

SECTOR CODES and/or TRANSFORMATION CHARTERS

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

However, based on the nature of your business and/or the industry or sector in which your company operates, a Sector Code or Transformation Charter would most likely dictate how your company's B-BBEE status needs to be determined.

What is a Sector Code / Transformation Charter?

Firstly, it is important to note that 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.

With the exception of 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. This explains the development of some charters long before the BEE Act and the DTI's strategy document were even released and furthermore why there is such significant incoherent differences between the various charters, specifically regarding content and measurement criteria.

The result of this "incoherence" is that some companies in certain sectors, with stricter measurement criteria, are being unfavourably disadvantaged when competing for

business with companies in sectors with more lenient measurement criteria.

To rectify this "incoherence", the BEE Act has made provision for Transformation Charters to either be gazetted in terms of section 9 or in terms of section 12, with the old 2007 DTI Codes of Good Practice including a statement on transformation charters as well as guidelines on the gazetting of charters (Code Series 000).

What is the difference between a Transformation Charter gazetted in terms of Section 9 versus a Transformation Charter gazetted in terms of Section 12?

- i. A Transformation Charter gazetted in terms of Section 9 means that the charter has been gazetted as a Code of Good Practice, having the same status as the old 2007 DTI Codes and essentially that it is legally binding on organs of state and public entities, whereas
- ii. A Transformation Charter gazetted in terms of Section 12 merely expresses an industry's commitment to transformation which is NOT legally binding on organs of state and public entities.

Where Transformation Charters have not been gazetted as Codes of Good Practice, government will make use of the current Codes of Good Practice, being the 2013 Amended Codes, as a means of B-BBEE measurement.

Which Transformation Charters have been gazetted?

There are currently two (2) Transformation Charters which were enacted as part of amendments to Acts, being:

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

Which Sector Codes have been gazetted?

With the exception of the **Chartered Accountancy Sector Code**, which was repealed on 17 February 2016, the following have been gazetted to date, all of which are 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).

The following though were issued in draft for public comment and has yet to be finalised and gazetted:

1. The Draft Transport Sector Code (26 February 2016),
2. The Draft Defence Sector Code (04 August 2017), and
3. The Draft Gazette for the Petroleum and Liquid Fuels Sector Code (13 September 2017).

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