

B-BBEE: The Amended Codes, Sector Codes, Transformation Charters and changes to be expected

Most companies operating in South Africa are familiar with the term B-BBEE, the old 2007 DTI Codes of Good Practice and the 2013 General Amended Codes.

Nevertheless, the nature of your business and the industry or sector in which your company operates, are both vital aspects which need to be considered when establishing whether a Sector Code or Transformation Charter would most likely dictate how your company's B-BBEE status will be determined.

Section 9 of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 (BEE Act) legally provides for the issuing of Codes of Good Practice on B-BBEE. Excluding the DTI's strategy for B-BBEE and the BEE Act, the drivers of transformation charter processes have, to date, lacked the standard BEE framework and knowledge from which to develop charters which explains the development of some charters long before the BEE Act and the DTI's strategy document were even released. It also makes sense why there is such significant disjointed and confusing differences between the various charters, specifically regarding content and measurement criteria.

This "disjointedness" has complicated and tainted the tender and procuring processes as companies in sectors with stricter measurement criteria, are unable to compete with those companies in sectors with more lenient, favourable measurement criteria.

To rectify the above, the BEE Act provides for Transformation Charters to either be gazetted in terms of Section 9 or in terms of Section 12. It is important to note that a Section 9 Transformation Charter refers to a charter which has been gazetted as a Code of Good Practice (i.e. which has the same status as the old 2007 DTI Codes) and which is legally binding on organs of state and public entities. A Section 12 Transformation Charter simply expresses a specific industry's commitment to transformation and is not legally binding.

In cases where Transformation Charters have not been gazetted in terms of Section 9, the 2013 General Amended Codes will need to be used for B-BBEE measurement.

Currently two (2) Transformation Charters were enacted as part of amendments to Acts, being:

1. The Mining Charter and Scorecard, contained in the Mineral and Petroleum Resources Development Act 28 of 2002 and
2. The Petroleum and Liquid Fuels Charter, contained in the Petroleum Products Amendment Act of 2003.

To date, the following Sector Codes have been gazetted, all of which being effective from date of issue:

1. The Amended Tourism Sector Codes (20 November 2015),
2. The Marketing, Advertising and Communications Sector Code also referred to as the MAC Sector Code (01 April 2016),
3. The Amended ICT Sector Codes (07 November 2016),
4. The Amended Forestry Sector Code (21 April 2017),
5. The Amended Construction Sector Code (1 December 2017),
6. The Amended Financial Services Sector Code (1 December 2017),
7. The Amended AgriBEE Sector Code (08 December 2017) and
8. The Amended Property Sector Code (09 June 2017).

It is important to note that the following still needs to be finalised and gazetted:

1. The Draft Transport Sector Code (26 February 2016),
2. The Draft Defence Sector Code (04 August 2017),
3. The Draft Gazette for the Petroleum and Liquid Fuels Sector Code (13 September 2017) and
4. Most importantly the Draft BEE Legislation (29 March 2018)

This article is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Contact Strata-g Labour Solutions for specific and detailed advice.

STEFANI DU TOIT

TRANSFORMATION SPECIALIST