

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE AND INDUSTRY

NOTICE 545 OF 2017

DRAFT STATEMENT 005 OF 2017 FOR 60 DAY PUBLIC COMMENTARY

DEPARTMENT OF TRADE AND INDUSTRY

CODES OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC EMPOWERMENT

I, Dr Rob Davies, Minister of Trade and Industry, hereby:

- a) Appoints the B-BBEE Unit under the administration of the Department of Trade and Industry as the B-BBEE Verification Professional Regulator.
- b) Amend the following Draft Statement 005 of 2017 for public commentary in terms of section 9 (5) of the Broad-Based Black Economic Empowerment Amendment Act 2003, (Act No. 53 of 2003) as amended by the B-BBEE Act 46 of 2013.
- c) Invite interested persons and the public to submit inputs and comments on the Draft Statement 005 of 2017 within 60 days from the date of this publication.

Interested parties are requested to forward their comments in writing for the attention of the B-BBEE Unit to either of the following addresses:

1. E-mail: statement005@thedti.gov.za

2. the dti Campus
77 Meintjies street
Sunnyside, Pretoria
0002
c/o BEE Unit

3. Private Bag X 84
Pretoria
0002

Enquiries: 012 394 3518


Dr Rob Davies, MP
Minister of Trade and Industry
20 June 2017

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

_____ Words underlined with a solid line indicate insertions into existing enactments

[STATEMENT 005:

BROAD BASED BLACK ECONOMIC EMPOWERMENT VERIFICATION

Issued under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 53 of 2003

ARRANGEMENT OF THIS STATEMENT

Section 1: Definitions

Section 2: Objectives of this Statement

Section 3: Interpretation of this Statement

Section 4: Application of this Statement

Section 5: Requirements for Verification Agencies

Section 6: Requirements for Approved Registered Auditors

Section 7: Verification Certificates and Information

Section 8: Verification Manual

Section 9: Term and Withdrawal of Approved or Registered Status]

AMENDED CODE SERIES 000, STATEMENT 005 OF 2017:

BROAD BASED BLACK ECONOMIC EMPOWERMENT VERIFICATION

Issued under section 9 (5) of the Broad-Based Black Economic Empowerment Act, 2003 (B-BBEE Act No. 53 of 2003) as amended by B-BBEE Amendment Act No.46 of 2013

ARRANGEMENT OF THIS STATEMENT

Table of Contents

<u>SECTION 1: DEFINITIONS</u>	<u>4</u>
<u>SECTION 2: OBJECTIVES OF THIS STATEMENT</u>	<u>6</u>
<u>SECTION 3: INTERPRETATION OF THIS STATEMENT.....</u>	<u>7</u>
<u>SECTION 4: APPLICATION OF THIS STATEMENT</u>	<u>7</u>
<u>SECTION 5: STANDARDS OF ETHICAL CONDUCT AND REQUIREMENTS.....</u>	<u>9</u>
<u>SECTION 6: STANDARDS ON EDUCATION REQUIREMENTS</u>	<u>10</u>
<u>SECTION 7: STANDARDS FOR B-BBEE VERIFICATION CERTIFICATES AND REPORTS.....</u>	<u>11</u>
<u>SECTION 8: STANDARDS FOR ACCREDITATION FOR A RATING AGENCY.....</u>	<u>14</u>
<u>SECTION 9: VERIFICATION METHODOLOGY</u>	<u>16</u>
<u>SECTION 10: TERM AND WITHDRAWAL OF THE ACCREDITATION BODY</u>	<u>17</u>

SECTION 1: DEFINITIONS

In this Statement, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

"Accreditation Body" means the South African National Accreditation System (SANAS) established by section 3 of the Accreditation for Conformity Assessment Calibration and Good Laboratory Practice Act 2006 (Act No. 19 of 2006), an agency of the dti's Council of Trade and Industry Institutions (COTII) and South Africa's technical infrastructure;

["Approved Regulatory Body" means the Independent Regulatory Board of Auditors (IRBA) established by section 3 of the Auditing Profession Act (Act No. 26 of 2005).]

"B-BBEE" means Broad-Based Black Economic Empowerment;

"B-BBEE Capacity Development Programme" means a programme developed by the B-BBEE Verification Professional Regulator and selected Higher Education Institutions. This programme replaces the current B-BBEE Management Development Programme (MDP)

"B-BBEE Verification [Manual] Methodology" means the Verification Manual gazetted by the Minister on the 18 July 2008 (gazette No. 31255) as and when amended and [or] any other guidance or notices as may be issued by the dti from time to time.

"B-BBEE Status" has the meaning assigned in Amended Code Series 000, Statement 000;

"B-BBEE Verification Professional" means a person who performs any work in connection with rating the status of enterprises in terms of Broad-Based Black Economic Empowerment compliance, or for an accredited rating agency, or on the

authority of, a B-BBEE Verification Professional Regulator as per "the Act" or as and when amended.

"B-BBEE Verification Professional Regulator" means a body appointed by the Minister of Trade and Industry for the accreditation of rating agencies or the authorisation of B-BBEE Verification Professionals as per "the Act" or as and when amended.

"B-BBEE Verification Professional Signatory" means a competent person that meets all education standards and is the Signatory on the B-BBEE Certificate and Report

["Enterprise"] "Entity" has the meaning assigned in Amended Code [000] Series 100 Statement [000] 100;

"Higher Education Institutions" has the meaning assigned in the Higher Education Act, 101 of 1997 as amended;

"Rating Agency" means an entity accredited by the Accreditation Body and approved by the B-BBEE Verification Professional Regulator approved by the Minister;

"Technical Exam" means a practical examination and assessment as developed by the B-BBEE Verification Professional Regulator and selected Higher Education Institutions

"the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003 as amended by B-BBEE Amendment Act No.46 of 2013;

"the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act; as and when amended by the Minister of Trade and Industry

"the dti" means the Department of Trade and Industry;

"the B-BBEE Certificate and Report Portal" means an IT Portal developed by the B-BBEE Commission that maintains B-BBEE Verification Certificates and Reports with underlying data that will allow the monitoring of B-BBEE within the South African economy;

"the Minister" means the Minister of the Department Trade and Industry;

"this Statement" means Statement 005 of 2017;

["Verification Agency" means a B-BBEE verification agency accredited by the Accreditation Body;]

["Approved Registered Auditor" means a Registered Auditor approved by the "Approved Regulatory Body" to provide B-BBEE verification services to measured entities, in terms of the approval granted by the Minister of Trade and Industry;]

"Verification Certificate" means a B-BBEE Certificate issued in compliance with the B-BBEE Codes of Good Practice and all Sector Codes issued in terms of Section **[9(1) of the B-BBEE Act 53 of 2003]** **9 (1) of the B-BBEE Act 53 of 2003 as amended by B-BBEE Amendment Act No.46 of 2013;**

SECTION 2: OBJECTIVES OF THIS STATEMENT

2.1. The objectives of this Statement are to:

- a) **[p]** Provide interpretation of this statement;
- b) **[p]** Provide for the application of this statement;
- c) **To specify Standards of ethical conduct and requirements;**

- d) To specify Standards on Education Standards;
- e) **[specify requirements for approval of the Approved Regulatory Body and the Accreditation Body;]** To specify Standards for Verification Certificates and Reports;
- f) **[specify accreditation requirements for Verification Agencies and approval requirements for Registered Auditors;]** To specify Standards for Accreditation for a Rating Agency;
- g) **[specify terms and withdrawal of approved status of the Approved Regulatory Body and the Accreditation Body;]** Specify Withdrawal Conditions for the Accreditation Body
- h) **[specify the Verification Manual or any other verification guidance as may be issued by the dti from time to time;]; [and] To provide guidance and clarification in terms of Application of the Codes, Act and Methodology and;**
- i) **[specify requirements for Verification Certificates;]** To set Standards that will govern the B-BBEE Verification Industry.

SECTION 3: INTERPRETATION OF THIS STATEMENT

This Statement must be interpreted in a manner that is consistent with the objectives of the Act.

SECTION 4: APPLICATION OF THIS STATEMENT

4.1. This Statement applies to:

- a) **[t] The Accreditation Body;**
- b) **[the Approved Regulatory Body;]**
- c) The Rating Agencies;
- d) B-BBEE Verification Professionals
- e) all organs of state and public entities exercising powers in terms of section 10 of the Act

[SECTION 5: REQUIREMENTS FOR VERIFICATION AGENCIES]

- 5.1. An entity may apply to the Accreditation Body in order to obtain accreditation as a Verification Agency.**
- 5.2. Accreditation will be conducted in terms of the accreditation standards that will be developed through the national standards process, and to be maintained and enforced by both the dti and the Accreditation Body.**
- 5.3. The accreditation requirements shall govern the terms and conditions on which the Accreditation Body may grant, refuse to grant, revoke or suspend an accreditation of a Verification Agency.**
- 5.4. Those verification agencies wishing to apply for accreditation will do so in writing through the Accreditation Body.**
- 5.5. the dti together with the Accreditation Body will implement such mechanisms as may be necessary to ensure that Verification Certificates are accurate and reliable.**

The Accreditation Body in terms of this Statement must meet the following criteria:

5.5.1. The Accreditation Body requires any entity seeking accreditation:

- a) To meet the accreditation standards to grant, refuse to grant, revoke or suspend an accreditation of a Verification Agency;**
- b) To have completed training on B-BBEE Verification Services and Certification offered by Higher Education Institution as prescribed by the dti and to maintain relevant Continuing Professional Development (CPD) as prescribed by the dti;**
- c) To comply with the relevant Verification Manual, Gazette notices or any other guidance as may be issued by the dti; and**
- d) To demonstrate transformation and rated as a Contributor to B-BBEE" (Level one to three Contributor). This requirement must be met within 12 months from effective date of this statement.**

5.5.2. The Accreditation body must provide the authorised verification agency with an approved identification reference to confirm such

authorization.

5.6. The Accreditation Body must have the power and established processes to:

- a) **Maintain a register of those accredited verification agencies who provide B-BBEE Verification Services;**
- b) **Conduct investigations of accredited verification agencies' verification engagement files for evidence of compliance with the Verification Manual, and report on the outcome to the dti for monitoring and evaluation purposes;**
- c) **Monitor CPD Compliance by accredited verification agencies; and**
- d) **Investigate complaints against accredited verification agencies and suspend accreditation of those individuals found guilty of negligence in the performance of their duties or conduct which brings the profession into disrepute.]**

SECTION 5: STANDARDS OF ETHICAL CONDUCT AND REQUIREMENTS

5.1 Impartiality - Impartiality is the actual and perceived presence of objectivity. Objectivity means that conflicts of interest do not exist or are resolved so as not to influence adversely the subsequent activities of the B-BBEE Verification Professional/Rating Agency.

5.2 Competence - Competence is the demonstrated ability to apply knowledge and skills effectively by the Verification Professional/Rating Agency.

5.3 Responsibility - The B-BBEE Verification Professional/Rating Agency is responsible for carrying out a factual, thorough evaluation of a measured entity's BEE status and, based on the result, for granting a BEE score

5.4 Openness - A B-BBEE Verification Professional/Rating Agency needs to provide public access to, or disclosure of, appropriate and timely information about the evaluation and verification process and about the verification status of any measured entity in order to gain confidence in the integrity and credibility of the BEE verification process.

5.5 Confidentiality - In order to gain access to the privileged information that is needed for the B-BBEE Verification Professional/Rating Agency to assess adequately the requirements for BEE Verification, a B-BBEE Verification Professional/Rating Agency needs to keep any proprietary information about a measured entity confidential

5.6 Resolution of Complaints - Parties that rely on the outcome of their verification status as assessed by accredited B-BBEE Verification Professionals/Rating Agencies expect to have their complaints investigated

SECTION 6: STANDARDS ON EDUCATION REQUIREMENTS

6.1 The following Education Standards will be required as a minimum for B-BBEE Verification Professional Signatories:

6.1.1 B-BBEE Capacity Development Programme:

6.1.2 Must have a minimum of Three (3) years relevant technical experience on the practical implementation and verification of the B-BBEE Codes of Good Practice:

6.1.3 Must have a minimum of One (1) of Managerial experience in the practical implementation and verification of the B-BBEE Codes of Good Practice above paragraph 6.1.2

6.1.4 All Candidates need to undergo a Technical Exam in order to qualify as a B-BBEE Verification Professional Signatory

6.2 The following Education Standards will be required as a minimum for B-BBEE Verification Professionals:

6.2.1 B-BBEE Capacity Development Programme:

SECTION 7: STANDARDS FOR B-BBEE VERIFICATION CERTIFICATES AND REPORTS

7.1 the dti will from time to time issue guidelines on the validity and issuance of B-BBEE Verification Certificates and Reports:

7.2 A B-BBEE Verification Certificate and Report issued:

7.2.1 Must record the weighting points attained by the measured entity for each element, where applicable, and the overall B-BBEE Status of an Enterprise and other relevant information regarding the identity of the Measured Enterprise, determined in accordance with the Amended Codes of Good Practice and Amended Sector Codes issued in terms of Section 9 (1) of the Act and the Verification Methodology:

7.2.2 Must record an approved identification reference in the format required by the Accreditation Body: and

7.2.3 is valid for a period of 12 months from the date of issue.

7.3 The Accreditation Body must require its accredited Rating Agencies, to keep records as are necessary to:

7.3.1 Identify B-BBEE Verification Professional Signatory who has signed the B-BBEE Verification Certificates and Reports issued by the Rating Agency:

7.3.2 Maintain such documentation and records as may be necessary to support the accuracy and reliability of the rating awarded to all Scorecard categories and resultant Contributor Level reflected on the B-BBEE Verification Certificates and Reports:

7.3.3 Upload the B-BBEE Verification Certificate and Report onto the B-BBEE Certificate and Report Portal:

7.3.1.1 The information uploaded must contain the underlying data in each B-BBEE Verification Certificate and Report:

7.3.1.2 The Rating Agencies must ensure that the above information is uploaded within 5 Working Days of issuance to the Measured Entity;

7.3.1.3 Where a B-BBEE Verification Certificate and Report has been uploaded and an amended version has been re-issued, the Rating Agency must ensure that the latest version is uploaded in addition to the original upload;

7.3.1.4 Any B-BBEE Verification Certificates and Reports issued prior to the implementation of this Statement which are still valid, must be uploaded onto B-BBEE Certificate and Report Portal.

[SECTION 6: REQUIREMENTS FOR APPROVED REGISTERED AUDITORS

6.1. A Registered Auditor may apply to the Approved Regulatory Body in order to obtain approval as an "Approved Registered Auditor".

6.1.1. The Approved Regulatory Body requires Registered Auditors:

- a) To be in good standing with the Regulatory Body;**
- b) To comply with its prescribed Code of Professional Conduct, Standards of Quality Control and Assurance Standards;**
- c) To have completed the Standardised B-BBEE Management Development Programme and Certification offered by Higher Education Institutions as prescribed by the dti and who maintain relevant Continuing Professional Development (CPD) as prescribed by the Approved Regulatory Body;**
- d) To comply with the relevant Verification Manual, or any other guidance or notices as may be issued by the dti from time to time; and**
- e) To demonstrate transformation and rated as a Contributor to B-BBEE" (Level one to three Contributor). This requirement must be met within 12 months from effective date of this statement.**

6.1.2. The Approved Regulatory Body provides all registered auditors with a registration number on registration and will issue a Certificate to

all Approved Registered Auditors, reflecting their approved status, which may also be confirmed directly with the Approved Regulatory Body.

6.2. The Approved Regulatory Body must have the power and established processes to:

- a) Maintain a record of those Approved Registered Auditors who provide B-BBEE Verification Services;**
- b) Conduct investigations of Approved Registered Auditors' engagement files for evidence of compliance with the prescribed Code of Conduct, with Standards of Quality Control and Assurance Standards (including B-BBEE Verification Services) and report on the outcome to the dti for monitoring and evaluation purposes;**
- c) Monitor CPD Compliance by Approved Registered Auditors; and**
- d) Investigate complaints against Approved Registered Auditors and to discipline, sanction or exclude from registration those individuals found guilty of negligence in the performance of their duties or conduct which brings the auditing profession into disrepute.]**

[SECTION 7: VERIFICATION CERTIFICATES AND INFORMATION

7.1. the dti will from time to time issue guidelines on the validity and issuance of Verification Certificates;

7.2. A Verification Certificate issued:

- a) Must record the weighting points attained by the measured entity for each element, where applicable, and the overall B-BBEE Status of an Enterprise and other relevant information regarding the identity of the Measured Enterprise, determined in accordance with the Codes of Good Practice, Sector Codes issued in terms of Section 9(1) of the Act and the Verification Manual;**
- b) Must record an approved identification reference in the format required by the Approved Regulatory Body or Accreditation**

Body; and

c) is valid for a period of 12 months from the date of issue.

7.3. The Approved Regulatory Body and the Accreditation Body must require its Approved Registered Auditors and accredited Verification Agencies, respectively, to keep records as are necessary to:

- a) Identify the individual member or Approved Registered Auditor who has signed the Verification Certificates issued by the Approved Registered Auditor's firm or Verification Agency; and
- b) Maintain such documentation and records as may be necessary to support the accuracy and reliability of the rating awarded to all Scorecard categories and resultant Contributor Level reflected on the Verification Certificates; and
- c) Upload the relevant information pertaining to the certificate on the dti BEE IT Portal containing the information underlying each verification certificate issued within 30 days of issuance of the certificate.]

SECTION 8: STANDARDS FOR ACCREDITATION FOR A RATING AGENCY

8.1 An entity must apply to the Accreditation Body in order to obtain accreditation as a Rating Agency

8.2 Accreditation will be conducted in terms of the accreditation standards that will be developed through the national standards process, and to be maintained and enforced by both The B-BBEE Verification Professional Regulator and the Accreditation Body;

8.3 The accreditation requirements shall govern the terms and conditions on which the Accreditation Body may grant, refuse to grant, revoke or suspend an accreditation of a Rating Agency;

8.4 Those Rating Agencies wishing to apply for accreditation will do so in writing to the Accreditation Body;

8.5 The B-BBEE Verification Professional Regulator together with the Accreditation Body will implement such mechanisms as may be necessary to

ensure that B-BBEE Verification Certificates and Reports are accurate and reliable;

8.6 The Accreditation Body must provide the accredited Rating Agency with an approved identification reference to confirm such accreditation;

8.7 The Rating Agency in terms of this Statement must meet the following criteria:

8.7.1 To comply with the relevant Verification Methodologies as amended, Gazette notices or any other guidance as may be issued by The B-BBEE Verification Professional Regulator; and

8.7.2 To be verified as a Superior Contributor to B-BBEE" (Level One (1) to Three (3) Contributor) with at least 51% Black Ownership utilizing the Flow Through Principle as per the Amended Codes of Good Practice within 12 Months of the final publication of Statement 005.

8.7.3 If the above is not adhered to, Accreditation is automatically lost.

8.7.4 The B-BBEE Verification Professional Regulator will assess and analyse the B-BBEE Verification Certificate and Report of the Rating Agency inclusive of all supporting documentation and evidence.

8.7.5 A Rating Agency needs to be verified against all 5 elements of the scorecard regardless of their size (EME, QSE or Generic)

8.7.6 Rating Agencies that are classified as EMEs, must be verified in accordance with paragraph 4.4 under Statement 000 of the Amended Codes of Good Practice and cannot use the application stated under paragraphs 4.2, 4.3 and 4.5 under Statement 000 of the Amended Codes of Good Practice.

8.7.7 Rating Agencies that are classified as EMEs cannot obtain a B-BBEE Certificate from the Companies and Intellectual Property Commission (CIPC)

8.7.8 Rating Agencies that are classified as QSEs and at least 51% Black Owned or more cannot use the application stated under paragraph 5.3 under Statement 000 of the Amended Codes of Good Practice.

8.7.9 The above principles are also applicable to Start-Up Enterprises

8.8 The B-BBEE Verification Professional Regulator and Accreditation Body must have the power and established processes to:

8.8.1 Maintain a register of those accredited Rating Agencies who provide B-BBEE Verification Services;

8.8.2 Conduct investigations of accredited Rating Agencies Verification engagement files for evidence of compliance with the Verification Methodology and the application of Statement 005, and report on the outcome to The B-BBEE Verification Professional Regulator and B-BBEE Commission for monitoring and evaluation purposes; and

8.8.3 Investigate complaints against accredited Rating Agencies and suspend accreditation of those found guilty of negligence in the performance of their duties or conduct which brings the profession into disrepute. This is also applicable to B-BBEE Verification Professionals

8.8.4 The B-BBEE Verification Professional Regulator may determine conditions for approval or withdraw approval of the B-BBEE Verification Professionals that has failed to comply with the provisions of this Statement or on such grounds as appear reasonable in the circumstances.

SECTION 9: VERIFICATION [MANUAL] METHODOLOGY

- 9.1 The Verification **[Manual]** Methodology shall be applied as minimum guidelines when performing B-BBEE Verification and determining the B-BBEE rating to be awarded in accordance with paragraph **[7.2]** 7.2 above; and
- 9.2 Any B-BBEE Verification Certificate issued without applying the guidelines in determining the B-BBEE rating as set out in the Verification **[Manual]** Methodology shall be deemed null and void.

[SECTION 9: TERM AND WITHDRAWAL OF APPROVED OR REGISTERED STATUS

- 9.1. The Term of Approval of the Approved Regulatory Body and the Accreditation Body may be specified for a specific period or, once approved, continues until such time as it may be withdrawn or revoked by the Minister.
- 9.2. The Minister may determine conditions for approval or withdraw approval of the Approved Regulatory Body and Accreditation Body that

has failed to comply with the provisions of this Statement or on such grounds as appear reasonable in the circumstances.]

SECTION 10: TERM AND WITHDRAWAL OF THE ACCREDITATION BODY

- 10.1 The Term of Approval of the Accreditation Body may be specified for a specific period or, once approved, continues until such time as it may be withdrawn or revoked by the Minister.
- 10.2 The Minister may determine conditions for approval or withdraw approval of the Accreditation Body that has failed to comply with the provisions of this Statement or on such grounds as appear reasonable in the circumstances.