

**FREQUENTLY ASKED QUESTIONS (FAQs)**  
**ON THE GAZETTED B-BBEE LEGAL SECTOR CODE**

Date of Issue: 21 February 2025

Reference: LSCFAQ 01/25

## **1. INTRODUCTION**

- 1.1. The Legal Sector Code (LSC) was gazetted on 20 September 2024. Mindful of the important role verification agencies and B-BBEE consultancies play in the implementation of BBEE Codes and based on queries they raised with the Steering Committee secretariat at the LPC as well as with the DTIC, the Steering Committee's Technical Committee, decided to engage with them.
- 1.2. The Steering Committee consists of representatives of a wide range of stakeholders in the legal sector. It conducted consultations and developed the LSC to its final gazetted form. After the LSC was published for comment in July 2022, a Technical Committee consisting of members of the Steering Committee, DTIC and Department of Justice and Constitutional Development (DoJ) reviewed the comments and updated the LSC.
- 1.3. Various queries related to the LSC were raised by verification agencies and BEE advisory firms subsequent to its gazetting. The Technical Committee met with verification agencies and B-BEE advisory firms on 4 February 2025 in order to provide responses to their queries.
- 1.4. The clarifications below are in response to the written queries received as well as those raised in the meeting held of 4 February 2025.

## **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 code. Therefore, the interventions contained therein are based on the unique characteristics of the 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 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 that are not legal practitioners such as 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 recognized 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. They would be catered for in the category on page 50, in their capacity as support staff, and therefore are distinct from the above management categories that are only intended to reference legal practitioners.
- 2.4. Paragraph 3.1.6 of Statement 003 (Gazette no 38766) states 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.
- 2.5. The normal EAP targets apply to all indicators including the targets for designated categories.
- 2.6. Paragraph 18.1 of the LSC provides that, when interpreting and measuring BBEE compliance of any LSME in terms of this sector code, substance must take precedence over legal form.

### **3. SCOPE OF APPLICATION**

**Is it a compulsory requirement for each law firm or advocate to have a B-BEE certificate Does the Legal Sector Code (LSC) apply to all legal practitioners and legal entities regardless of whether they conduct business with organs of state or any entities requiring B-BBEE compliance.**

**ANSWER**

- 3.1. Compliance with the provisions of the LSC is elective and apply only to those law firms and advocates who are admitted and registered with the LPC and who choose to be measured for B-BBEE. If they so elect, then they must use the LSC to be measured as provided for in paragraph 12.3 as read with paragraph 12.4.
- 3.2. Law firms whose annual revenue are below R5 million and advocates whose annual turnover are below R3 million are exempted from complying with the LSC. LSC 000 does provide for those who wish to enhance their Contribution Levels to obtain a B-BBEE certificate.
- 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 same.

#### **4. MEASUREMENT PERIOD**

**From which date must LSMEs be measured in terms of the LSC, especially where there is an overlap between their financial year end and the date of its gazetting on 20 September 2024. For example, which code must be used if the law firm's financial year end is December 2024 or February 2025, and they have a B-BEE certificate that is valid until June 2025. Would it be the Generic Codes or the LSC.**

#### **ANSWER**

- 4.1. The LSC was gazetted on 20 September 2024. Paragraph 3.1.11 of Statement 003 provides that there shall be no transitional period for the implementation of the LSC. Paragraph 38.1 reflects this requirement. 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, 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. If for example 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.
- 4.2. The verification of LSMEs is always based on the compliance spend that would have occurred in the previous 12 months. Therefore, in all

likelihood, depending on the commencement of the financial year, verification in terms of the LSC will only occur in 2026.

- 4.3. 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 of their validity.

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

**What is the situation in instances where a law firm has one practice number with branches in different locations with each branch having a separate trust and business account and all directors being the same in all offices. For purposes of the LSC, will the revenue of each office be determined separately to determine whether it is a QSE or LSME or will the revenue of the branches be consolidated and calculated as one.**

### **ANSWER**

- 5.1. For the purposes of this LSC, whether or not a law firm has more than one branch does not affect the status of its measurement in terms of the LSC, including where it has one practice number and the same directors.
- 5.2. To the extent that the LSC is applicable, then the consolidated annual financial statements must be utilised.

## **6. CALCULATION OF YEARS IN TERMS OF TARGETS**

**When will the year 3 and year 5 targets become applicable. Will it be on the anniversary of the publication of the LSC. For example, will year 3 become applicable on 20 September 2027**

### **ANSWER**

- 6.1. The targets are set in line with the anniversary of the gazette of the sector code. As indicated above in relation to the measurement period in paragraph 4 and in order to avoid an overlap, year targets are applicable to the financial year of the LSME commencing on or after the date of gazetting of the LSC. For example, if an LSME's 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 so on for subsequent years of measurement.

## **7. DEFINITION OF NEW ENTRANTS**

**For Attorneys:**

**Does New Entrant status apply only to legal practitioners with fewer than three years of practice. Are attorneys with more than three years' experience excluded from this status, even when establishing a new firm. What constitutes independent confirmation of an LSMEs New Entrant status.**

### **ANSWER**

- 7.1. This provision 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 is confirmation from an auditor or bank statements.

- 7.3. Please note the exclusions in Paragraph 20.4.2

## **8. ELEs AND QUALIFICATION FOR BBBEE LEVEL 4 and 5 (LSC 000)**

**At paragraph 20.3 on page 38, there is a table with the thresholds for ELEs. A Level 4 is a measured entity that has a turnover below R5 million (attorneys), irrespective of black ownership.**

**However, a less than 35% black owned entity is a level 5. But the above says level 4 and “irrespective of black ownership”**

## ANSWER

- 8.1. The intention is to provide an enhancement opportunity for ELEs that are non-majority black owned as provided for in the columns 4 and 5. Such ELEs can choose any one of the initiatives stated there and will need to obtain a B-BBEE certificate for the recognition of their spend. This is entirely voluntary.
- 8.2. Such an LSME can be enhanced to Level 4 if they choose any of the initiatives provided their black ownership level is 35% or above but less than 51%. An LSME can be enhanced to Level 5 if black ownership of such LSME is less than 35% and they choose any of the initiatives.

## 9. OWNERSHIP

**Does the modified flow-through principle apply in the LSC. It's not mentioned anywhere, so on the basis that the LSC is silent, can it be assumed that the DTIC version applies.**

## ANSWER

- 9.1. Given its unique nature as a service-based sector, ownership structures in law firms are not the same as in a typical corporate and commercial entity. The MFTP therefore does not apply. See the principles set out in paragraph 23.3.

***The measurement indicators for Ownership by black designated categories, do not refer to legal practitioners. Is this omission an oversight or is the intent to measure exercisable voting rights and economic interest by non-legal practitioners in these instances.***

## ANSWER

- 9.2. All references to designated categories in LSC refer to designated categories who are legal practitioners unless there is specific reference to non-legal or support staff.

**Where are the EAP targets for designated groups obtained. The StatsSA break it down into male and female, but not into a category that includes black women, youth, disabled and rural. Or do LSMEs apply the normal**

**EAP breakdown here again. This doesn't really work as this category is going to be made up mostly of women and yet the target will be around 50% male.**

#### **ANSWER**

- 9.3. EAPs are obtained in the StatsSA and quarterly industry norm surveys. As indicated above the normal EAPs should be applied for designated categories. The operative EAP for the purposes of any calculation under the LSC shall be the most recently published EAP statistics and quarterly industry norm surveys.

### **10. MANAGEMENT CONTROL**

**Does EAP apply to Exec Management (para 26.3 indicates that it does and cl 28.1 indicates that the formulae per indicator should be as per the Generic Codes). Can a person that is an Equity Director also be part of Executive Management. i.e. counted twice. The definition of EM includes managing partners, and chief executives that are attorneys, both of which could also hold equity and therefore be equity directors.**

#### **ANSWER**

- 10.1. Based on the provisions of the LPA relating to ownership of law firms and sector specific characteristics, an Equity Director who is also part of the 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. MANAGEMENT CONTROL**

**Do EAP targets apply to Executive Management.**

**Can management levels be collapsed.**

**On Page 51 of 70 Paragraph 26.2 omits a reference to Senior Management. Was this an error. The paragraph references black legal practitioners and black women but excludes black designated groups. Should these also be included, in line with the table.**

## **ANSWER**

- 11.1. For QSEs management levels are already collapsed due to flat management structures in many of such firms. For Large LSMS they are not.
- 11.2. Paragraph 26.2 should be read to refer to all management levels. In the Management Control Scorecard, LSC 201, senior management is referred to and references the definition of senior management in the LSC. In substance it specifies that only legal practitioners can be counted in the management control scorecard based on the objectives of the LSC and requirements of the LPA.
- 11.3. Black legal practitioners in 26.2 include designated categories and such categories are included in the Skills Development table.

## **12. SKILLS DEVELOPMENT**

**In Page 53 of 70 - The formulae for calculating compliance are complex and lack clear guidance on key components, leading to potential inconsistencies across the sector. Para 29.5 of the Codes states that the targets for measurement will be between the minimum of years 1 and 2 and the maximum of 3.5% of the leviable amount in years 3 to 5.**

**However, if one adds the targets across all the spend Skills Development formulas, they total 9% of the leviable amount which cannot be the intention of the Legal Sector Codes.**

## **ANSWER**

- 12.1. The targets are reasonable. It is important to note that the targets in the Generic Codes are the minimum targets and have been in place since 2013. Furthermore paragraph 3.1.6 of Statement 003 requires that a sector code must set targets over and above the minimum targets set out in the Generic Codes. The initiatives are flexible and relatively easy to implement. There is an additional 7 bonus points which enhances the ability of the LSMES to gain more points which is not in the Generic Scorecard.

**On Page 55 of 70, the second bullet in the table refers to sub-category 300.6 indicating that Large LSMES are not measured for the recognition of expenditure incurred as the result of the payment of top-up monthly**



**remuneration of black CLPS as a total number in the LSME. However, the sub-category dealing with this is 300.5:**

**ANSWER**

12.2. This is correct and the reference should be to 300.5 in the bullet point.

**What is the denominator for measuring sub-category 300.1. The heading refers to “the number of black candidate legal practitioners (CLPs) who are enrolled within the LSME as a percentage of the leviable amount”. Does this mean that the entire staff compliment’s leviable amount should be used or only the leviable amount portion for candidate legal practitioners.**

**ANSWER**

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

**Does the Learning Matrix in the Generic Scorecard apply or will there be a specific skills development matrix be made available**

**ANSWER**

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.

**Does sub- category 300.4 refer to head count or expenditure**

**ANSWER**

12.5. Notwithstanding reference to leviable amounts in the Skills development table, paragraph 300.4 refers to head count i.e. the number of black law graduates, candidate attorneys who have completed their articles but

are not employed, or law students (as may be applicable) as a percentage of the total number of employees in the LSME.

***Sub-category 300.4 refers to internship. Must the one month be at one time or can it be split into different periods***

#### **ANSWER**

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

**In terms of sub-category 300.5, is it correct to state that this will refer to the number of black CLPs absorbed from 1 April 2022 to 31 March 2025 or 2022 verification date to 2025 verification date as a % of the total number of CLPs employed across the same period. Furthermore, will an LSME be able to claim recognition if that candidate attorney is employed permanently by another firm.**

#### **ANSWER**

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 50%, they will still get recognition for those that they do retain.

#### **Advocates Training Requirements**

**In Pages 58 – 59 of 70 whether advocates may outsource training or convert hourly rates into monetary targets. Can pupillage count as mentorship under Paragraph 301.2.**

**Statement 301.2 – Bonus points – are Advocates allowed to pay the contribution instead of the training in 301.1 and 301.2 or is it in addition to training in statement 301.1 and 301.2. If the advocate chooses to only**

**spend the monetary targets, will they still be able to claim sub-minimum or do the contributions not apply to the points for sub-minimum to avoid discounting**

#### **ANSWER**

12.9. Statement 301 – recognizes the following skills development initiatives to be undertaken by Advocates:

- Training
- Mentorships or
- contributions into the LSTF

12.10. Pupillage refers to training towards being admitted as an advocate and is not included. Mentorship under LSC 301.2 applies to black junior advocates.

12.11. Advocates are allowed to make monetary contributions into the LSTF as an alternative to training and/or tutoring in 301.1 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 in lieu of training in terms of 301.1 and 301.2.

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

**Due to the fact that the LSTF is not yet in existence, can LSMs who wish to contribute:**

- **Provide proof that it is not in existence and therefore obtain the weighting points; and**
- **Obtain a letter from the LPC that it is not in existence and therefore it could not contribute in order to obtain points;**

#### **ANSWER**

13.1. The Legal Sector Charter Council is responsible for the establishment of the LSTF. 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.

13.2. Details about the LSTF will be provided on the appointment of the Legal Sector Charter Council. Points cannot be allocated until the funds are deposited into the LSTF.

#### **14. PREFERENTIAL PROCUREMENT (LSC 400)**

**There is no mention of TMPS in the LSC. Instead, it measures black advocate spend as a percentage of all advocate spend and B-BBEE spend on other spend (goods, equipment and assets) as a percentage of the total for other spend. As far as we can see these two totals add up to what would effectively be the TMPS. In order to measure this, we need an audited figure of total advocate spend i.e. from the financials. Is this spend on advocates indicated as a separate expense in the financials of law firms.**

**Do the inclusions and exclusions as indicated in the DTIC Codes apply here too. (LSC is silent)**

#### **ANSWER**

- 14.1. This provision is designed to achieve the objectives of the LSC including 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.
- 14.2. The spend on advocates would be reflected in the law firms' invoices to clients as disbursements. Attorneys therefore will have a record of the total amount of expenditure that went through their trust accounts to pay advocates and can provide such records to a verification agency.

**Can foreign legal costs be excluded without an import substitution plan. Local law firms may be hired to represent clients in matters involving foreign parties and would therefore need to instruct foreign attorneys. This cannot be done using local attorneys as law is a very jurisdictional industry. There is also no realistic way to develop this capability locally as it requires foreign registration**

#### **ANSWER**

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

**Are targets for the JV/partnering items based on NPAT. This is not explicitly indicated. Both items include the option of contributing to beneficiaries who are 51% Black owned LSMEs. Does this effectively mean that the same beneficiaries can count in both items.**

**ANSWER**

14.4. It is clearly stated in LSC 400 that the measurement is based on value of the contract.

14.5. Where a beneficiary is both 51% Black and female for example it will be counted and the points in each category can be scored.

**Does the same “¼ of industry norms” methodology apply when the NPAT is low or at a loss as the LSC is silent on this. There is no separate Supplier Development element for attorneys. Does this mean that suppliers can be ED beneficiaries.**

**ANSWER**

14.6. This is correct, the industry norm becomes a fall-back principle as outlined in the Generic Codes find applicability.

14.7. 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 ESD element namely preferential procurement and enterprise development.

---