

THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION'S

PRACTICE GUIDE 01 of 2022

DETERMINING THE VALIDITY OF A BROAD-BASED BLACK ECONOMIC EMPOWERMENT VERIFICATION CERTIFICATE, B-BBEE SWORN AFFIDAVIT AND CERTIFICATE ISSUED BY THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

A. Introduction

1. The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is an entity established by the Broad-Based Black Economic Empowerment Act 53 of 2003 as amended by Act 46 of 2013 (“the Act”), to oversee the implementation of the Act, which includes provision of practice guides, explanatory notices, non-binding advisory opinions and clarification services to improve the understanding of the Act.
2. This Practice Guide is issued as a non-binding guide purely to assist with the interpretation of B-BBEE documentation presented by measured entities to ensure consistency in the application of the Act. Should this Practice Guide not be clearly applicable to your specific set of facts at any given time, you are advised to approach the B-BBEE Commission for a non-binding advisory opinion, which will be more specific to your set of facts.
3. This Practice Guide does not constitute a legal document or a ruling of the B-BBEE Commission on the issue concerned. Further, although this Practice Guide is not binding on the B-BBEE Commission, it does set out the approach that the B-BBEE Commission is likely to take on any matter relating to implementation of B-BBEE including determining the validity of B-BBEE sworn affidavits, B-BBEE verification certificates and certificates issued by the Companies and Intellectual Property Commission (CIPC) for B-BBEE purposes.
4. This Practice Guide replaces Practice Guide 01 of 2018 as of **01 November 2022**.

A. Purpose of this practice guide

5. The B-BBEE Commission has over the years continued to be inundated with requests from various stakeholders to confirm validity of B-BBEE certificates, sworn affidavits and CIPC certificates, which process has resulted in the B-BBEE Commission issuing a number of advisory letters to the affected entities to advise of invalidity of such documentation and the need to withdraw the invalid B-BBEE verification certificates or sworn affidavits/CIPC certificates. Thus, the purpose of this Practice Guide is to set out the approach for stakeholders to determine the validity of B-BBEE certificates or sworn affidavits/CIPC certificates for consistency.
6. The five elements of B-BBEE adopted in the Codes of Good Practice (the Codes) each have a specific purpose and together provide an integrated intervention to empower black people as envisaged in the Act. Further, the Act allows for B-BBEE verification, which is a measure used to determine compliance with the Act, and results in the issuing of a B-BBEE verification certificate.
7. A B-BBEE verification certificate, a sworn affidavit and a B-BBEE certificate issued by the CIPC is evidence of a measured entity's compliance with the Act over a particular period. Such compliance is based on B-BBEE related information of a measured entity in line with the applicable Codes as per Section 9 (1) of the Act.
8. It is contrary to the Act for a measured entity to trade with an invalid/inconclusive or incorrect B-BBEE verification certificate or sworn affidavit/CIPC certificate. The preferential procurement spend or economic activity that was directed by measured entities to a supplier or entity on the basis of an invalid B-BBEE document cannot be recognised during a B-BBEE measurement process, therefore, it is critical to determine the validity of B-BBEE verification certificates or sworn affidavits/CIPC certificates presented by measured entities in order to access an economic opportunity both in the public and private sector.

B. Determining validity of a sworn affidavit for B-BBEE compliance

9. The legal dictionary (<https://legal-dictionary.thefreedictionary.com/Affadavit>) defines a sworn affidavit as a written statement of facts voluntarily made by a person under an oath or affirmation administered by a person authorized to do so by law.
10. In terms of the Codes, Exempted Micro-Enterprises (EMEs) and black controlled and owned Qualifying Small Enterprises (QSEs) only have to use a sworn affidavit to indicate their B-BBEE

compliance status. Government introduced this mechanism specifically to reduce the cost of doing business and regulatory burden for these entities.

11. The Department of Trade, Industry and Competition (**the dtic**) has designed sworn affidavit templates and qualifying measured entities must use these templates, which can be accessed on **the dtic** website. It is acceptable to use the templates on the letterhead of the measured entity.
12. The only time an EME can be verified by a South African National Accreditation System (SANAS) accredited verification professional is when it wishes to maximise its B-BBEE points and move to a higher B-BBEE recognition level, and that must be done using the QSE Scorecard.
13. The exception to this is only with regard to the Transport Sector where EMEs have a choice of obtaining accounting officer letter or get verified and be issued with a B-BBEE verification certificate by a SANAS accredited professional or agency because the Integrated Transport Sector Code has not been aligned to the amended Generic Codes.
14. Also, start-ups that are EMEs but wish to tender for contracts of R10 million in value or above must be verified using the QSE scorecard, and for tenders of R50 million and above must be verified using the generic scorecard.
15. Further, the Construction Sector Code, provides for EMEs whose annual turnover is R1.8 million for Built Environment Professionals and R3 million for Contractors or less to obtain automatic recognition levels and these do not require to undergo verification except in instances where they elect to enhance their B-BBEE status levels. In those circumstances there is a requirement for these EMEs to contribute towards empowerment by complying with the 40% sub-minimum on skills development element and in ensuring compliance with the skills development element, these EMEs are required to be verified by a SANAS accredited verification professional or agency.
16. Furthermore, the Generic Codes and the Financial Services Sector Code have granted an option to 51% and 100% black owned QSEs to undergo a verification process from a SANAS accredited verification professional if they so choose. However, for consistent application, EMEs in the Financial Services Sector should only obtain a sworn affidavit, and not a B-BBEE verification certificate as there is nothing to verify.

17. **The following pointers are key in determining the validity of a sworn affidavit:**

- a) Name/s of deponent as they appear in the identity document and the identity number must be completed.
- b) Designation of the deponent as either the director, owner or member must be indicated in order to know that the person deposing to the sworn affidavit is duly authorised. A deponent is able to tick more than one option if the person is a director and owner of the entity.
- c) Name of enterprise must be cited as per the enterprise registration documents issued by the CIPC, where applicable, including the enterprise business address.
- d) Percentage of ownership held by black people, black female and black designated groups. For designated groups, the percentage must be indicated for each sub-category or nil where there is none. In the case of specialised enterprises as per Statement 004, the percentage of black beneficiaries must be reflected.
- e) Indicate the total annual revenue for the year under review and whether it is based on audited financial statements or financial statements or management accounts. Please select one option.
- f) Indicate the full financial year end (day/month/year) as per the enterprise's registration documents, which was used to determine the total revenue. This must be the recent financial year end.
- g) Select the B-BBEE Status level based on black ownership percentage. An enterprise can only have one B-BBEE status level.
- h) Empowering supplier status must be indicated. For QSEs, the deponent must select the basis for which the empowering supplier status is based on.
- i) Date of signature for both the deponent and Commissioner of Oath must be the same. If using the first **dtic** template for sworn affidavits, where provision is not made for Commissioner of Oath signature date, the date of the deponent will be regarded by default as the signature date for Commissioner of Oath.
- j) Commissioner of Oath cannot be an employee or ex officio of the enterprise because, a person cannot by law, commission a sworn affidavit in which they have an interest. Please note that the B-BEE Act does not determine the qualification for Commissioner of Oaths, this is done in terms of the Justice of Peace and Commissioners' of Oaths Act, 1963 (Act No. 16 of 1963) which is administered by the Department of Justice and Constitutional Development (DOJ & CD). Therefore any queries regarding the legitimacy of a Commissioner of Oath need to be directed to DOJ & CD.
- k) A B-BBEE sworn affidavit is valid for a period of 12 months calculated from the date the sworn affidavit was commissioned, for example, if the sworn affidavit is commissioned on 12 August 2022, it will expire on 11 August 2023.

C. B-BBEE Certificate issued by the Companies and Intellectual Property Commission

18. **the dtic** through government Gazette Number 38765 published on 6 May 2015, mandated CIPC to issue B-BBEE certificates for EMEs and start-up enterprises, in its efforts to reduce cost of business for small businesses. A certificate issued by CIPC has the same status as a B-BBEE sworn affidavit.
19. Subsequently, CIPC issued a Customer Notice indicating that B-BBEE certificates can be applied for via e-services on the CIPC website (www.cipc.co.za), at CIPC Self Services Terminals when registering or filing Annual Returns.
20. **The following conditions apply when an enterprise uses the CIPC services for obtaining a B-BBEE certificate:**
 - a) Only directors of a company or members of close corporations can apply for a B-BBEE certificate.
 - b) Only companies and close corporations with a turnover of less than R10 million can apply via CIPC.
 - c) The enterprise's status must be "In Business".
 - d) All Annual Return filings for the relevant company or close corporation need to be up to date;
 - e) Application for a B-BBEE certificate can be done at any time (not only when registering a company or filing returns), provided that an application for the certificate which is still valid, was not done already.
 - f) Applicant must agree to the B-BBEE terms and conditions.
 - g) A director or member amendment must be filed if the director or member's email address or telephone is not correct or up to date.
21. A CIPC certificate can be submitted to the B-BBEE Commission for attention of Mr. Madidimalo Ramare at MRamare@beecommission.gov.za to confirm if it was generated from the CIPC system. However, on face value, the following information must appear on the certificate:
 - a) Name of enterprise, registration number and business address.
 - b) Date of issue and expiry adding to twelve months (e.g 9 June 2018 to 8 June 2019) must be indicated.
 - c) Percentage of total black ownership, black female ownership and total white ownership.
 - d) Certificate number.
 - e) Barcode with tracking number.

- f) Barcode with enterprise number.
- g) B-BBEE Status and procurement recognition level.
- h) **the dtic** logo on the top left corner, and CIPC logo on the top right corner.
- i) CIPC watermark.

D. Determining validity of a B-BBEE Verification Certificate for B-BBEE compliance

- 22. An entity that qualifies in terms of the B-BBEE Act to undergo a B-BBEE verification process, can only do so with a verification professional or agency that has been accredited by SANAS or a B-BBEE Verification Professional Regulator that may be appointed by the Minister of Trade, Industry and Competition.
- 23. B-BBEE verification means the process and activities conducted by a verification professional or agency to assess, verify and validate that the score awarded to a measured entity is a result of individual scorecard elements supplied by a measured entity, and to evaluate B-BBEE transactions in order to provide an indicative B-BBEE score and certification based on the principles of B-BBEE as per the Codes.
- 24. A B-BBEE verification process is important in assuring parties that rely on the score achieved by the measured entity and reflected on their B-BBEE Verification Certificate (refers to the B-BBEE verification certificate issued by the verification professional or agency which reflects the overall B-BBEE Status of a measured entity and scoring allocated for each scorecard element verified in respect of the measured entity) and that the information on which the certificate was issued is acceptable, and has been independently verified, and is free from misstatements.
- 25. Therefore, the role of a verifier is to assess, verify and validate both disclosed and undisclosed B-BBEE related information of the measured entity. The verification thereof should be based on the principles contained in the B-BBEE Act and relevant Codes, by applying the verification methodologies outlined in the Framework for accreditation and verification by all verification agencies (also known as the verification manual) as well as the Accreditation of B-BBEE Verification Agencies document issued by SANAS (also referred to as the R47-03). Important to note that a verifier is not to provide clarity or opinion on interpretation of any B-BBEE matter as such clarity must be sought from the B-BBEE Commission using the contact details mentioned below.
- 26. **A B-BBEE Verification Certificate shall identify the following information:**
 - a) The name and identifiable physical location(s) of the measured entity as per the CIPC records.

- b) The registration and VAT number of the measured entity.
- c) The dates of granting of the B-BBEE score/the period of validity, which is the initial issue date (e.g. 7 October 2021 to 6 October 2022) and the expiry date of the verification certificate.
- d) The revision or reissue date if applicable. .
- e) A unique identification number including revision number if applicable.
- f) The standard and/or normative document, including the issue and/or revision used to evaluate the client (amended codes / specialised or respective sector codes).
- g) The name and/or mark/logo of the B-BBEE verification agency.
- h) The scorecard against which the measured entity has been verified (Generic / QSE).
- i) The B-BBEE status level.
- j) The SANAS Accreditation Symbol on the verification certificate.
- k) The B-BBEE procurement recognition level.
- l) Score per element including total score achieved.
- m) Black ownership percentage.
- n) Black Female ownership percentage.
- o) Black designated group percentage:
 - Black Youth percentage
 - Black Disabled percentage
 - Black Unemployed percentage
 - Black People living in Rural areas percentage
 - Black Military Veterans percentage
- u) Modified flow has been applied, indicate yes or no.
- v) Exclusion principle used, indicate yes or no.
- w) Recent financial year end used (day/month/year).
- x) Discounting principle used, indicate yes / no.
- y) Empowering Supplier status, indicate yes / no.
- z) Name and signature of technical signatory
- aa) Amendments to certificate to be clearly documented.
- bb) A consolidated certificate to state as such and refers to attachment of the measured entities that are consolidated with registration and vat numbers.
- cc) In terms of the reflection of the level and points on the B-BBEE verification certificate, the following is applicable:
 - Participated in Y.E.S Initiative yes / no
 - Achieve Y.E.S Target and 2.5% Absorption yes / no
 - Achieve 1.5 x Y.E.S Target and 5% Absorption yes / no
 - Achieve Double Y.E.S Target and 5% Absorption yes / no

27. The recipient or user of a B-BBEE verification certificate can contact any of the accredited verification professionals or agency that is said to have issued the B-BBEE verification certificate, to request confirmation on the issuance of B-BBEE certificate. The recipient or user is also advised to use the SANAS website to verify the accreditation status, accreditation period and scope of accreditation for the verification professional or agency. The SANAS website also has a list of all verification professionals or agencies whose accreditation status has been withdrawn, or suspended, because a verification professional or agency cannot issue a B-BBEE certificate if the accreditation status has expired, withdrawn or suspended.
28. The recipient or user of the B-BBEE verification certificate, sworn affidavit or B-BBEE certificate issued by CIPC is also allowed, as part of its due diligence processes, to request any relevant additional information or documents from the measured entity in order to validate the credibility of the information recorded on the B-BBEE verification certificate, sworn affidavit/CIPC B-BBEE certificate.
29. It is also the responsibility of the recipient or user of the B-BBEE verification certificate or sworn affidavit/CIPC certificate to specify if measured entities ought to furnish an original or copy including certified copy of the B-BBEE verification certificate or sworn affidavit/CIPC certificate.

E. Penalties as per the B-BBEE Act

30. Trading with an invalid or fraudulent B-BBEE certificate or sworn affidavit/CIPC certificate may constitute an offence in terms of Section 13O (1) (a) of the B-BBEE Act, which state that a person commits an offence if that person knowingly misrepresents or attempts to misrepresent the broad-based black economic empowerment status of an enterprise, and the B-BBEE Commission may institute an investigation in terms of Section 13J of the B-BBEE Act. In addition, Section 13A of the B-BBEE Act has empowered organs of state and public entities to cancel any contract or authorisation awarded on account of false information knowingly furnished by or on behalf of an enterprise in respect of its broad-based black economic empowerment status.
31. If an entity is found to have violated the B-BBEE Act, the B-BBEE Commission is empowered to act accordingly as guided by the B-BBEE Act and this can result in the entity that violated the B-BBEE Act to be fined up to 10% of its annual turnover, and individuals involved could be imprisoned for up to 10 years, and / or fined. Specifically, an offence under section 13O (2) could lead to imprisonment of up to 12 months, or a fine, or both the fine and imprisonment.

32. In terms of section 13O (2) a verification professional, procurement officer or any official of an organ of state or public entity who becomes aware of the commission of, or attempt to commit any offence referred to under section 13O (1) and fails to report it, is guilty of an offence.
33. This Practice Guide is issued as a guide purely to assist with the interpretation and testing the validity of a B-BBEE verification certificates and sworn affidavit/CIPC certificates, and does not constitute a legal document or ruling of the B-BBEE Commission.
34. This Practice Guide may be updated anytime by the B-BBEE Commission if there are any material changes arising from developments in the application of the B-BBEE Act. In such an instance, an amended version will be published to replace this one.
35. For any queries or further clarity on this Practice Guide, kindly feel free to contact us at the following contact details:

B-BBEE Commission

Private Bag X31

Pretoria

0001

Telephone: +27 12 394 1535 or +27 82 903 6398

Email: MRamare@beecommission.gov.za

Issued by the B-BBEE Commission

19 October 2022