

Nyapotse Inc
Attorneys



**LEGAL PRACTICE
COUNCIL**



PRESENTATION OF THE SUMMARY AND SALIENT PROVISIONS OF THE PROPOSED LEGAL SECTOR CODE (LSC) FOR PURPOSES OF STAKEHOLDERS CONSULTATIONS

November – December 2020

PRESENTED BY ON BEHALF OF THE LPC

BY

NYAPOTSE & MHLABENI INCORPORATED

INTRODUCTION & BACKGROUND

- * As early as 1998, the Legal Sector was still divided along the Attorneys and Advocates professions before the amalgamation in terms of the Legal Practice Act in 2014.
- * Before the amalgamation, an attempt was made to develop and conclude the Transformation Sector Charter in terms of Section 12 of the BBBEE Act, as it was then referred to.
- * This process was placed in abeyance pending the finalization of the new dispensation which has now been confirmed and approved by the LPC, which is the highest decision-making body of the amalgamated profession.
- * The LPC has since appointed a team of the technical legal and policy specialists to assist it in managing the process relating to the stakeholders consultation and technical advisory with regard to the gazetting process.

INTRODUCTION & BACKGROUND

- * The Technical Services Providers (TSPs), made up of Nyapotse Inc and Bangiso Mhlabeni Attorneys, who have robbed in the services of a leading economic transformation advisory consultant.
- * Thabo Masombuka, a former Director for Sector Codes and Partnerships at the BBBEE Unit of the Department of Trade and Industry and previously the CEO of the Construction Sector Charter Council, an Empowerment Industry Executive authority overseeing transformation and empowerment in the construction sector.
- * The TSPs have the necessary experience, knowledge and understanding of the framework and have the task of assisting the LPC with the drafting, consultation and gazette preparation process.

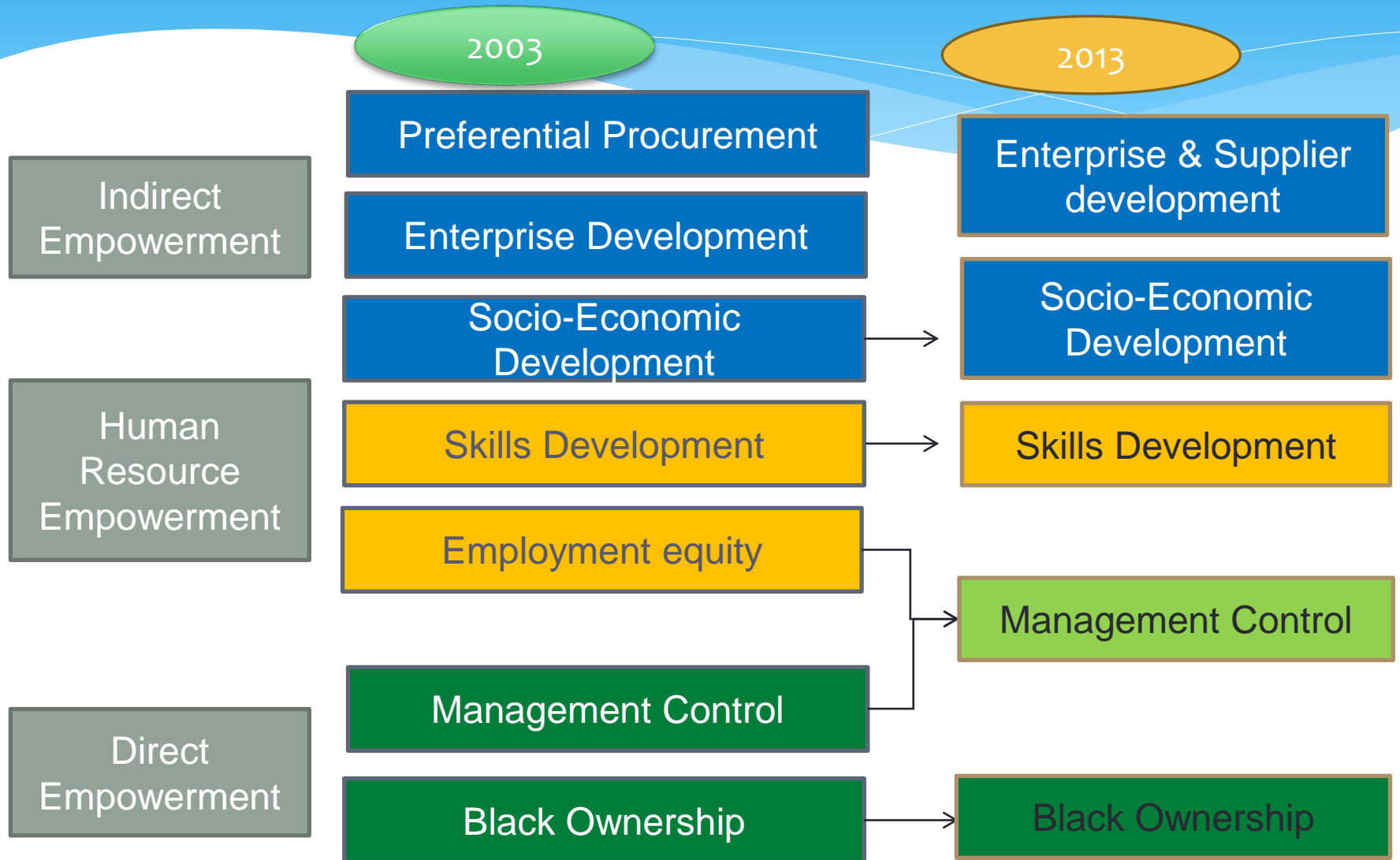
THE SECTOR CODE DRAFTING PROCESS

- * Once gazetted, the Legal Sector Code will be final and binding on the Sector.
- * The DTIC, who are the primary custodians of the BBBEE legislative and policy framework, prescribes the standard procedure and requirements for the development of the sector codes.
- * The initiators of the sector charter process must appoint a Steering Committee that should be made up of the **representatives of relevant stakeholders and should consist of senior and influential members of the** relevant sector.
- * Major commercial stakeholders are those clearly identified in the STAKEHOLDERS IDENTIFICATION document proposed to the LPC in the order of participation in the sector value chain.

INTRODUCTION & BACKGROUND

- * The LPC Transformation Committee, acting on the delegated authority of the LPC EXCO and Council, has established and constituted the Sector Code Development Steering Committee (SCSTC), which is primarily overseeing the sector code development process.
- * The SCSTC is fairly representative of the major industry stakeholders amongst others, the following:
 1. the BLA
 2. the GCB
 3. Nadel
 4. PABASA
 5. ATF

The proposed LSC will be based on 5 measurement elements (unless determined otherwise by a consultative process)



CODE SERIES 000

(Introductory phase)

Subject Matter	Salient areas
Definition of concepts	<ul style="list-style-type: none">• Definition of concepts applicable throughout the LCS• Definition of FINANCIAL REVENUE• Main concepts – LSEMEs, LSMES, LSLEs etc
Preamble & background	<ul style="list-style-type: none">• Lays out the basis for the need for the LCS• Apartheid economy & current inequalities• Skewed distribution of works & patterns
Business case and Imperative for the LCS	<ul style="list-style-type: none">• Why the LCS and not the GCoGP• @Least 75% black owned LSMES• @Least 51% black women owned LSMES• Designated categories (Black Women, Youth & Persons with disability)
UNDERTAKINGS AND COMMITMENT BY THE INDUSTRY STAKEHOLDERS	<ul style="list-style-type: none">• Stakeholder commitment• Members held accountable
UNIQUE FEATURES AND STRATEGIC OBJECTIVES OF THE LCS	<ul style="list-style-type: none">• What makes the LCS different• Priorities & reach onto arrears not covered by the LCS

CODE SERIES 000

Subject Matter	Salient areas	
MONITORING AND COMPLIANCE	<ul style="list-style-type: none"> • Responsibility to enforce the LSC • The LPC is placed at the center • Setting up of the LSC Charter Council 	
SCOPE OF APPLICATION	<ul style="list-style-type: none"> • Government, its organs & all its arms • Private Sector practitioners • The Legal Aid SA • University Law Clinics 	
KEY MEASUREMENT PRINCIPLES	<ul style="list-style-type: none"> • What constitute an LS-EME • What constitute a partially exempted LS 	
ELIGIBILITY FOR LSEMEs, LSLEs	<ul style="list-style-type: none"> • Compliance requirements for Large LSMEs 	
THE ATTORNEYS AND ADVOCATES SCORECARDS	Attorneys	Advocates
	R0-3million (LSEMEs) R3 -10million (Partially) R 10 million & above	R0-3million (exempted) R3 -10million (partially) R 10 million & above

Statement 100 – Measurement of Ownership

Subject Matter	Salient Areas		
<p>The ownership measurement element seeks to ensure that the legal sector’s measured entities have an equitable levels of black participation in shareholding in the LS Measured Entities where such is practically possible</p>			
GENERAL PRINCIPLES	<ul style="list-style-type: none"> • Recognition of the peculiar nature of the lawyers’ and advocates professions • Individuals, Sole Proprietaries & Partnerships 		
Ownership Element	For Attorneys		For Advocates
	Exercisable Voting Rights (On blacks)	40%	N/A
	Exercisable Voting Rights (Designated Groups)	20%	N/A
	Economic Interests	10%	N/A

NB – Advocates Scorecard still subject to further drafting

CODE SERIES 200 – MEASUREMENT OF MANAGEMENT CONTROL

Subject Matter	Salient areas	
<p>This element, primarily measures the contribution of Law Firms, the LS Measured Entities in the empowerment of black people and black lawyers in the applicable echelons of management.</p>		
Board Equity Participation by black people in LSMEs	60% target for black legal practitioners	50% target for black women legal practitioners
Decision-Making powers in the hands of Black Lawyers in Executive Management of the LSMEs	30% target for black legal practitioners	60% target for black women legal practitioners
The allocation and distribution of work and/or resources	50% target for black legal practitioners	60% target for black women legal practitioners
Measures executive/senior management as a percentage of all senior legal practitioners in the LSMEs.	80% target for black legal practitioners	N/A

CODE SERIES 200 – MEASUREMENT OF MANAGEMENT CONTROL

Subject Matter	Salient areas	
PROPOSED SCORECARD FOR ATTORNEYS		
Designated Categories of legal practitioners as a total percentage of all the legal practitioners in the LSME.	2% target for black legal practitioners	N/A
Number of specialist legal practitioners as a total percentage of the legal practitioners in the LSME.	1% target for black legal practitioners	N/A
Number of as a total number young legal practitioners drawn from rural areas of the legal practitioners.	1% target for black legal practitioners	N/A

CODE SERIES 200 – MEASUREMENT OF MANAGEMENT CONTROL

Subject Matter	Salient areas	
PROPOSED SCORECARD FOR ADVOCATES		
Skills Development Funding for Black Junior Counsel	5	
Skills Development Funding for Junior Advocates drawn from designated categories	5	
Contribution into a fund that is established and set up by the LPC to advance the promotion of : <ul style="list-style-type: none"> <li data-bbox="65 1079 894 1172">•Stipends for students at tertiary institutions and law schools, <li data-bbox="65 1229 938 1270">•Youth Employment Services (YES) Initiatives 	2	

CODE SERIES 300 – MEASUREMENT OF SKILLS DEVELOPMENT

Subject Matter	Salient areas	
PROPOSED SCORECARD FOR ATTORNEYS		
Skills Development Funding for Black Junior Counsel	5	
Skills Development Funding for Junior Advocates drawn from designated categories	5	
Contribution into a fund that is established and set up by the LPC to advance the promotion of : <ul style="list-style-type: none"> <li data-bbox="67 1071 888 1170">•Stipends for students at tertiary institutions and law schools, <li data-bbox="67 1213 927 1270">•Youth Employment Services (YES) Initiatives 	2	

CODE SERIES LSC 300

OBJECTIVE OF THIS STATEMENT

- ❖ The objective of this statement is:
 - to specify the measurement of the skills development spend in the LSC element for B-BBEE in the legal sector;
 - to define the key measurement principles associated with the skills development element; and
 - indicate the formula for measuring the skills development element.

- ❖ Due to the unique nature of the **advocates practices**, some of the provisions of this statement, may not apply equally and/or similarly to the advocates as they may apply to the attorneys. To this extent, and where applicable, the advocates shall accordingly be excluded from the application of this statement.

SKILLS DEVELOPMENT ELEMENT SCORECARD

- * The table below represents the criteria used for deriving a score for skills development applicable to the attorneys.
- * Under this table: *W* means *weighting points*, and *T* means *target*:

Category	Skills Dev Element	Attorneys			
		W	T		
Skills development expenditure/spend on initiatives undertaken by LSMEs that are partially and fully compliant with skills development, which are specified on the training matrix as a percentage (%) of black legal practitioners in the LSME as part of the leviable amount					
Skills development expenditure/spend on black trainees as a % of the LSME leviable amount in the total training budget allocated by the LSME in a year.	R3 – R10 million	3	3.0%		
	R10 – R60 million	3	3.0%		
	R60 million and above	6	6.0%		

SKILLS DEVELOPMENT ELEMENT SCORECARD CONT...

Recognition for skills development expenditure/spend on black candidate attorneys by the LSME applying the adjusted recognition for gender expended on the following categories of black legal practitioners:

Points allocated for initiatives directed on designated categories of beneficiaries (aligned to the national statistics outlined in the EAP definitions and allocations), by LSMEs with a national footprint.	R3 – R10 million	2	3.0%		
	R10 – R60 million	2	3.0%		
	R60 million and above	3	6.0%		
Training initiatives directed towards black professionals for managerial expertise (executive and senior management) and training on public law clinics and institutions by senior counsel.	R3 – R10 million	3	3.0%		
	R10 – R60 million	3	3.0%		
	R60 million and above	5	5.0%		

SKILLS DEVELOPMENT ELEMENT SCORECARD CONT...

Recognition for the expenditure/spend on training on specialized professional categories of training.	R3 – R10 million	2	2.0%		
	R10 – R60 million	2	2.0%		
	R60 million and above	3	3.5%		
Bursaries and scholarships where beneficiaries are black youths, black women and persons with disabilities registered in any recognized South African and/or international university.	R3 – R10 million	1	3.0%		
	R10 – R60 million	1	3.0%		
	R60 million and above	1	3.0%		

SKILLS DEVELOPMENT ELEMENT SCORECARD CONT...

Recognition of learnerships, Internships, and candidacy and programmes					
Number of black trainees/candidates attorneys registered by an LSME in any of the following programmes: <ul style="list-style-type: none"> • learnership programmes; • candidate attorneys' registration; and • continuous legal education (practical legal training). 	R3 – R10 million	1	3.0%		
	R10 -R60 million	1	3.0%		
	R10 – R60 million	3	3.0%		
	R60 million and above	3	3.0%		
Investment in any training initiative that enhances community legal training in designated areas.	Law Clinics / Public Law Institutions	W		T	
		10			
	R3 – R10 million	2	2%		
	R10 – R60 million	2	2%		
	R 60 million and above	2	5%		

SKILLS DEVELOPMENT ELEMENT SCORECARD CONT...

Recognition for the recruitment of the candidate attorneys for positions as legal practitioners by LSME, in the following categories

Black legal practitioners	R3 – R10 million	2	2.0%		
	R10 – R60 million	2	2.0%		
	R60 million and above				
Black female legal practitioners	R3 – R10 million	3	3.0%		
	R10 – R60 million	3	3.0%		
	R60 million and above				

SKILLS DEVELOPMENT ELEMENT SCORECARD CONT...

Mentorships and employment opportunities					
Implementation of an approved and verifiable mentorship programme implemented by a senior attorney or advocate where beneficiaries are in the designated categories (especially students in tertiary institutions).	By All categories of the annual thresholds	2	2.0%		
Y.E.S initiatives which seek to promote the employment of non-professional young people	By All categories of the annual thresholds	2	2.0%		
R3 – 10 million LSMEs	10				
R 10 – 60 million LSMEs	20				
R 60 million & above LSMEs	20				

GENERAL PRINCIPLES

- ❖ The general principles underpinning the skills development element in the LSC is that it must:
 - contribute to the achievement of the country's economic growth and social development goals that will promote the creation of decent work and sustainable livelihoods;
 - promote the development of the skills base in critical sectors of the economy and value-added in the legal profession; and
 - strengthen the skills and human resource base by encouraging the support of skills development initiatives with an emphasis on skills development and career pathing for all working people in order to support employment creation.
- ❖ Recognisable skills development expenditure includes any legitimate training expenses incurred for any learning programme offered by a measured entity to black people.

CODE SERIES LSC 400

INTRODUCTION AND OBJECTIVES OF THIS STATEMENT

- ❖ As a general principle, section 217(1) of the Constitution of the Republic of South Africa Act No: 108 of 1996 (“**the Constitution**”) provides that

“when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”,

to ensure that there is equitable distribution of access to procurement

- ❖ In addition, section 217(2) of the Constitution provides that:

“subsection (1) does not prevent the organ of state or institutions referred to in that subsection from implementing a procurement policy providing for:

- (a) categories of preference in the allocation of contracts; and*
- (b) the protection or advancement of persons, or categories or person, disadvantaged by unfair discrimination”.*

PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT

Measurement Category	Procurer	Attorneys	
		<i>W</i>	<i>T</i>
Procurement of legal work			
By the State and all its arms (Specialized Entities)			
Procurement spend from the LSMEs that are at least 75% black owned	All state organs, the state law office, including law clinics and chapter 9 institutions.	8	60%
Procurement from LSMEs that are at least 51% black women owned	All state organs, the state law office, including law clinics and chapter 9 institutions.	5	30%
By Private Corporate Entities			
Procurement spend from LSMEs that are at least 75% black owned	All private sector entities	6	50%
From LSMEs that are at least 51% black women owned	All private sector entities	3	30%

PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT CONT...

Supplier /Enterprise Development of Designated LSMEs			
By all users and consumers of legal services			
Recognition of procurement spend on all LSMEs that are either EMEs in line with paragraph 10.2.2 in code series 000 (in the category of R0-5 million annual threshold) or at least 75% black owned in line with paragraph 3.5.4 in code series 000, based on the applicable B-BBEE procurement recognition levels with the intention to enable supplier and/or enterprise development of those LSMEs.	By all LSMEs that are in the annual threshold category of R10 million and above in line with paragraph 10.2.2 of code series 000	5	80%
Recognition of procurement spend from all LSMEs that are partially exempted in line with paragraph 10.2.2 of code series 000 (in the category of R 10-5 million annual threshold) based on the applicable B-BBEE procurement recognition levels with the intention to enable supplier and/or enterprise development of those LSMEs.	By all LSMEs that are in the annual threshold of R60 million and above in line with paragraph 10.2.2 of code series 000.	3	30%

PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT CONT...

By all users and consumers of legal services		
Supplier Development Initiatives that enhance the economic participation of black businesses that are related to the business of a legal practitioner		
Supplier development spend from black owned suppliers that are at least 75% owned by black legal professionals, including but not limited to secretarial, accounting/auditing, ICT and courier services.	5	50%
Supplier development spend from black owned suppliers that are at least 51% owned by black legal professionals, including but not limited to secretarial, accounting/auditing, ICT and courier services.	3	30%
Supplier development spend from black owned suppliers that are at least 35% owned by black legal professionals, including but not limited to secretarial, accounting/auditing, ICT and courier services.	2	20%
Total weighting points	40	

PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT CONT...

LSC ESD scorecard for advocates

Measurement Category	Procurer	Advocates	
		W	T
Procurement of legal work			
By the State and all its arms (Specialized Entities)			
Procurement from Advocates who are Black South Africans	By all state organs, the state law office, including law clinics and chapter 9 institutions.	6	The advocate must be SC, supported by 3 (three) JCs, of which one is a black woman
Procurement from Advocates who are White South Africans	By all state organs, the state law office, including law clinics and chapter 9 institutions.	3	The Advocate must be SC, supported by two JCs, of which 1 (one) is a black woman
By Private Corporate Entities			
Procurement from Advocates who are Black South Africans	From all private sector entities	6	The advocate must be SC, supported by 3 JCs, of which one is a black woman
Procurement from Advocates who are White South Africans	From all private sector entities	3	The Advocate must be SC, supported by 2 (two) JCs, of which 1 (one) is a black woman

PREFERENTIAL PROCUREMENT AND SUPPLIER ENTERPRISE DEVELOPMENT CONT...

Legal services supply in support of in forma pauperis matters		
by all Advocates		
Recognition of legal services hours dedicated in providing legal support to matters where litigants do not have the financial resources to institute/defend them.	10	100 hours per annum
Legal services in support of supplier development initiatives that enhance the economic participation of black businesses that are related to the business of a legal practitioner		
Supplier development hours in support of black owned businesses that are at least 75% owned by black legal professionals, including but not limited to secretarial, accounting/auditing, ICT and courier services.	5	50%
Supplier development hours in support of black owned businesses that are at least 51% owned by black legal professionals, including but not limited to secretarial, accounting/auditing, ICT and courier services.	5	40%
Supplier development spend from black owned suppliers that are at least 35% owned by black legal professionals, including but not limited to secretarial, accounting/auditing, ICT and courier services.	2	30%
Total weighting points	40	

KEY MEASUREMENT PRINCIPLES IN DETERMINING THE SUITABILITY OF PREFERENTIAL PROCUREMENT IN THE LEGAL SECTOR

- ❖ Preferential procurement, supplier/enterprise development spend in terms of the LSC must always seek to ensure the following:
 - facilitate preferential spend for legal commercial/qualitative work from the legal practitioners who are black and previously disadvantaged;
 - enterprise/supplier development initiatives of small black legal practitioners with the view to enhance their legal, operational and economic independence; and
 - enterprise/supplier development initiatives that seek to enhance businesses that are related to the business of the legal practitioner;
- ❖ Non-compliance with the LSC ESD will result in the discounting of LSMEs that have been expected to qualify with this statement.

KEY MEASUREMENT PRINCIPLES IN DETERMINING THE SUITABILITY OF PREFERENTIAL PROCUREMENT IN THE LEGAL SECTOR CONT...

- ❖ The weighting points in this statement represents the maximum number of points possible for each of the criteria applicable in the sub-categories.
- ❖ LSMEs that procures legal services from designated LSMEs, that are either fully or partially exempted are encouraged to ensure that a recipient qualifying beneficiaries:
 - are registered with the LPC;
 - must have at least a minimum of 3 years in practice; and
 - has at least **51% black ownership** and is not a development beneficiary with any other measured entity.

CODE SERIES LSC 500

INTRODUCTION AND OBJECTIVES OF THE SED STATEMENT

- ❖ Whereas the legal sector is predominantly a professional services sector which is made up of the legal practitioners as defined in the Legal Practitioners Act No: 28 of 2014 of (“**LPA**”), practicing as such, on their own account and through firms and partnerships, however, firmly rooted and existing within their respective communities, that is, in urban, semi-rural and rural areas. The impact of the contributions and/or role played by the legal practitioners, especially in the rural and semi-rural areas is hugely significant in facilitating access to justice by poor and vulnerable communities, as envisaged by the Constitution of the Republic of South Africa Act No: 108 of 1996 as amended (“**the Constitution**”).
- ❖ In the main, the rural communities rarely have access to quality and affordable legal services, prompting institutions such as the Legal Resources Centre, the University Law Clinics and Legal Aid South Africa, to set up centres around these areas.

INTRODUCTION AND OBJECTIVES OF THE SED STATEMENT CONT...

- ❖ The SED element in the LSC therefore seeks to facilitate a comprehensive response of initiatives and measures to ensure that the rural and poor communities receive access to justice, through quality and affordable legal services.
- ❖ This statement further outlines some key measurement principles that are applicable when certain specific SED initiatives, as contemplated in the LSC, are being assessed and evaluated.

THE SED SCORECARD FOR ATTORNEYS AND ADVOCATES CONT...

Socio-Economic Development Measurement Criteria	Attorneys	
<i>Pro bono services</i>	<i>W</i>	<i>T</i>
Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients from semi-rural and rural areas.	2	100 hours per annum
Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients in community legal centres.	2	100 hours per annum
Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients who require legal commercial and contractual assistance for the enhancement of small businesses.	2	100 hours per annum
Total Weighting Points	6	

THE SED SCORECARD FOR ATTORNEYS AND ADVOCATES CONT...

SED measurement scorecard for advocates

Socio-Economic Development Measurement Criteria	Practicing Advocates	
<i>Pro bono services</i>	<i>W</i>	<i>T</i>
Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients represented by a 75% black owned LSME.	2	100 hours per annum
Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients represented by a 51% black owned LSME.	2	100 hours per annum
Number of hours spent on a <i>pro bono</i> basis dedicated in rendering legal services for the benefit of poor, marginalised and black clients represented by a Legal Resources/Community Legal Centre in the benefit of a rural community.	2	100 hours per annum
Total Weighting Points	6	

KEY MEASUREMENT PRINCIPLES AND INDICATIVE FACTORS

- ❖ For purposes of measurement and verification, LSMEs will only receive recognition for any Qualifying Socio-Economic Contributions (“**QSEDs**”) and initiatives that are, albeit in hourly rates, quantifiable as a monetary value using generally accepted standards of valuation methods.
- ❖ QSEDs and initiatives of any LSME are recognisable ONLY on an annual basis and cannot be ceded nor apportioned in favour of another LSME.
- ❖ QSEDs and initiatives by any LSME may consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by an LSME with the specific objective of facilitating sustainable access to justice for the targeted beneficiaries.
- ❖ LSMEs are encouraged to prioritise communities in areas where they operate.
- ❖ The full value of QSEDs and initiatives by any LSME given to the beneficiaries is recognisable if at least 100% of the value directly benefits black people.



THANK YOU