GUIDELINE 1 OF 2026
IMPLEMENTATION GUIDELINES FOR SOEs ON COMPLIANCE WITH THE LEGAL SECTOR CODE (LSC)

INTRODUCTION

1. Section 10 (1) (b) of the Broad Based Black Economic Act (the 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.

2. The Broad-Based Black Economic Legal Sector Code of Good Practice (LSC) was gazetted on 20 September 2024.

3. Paragraph 35.3 of the LSC provides that all organs of state and public entities that procure legal services from external legal practitioners must use the provisions of the LSC when procuring such services. Such organs of state and public entities must comply with the targets set out in LSC 401.

4. Therefore, organs of state and public entities need to apply the LSC only in relation to the procurement of legal services. In relation to measuring other elements such as skills development, management control and preferential procurement of general goods and services all organs of state, public entities and SOEs shall apply the Specialised Scorecard in Code Series 000.

5. Organs of state and public entities are major procurers of legal services and, as such, their legal procurement policies significantly impact the legal sector. They must. use procurement as a transformation lever under s 217 of the Constitution and the Public Procurement Act 28 of 2024.Organs of state and public entities need to diversify their procurement to ensure that black-owned and female-led law firms are given equal opportunities both in the nature of legal services procured as well as the value of such procurement.

6. It is important that organs of state and public entities use Black ownership as a measurement for purpose of compliance with the LSC instead of relying solely on Contribution Levels. of a firm.

LEGAL SECTOR CHARTER COUNCIL

7. It is important that organs of state and public entities embed compliance with LSC 401 in their procurement processes for legal services and reporting protocols.

PURPOSE AND POLICY ALIGNMENT

8. The purpose of this document is to provide guidance to organs of state and public entities who utilise partnering and joint ventures in accordance with LSC 401.

9. Organs of state and public entities must meet the targets as set out in LSC 401 insofar as procuring legal services from Black legal practitioners.

10. In instances where specialised legal services are required or where there are capacity constraints and only after diligent enquiry to establish the absence of such skills among Black legal practitioners or lack of capacity, should organs of state and public entities utilise joint venturing, sub-contracting and partnering between large majority White owned or large Black owned law firms on the one hand and Black owned ELEs and QSEs.

11. The purpose of such joint venturing, partnerships and sub-contracting is to:

11.1. increase the flow of quality legal work to Black legal practitioners;

11.2. increase allocation of specialized legal work to Black law firms and advocates in areas that they have been historically excluded from and continue to be excluded from; and

11.3. promote skills transfer.

METHODOLOGY

12. These guidelines set out how joint venture agreements, sub-contracting and partnering can be used by organs of state, including the State Attorney and public entities as a tool to ensure compliance with the LSC and build a more equal and capacitated legal profession.

SELECTION OF SERVICE PROVIDERS

13. The council is aware that the selection of service providers is usually through tenders and the establishment of panels or through separate tendering. Some organs of state and public entities, when using panels, use a rotation system to ensure a fair distribution of work among those on panels. We recommend the following in each case.

PANELS

14. Where a restoration system is used, steps must be taken to ensure that it does not inadvertently disadvantage Black practitioners. It must therefore be structured in such a way that the targets in the LSC 401 are met.

15. In the event of joint venturing, the firms participating in such must be selected by the organ of state or public themselves from those on the panel.

TENDERS

16. Where a public entity or organ of state has decided to utilise joint venturing, sub-contracting or partnering and needs to issue a new tender, Black law firms and large law firms should independently tender. The selection of the joint venture partners should be made by the public entity or organ of state itself and not the law firms.

MINIMUM JV CONTENT REQUIREMENTS

17. It is recommended that in tenders, the organ of state and public entity must reserve for itself the right to allocate the work to a joint venture or partner and to sub-contract. In addition, the following must be required whether through new tender or panel –

17.1. **Parties and Scope**

17.1.1. Identification of the large LSME and the Black-owned/Black women-owned ELE/QSE/ LSME. Defined mandate and scope of work and nature of work to be performed by each party (this could be done by requesting work plan).

17.2. **Work-Share**

17.2.1. Minimum 30–40% of the work should be allocated to the Black firm/advocate.

17.2.2. Non-compliance with work share allocation by large LSME should trigger breach provisions of the JV and ultimately result in non-compliance measures detailed below.

17.3. **Fee-Share**

17.3.1. Fee split aligned to actual work performed.

17.3.2. Hourly rates for work performed should be negotiated so that rates in respect of the ELE/QSE/Black-owned or Black-women owned LSME's are reasonable in relation to the other party's rate.

17.4. **Skills Transfer**

17.4.1. JV Agreement must include skills transfer mechanisms, including but not limited to –

17.4.1.1. joint staffing;
17.4.1.2. secondments;
17.4.1.3. joint training;
17.4.1.4. joint case-management and co-signing where practicable;
17.4.1.5. joint client engagements – Black LSMEs must be given the opportunity and means to meet with and engage directly with the client;
17.4.1.6. repository sharing;
17.4.1.7. joint intellectual property ownership; and
17.4.1.8. joint project leadership.

17.5. **Reporting**

17.5.1. JV must set out strict duration linked reporting timeframes and targets on work performed, fees earned, and skills transfer delivered.

CONTRACT MANAGEMENT AND ENFORCEMENT

18. **Monitoring**

18.1. SCM and legal services must jointly monitor –

18.1.1. Work allocation;
18.1.2. Fee allocation;
18.1.3. Skills transfer activities; and
18.1.4. Compliance with governance requirements.

18.2. JV and other partners and sub-contractors and partners must be required to file reports to facilitate monitoring.

19. **Remedies for Non-Performance**

19.1. **Breach and Default Clauses**

19.1.1. Non-compliance with transformation, skills-transfer, or work-allocation obligations should be regarded as a material breach.

19.1.2. Breach triggers immediate corrective action requirements and potential sanctions.

19.1.3. If non-compliance amounts to fronting, the matter must be referred to the B-BBEE Commission;

ANTI-FRONTING SAFEGUARDS

20. Verification of actual work performed by the B-BBEE partner.

21. Interviews with junior and senior attorneys or advocates to confirm skills transfer.

22. Review of time sheets, briefs, and deliverables.