- 7.4. Please further note that in relation to New Entrants and start-ups, par 20.4.3 of the LSC provides that a new entrant is an automatic Level 4 whereas the table in LSC states that a new entrant is an automatic Level 5. The Generic Scorecard deems a new entrant (start-up enterprise) as an automatic level 4 except where the New Entrant is a Black measured entity in which case, it becomes a B-BBEE level 2 (for 51% Black owned) and B-BBEE level 1 (for 100% Black owned entities or Black advocate).
- 7.5. Paragraph 20.4.3 is the correct provision and should be complied with not the table in LSC 000. A New Entrant which or who is not Black is therefore an automatic Level 4.



## 8. ELEs AND QUALIFICATION FOR B-BBEE LEVEL 4 and 5 (LSC 000)

- 8.1. The enhancement provisions in the LSC reflect an intention to provide an opportunity to ELEs that have less than 51% Black ownership to enhance their B-BBEE recognition level. Columns 4 and 5 provide three alternative initiatives.
- 8.2. If an ELE wishes to enhance its Contribution Level, it must be measured in terms of the QSE Scorecard on the initiatives set out in columns 4 and 5.
- 8.3. Given the apparent conflict between columns 3, 4 and 5, it is important to clarify the provisions in LSC 000 as follows:
  - 8.3.1. The Generic Codes provide that an Exempted Micro Enterprise is deemed to have a B-BBEE status of Level 4 Contributor. It then provides that despite this provision; exceptions occur for majority Black owned EMEs. The LSC followed this provision and intended to refer to the monetary threshold rather than race in column 3. An ELE that is less than 51% Black owned is deemed to be a level 4 Contributor. It can enhance one level up - to Level 3. Such an ELE can choose any one of the initiatives stated in column 4; and
  - 8.3.2. The reference to level 5 should therefore be disregarded in column 5. (Appropriate guidance will be issued to verification agencies)



## 9. MODIFIED FLOW THROUGH PRINCIPLE

Given its unique characteristics, as a service-based profession, ownership structures in law firms are not the same as in a typical corporate commercial entity. Therefore, the Modified Flow Through Principle does not apply. See the principles set out in paragraph 23.3 of the LSC.

## 10. APPLICABILITY OF EAP TARGETS

EAP target reports are released by the Department of Labour on a quarterly basis (every 3 months) and the relevant EAP reports applicable are that of the financial year prior to the measurement date. The most recent reports are also obtained in the StatsSA and quarterly industry norm surveys. As indicated above the standard EAPs should be applied for designated categories.

## 11. MANAGEMENT CONTROL- MEASUREMENT OF LEGAL PRACTITONERS WHO FULFILL MORE THAN ONE MANAGEMENT ROLE

### Executive Management

11.1. Based on the provisions of the Legal Practice Act (LPA) relating to the requirements for ownership of law firms and sector specific characteristics, an Equity Director who is also part of the executive management structure of a QSE or Large LSME can also be counted in the management control element, especially in LSMEs that have a 'flat' structure such as in QSEs. This is permissible to the extent that it promotes the objectives of the LSC.

- 11.2. Paragraph 26.2 of the LSC should be read to refer to all management levels, including senior management. In the Management Control Statement LSC 201, senior management is referred to and references the definition of senior management in the LSC. The omission in 26.2 of the senior management categories is therefore inadvertent.
- 11.3. Black legal practitioners in 26.2 also include and refer to designated categories and such categories are included in the Skills Development table.

### **Applicability of EAP Targets to Management Levels**

- 11.4. The EAP targets do not apply to the board of directors in a Large LSME in an incorporated entity or to a similar governance structure but does apply to executive management and all the lower levels of management. As indicated in Paragraph 26.5, the EAP targets do not apply to QSE management control scorecard.

### **Targets for Directors**

- 11.5. In LSC 201, 'Board participation' is to be calculated as the percentage of Black legal practitioners who are equity directors out of the total number of board members, irrespective of race, and irrespective of whether they are equity or salaried directors.

11.6. Please note the definition of Executive Management:

*“for the purposes of this LSC, executive management shall be constituted by members of the various sub-committees established by the board including any executive committee, or in the case of a partnership, an equivalent structure to carry out and implement specific functions and/or duties, as may be delegated to such sub-committees by the board, from time to time. Such members may include without limitation, managing partners, chairpersons and chief executive persons who are attorneys;”*

11.7. It further important to note that the targets for board in the Generic Codes is 50%. The LSC considered the unique characteristics of the legal sector and lowered the target.

## 12. SKILLS DEVELOPMENT

### Leviable amount targets

12.1. It is important to note that the targets in the Generic Codes are the minimum targets and have been in place since 2013 without an increase.

12.2. It is also important to note that notwithstanding reference to ‘leviable amount’ in the heading to LSC 300, the intention in LSC 300.3 is that the 2.5% in paragraph 300.3 refers to head count, that is, the number of Black trainees and/or candidate legal practitioners registered by an LSME in any of the programmes referred to as a percentage of total legal practitioners, employees and trainees.

This brings the leviable amount target to 7% in the first two years. Moreover, there is an additional 7 bonus points which enhances the ability of the LSMEs to gain more points. These are additional points which were not available in the Generic Scorecard. All other targets in LSC 300 refers to leviable amount.

### **Calculation of Leviable amount in category 300.1**

12.3. Leviable amounts in terms of the Skills Development Levies Act, refers to the percentage of the total payroll and staff, and for this purpose not just for candidate attorneys.

### **Training Areas and training expenses that are recognised**

12.4. The LSC is designed to focus on sector specific interventions. LSC 300 in each category sets out very specific types of training for example training in specialised areas of the law, practice management, and trial advocacy. Training programmes must further be external but do not need to be accredited for purposes of measurement in the case of attorneys. Please note the legitimate training expenses in paragraph 32.3. The Charter Council may recognise further legitimate training expenses as provided for in paragraph 32.2.

### **The application of the one-month reference in sub-category 300.4**

12.5. The one-month period can be split into different periods as long as the one-month period occurs in the same measurement period.



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### **Candidate Legal Practitioners as referenced in sub-category 300.5**

- 12.7. This sub-category provides for instances where although the candidate attorney's contract was registered with the LPC prior to the gazetting of the Code but is completed after September 2024 and the candidate attorney is employed permanently by the LSME after such date. Under these circumstances, the LSME will be entitled to claim bonus points
- 12.8. An LSME can only claim the bonus points if it, itself, employs the candidate attorney permanently. The aim is to incentivise LSMEs to retain candidate attorneys trained by themselves. Even where they retain less than fifty percent, they will still get recognition for those that they do retain.

### **Advocates Training Requirements**

- 12.9. Statement 301 – recognizes the following skills development initiatives that are to be undertaken by advocates themselves, and not through a third party:
- Training.
  - Mentorships; or
  - contributions into the LSTF

12.10. Pupillage refers to training towards being admitted as an advocate and may not be counted under skills development. Mentorship under LSC 301.2 applies to Black junior advocates who would have completed their pupillage and are admitted.

12.11. Advocates are allowed to make monetary contributions into the LSTF instead of training and/or tutoring in 301.1 as an alternative to training but not in relation to training programmes in 301.2. The contributions to the Fund in 301.2 are bonus points reserved for advocates who are senior counsel and are not able to do training in in terms of 301.1 and 301.2.

12.12. The number of trainees is not an indicator to qualify for points. Please note the principle set out in Paragraph 23.1.

### **13. THE LEGAL TRANSFORMATION FUND**

The LSTF has been established, and the bank account is open for deposits. Since the measurement period under the LSC only commences in 2025, there is sufficient time for donating to the Fund as verification in terms of the LSC will only occur in 2026. Points can only be allocated after the funds are deposited into the LSTF and the verification agency is in possession of the proof of payment.



## 14. PREFERENTIAL PROCUREMENT (LSC 400)

### Guidance with respect to the preferential procurement in relation to Black advocates in LSC 400.

14.1. This provision is designed to achieve the objectives of the LSC that includes attending to challenges of skewed and discriminatory briefing patterns and is unique to the legal sector.

The inclusions and exclusions as indicated in the Generic Codes therefore do not apply. The spend on the briefing of Black advocates as a percentage of the briefing spend by law firms annually is treated and regarded as third party spend and is permitted in the LSC based on the unique features of the legal sector and the objectives of the LSC.

14.2. The spend on the procurement of legal services from advocates would be reflected in the law firm's invoices to clients as disbursements. Attorneys therefore will have a record of the total amount of expenditure that went through their trust accounts annually to pay advocates and can provide such records to a verification agency.

### Expenditure on foreign legal services

14.3. Foreign legal costs, to the extent that they are extra-jurisdictional, must be excluded as a spend in terms of preferential procurement since they are not for the benefit of South African legal practitioners. The same applies in excluding the measurement of foreign operations where the LSME is part of a firm that has foreign offices.



## Joint Ventures and partnering

14.4. According to LSC 400, the measurement in joint ventures and partnering is based on the value of the contract. Where for example, a beneficiary is both 51% Black and Female, it may both be counted and the points in each category can be included in the measurement.

## Application of industry norms when the NPAT is low or at a loss and Enterprise Supplier Development for attorneys.

14.5. The '1/4 of industry norms' is a fall-back principle as outlined in the Generic Codes is applicable.

14.6. Based on the unique features of the legal profession and the objective to benefit Black legal practitioners, paragraph 34.5 provides for two categories in the Enterprise Supplier Development element namely preferential procurement and enterprise development with the addition of LSTF contributions. Measured Entities are expected to achieve 40% of each of the sub-elements i.e. procurement, enterprise development and LSTF contribution