

Short notes on:

THE ICT BBEE CODE – WHAT YOU NEED TO KNOW

Introduction

The Minister of Trade and Industry gazetted the Information and Communication Technology's ("ICT") Sector Code for black economic empowerment ("BEE") in terms of Section 9(1) of the Broad-Based Black Economic Empowerment ("BBBEE") Act 53 of 2003 as amended, on 6 June 2012.

At this stage, this ICT Sector Code ("Code") is legally binding on entities in the ICT Sector from the date of gazette to 31 April 2026 with a mid-term five year review.

The ICT Charter Council

The ICT Charter Council established in 2015, with its main responsibility to develop and monitor implementation of the Code including but not limited to being the custodian of the Code.

The Council is mandated to:¹

- *“Advise the organs of state on all matters relating to B-BBEE in the ICT sector;*
- *Monitor and review the implementation of the ICT Sector Code and all related matters;*
- *Develop and foster common standards and Code of ethics in the implementation of ICT Sector Code;*
- *Assess, evaluate and commission research on specific areas where such research is not available;*
- *Be responsible for the accreditation of the national ICT projects aimed at “bridging the digital divide” in conjunction with the existing bodies such as the USAASA, the Digital Divide Partnership, ICASA, the CSIR, Trade Unions, NGOs and other organs of civil society;*
- *Provide guidance on sector-specific matters affecting B-BBEE in entities in the sector and*
- *Compile reports on the status of B-BBEE within the ICT Sector. ”*

Latest Code

¹ <http://www.ictsectorcouncil.org.za>: accessed 9 February 2019.

In November 2016 an amended code was tabled. The ICT Charter includes a Sector-specific scorecard that will be used to determine the BEE scores of enterprises in the ICT Sector. Generally speaking it is aligned to the Generic Codes, with these exceptions:²

- *“The ICT Sector has set a black ownership target of 30% to be achieved by entities in the Sector instead of the 25% of the Generic Codes. The target set for Equity Equivalent for multinationals that qualify is also 30%.*
- *The main feature of the Charter is a set target of 5% net profit after tax to be spent on enterprise development initiatives that are aimed at growing and developing black- owned ICT enterprises. The target for the Generic Codes is 3%.*
- *A spend of 1.5% of net profit after tax on socio-economic development initiatives to improve the lives of communities through programmes such as ICTs in education, and health. The Generic Codes requires companies to spend 1%.”*

Conclusion

From a Regulator’s perspective, bridging the digital divide in the country is the ultimate goal of spend on development initiatives. As such, it is important to consult a specialist on compliance and to implement strategies that comply and make business sense. Contact us at SchoemanLaw today.

² https://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp: accessed 9 February 2019.