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IN THE HIGH COURT OF SOUTH AFRICA Gauteng Division, Pretoria	CASE NO: 2024-149523
In the matter between: Norton Rose Fulbright South Africa Inc	Plaintiff / Applicant / Appellant
and Minister of Trade, Industry and Competition,The South African Legal Practice Council,The Minister of Justice and Constitutional Development	Defendant / Respondent

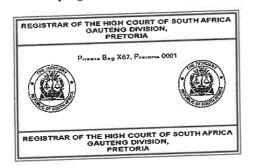
Notice of Motion (Long Form)

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Registrar of High Court of South Africa , Gauteng Division,Pretoria

20/12/2024-8:56:35 AM

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Case No .:

In the matter between:

NORTON ROSE FULBRIGHT SOUTH AFRICA INC

and

MINISTER OF TRADE, INDUSTRY AND COMPETITION

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

MINISTER OF JUSTICE AND

CONSTITUTIONAL DEVELOPMENT

NOTICE OF MOTION

REGISTRAR OF THE HEDI COURT OF SOUTH AFRICA

First Respondent

Second Respondent

Third Respondent

PART A

TAKE NOTICE that the applicant intends making application to the above Honourable Court at 10h00 on 4 March 2025 or so soon thereafter as the matter may be heard, for the following orders:

- The ordinary forms and service provided for in the Uniform Rules of the High Court are dispensed with and Part A of this application is heard on an urgent basis in terms of the provisions of Uniform Rule 6(12)(a).
- 2. Pending the final determination of Part B of this application (including the determination of anti-appeals), the operation of the Codes of Good Practice on Broad-Based Black Economic Empowerment: Legal Sector Code (the "Legal Sector Code"), as published in Government Notice 5221 in Government Gazette 51271 on 20 September 2024, is suspended with immediate effect.
- 3. The first respondent, together with any respondent that opposes this relief, is ordered to pay the costs of the application, including the costs of two counsel, jointly and severally the one paying the other to be absolved.
- 4. Granting such further or alternative relief as may be appropriate.

TAKE NOTICE FURTHER that the accompanying founding affidavit of BRENT ETIENNE BOTHA together with the annexures thereto, will be used in support of this application.

GALITENG DIVISION. PRETORIA

TAKE NOTICE FURTHER that the applicant has appointed the offices of NORTON ROSE FULBRIGHT, as set out below, as the address in terms of Rule 6(5)(b) at which it will accept service of all notices and process in these proceedings.

TAKE NOTICE FURTHER that the relevant time periods in respect of Part A have been shortened. In the event that you wish to oppose the relief sought in Part A of this application, you are required:

- (a) to notify the Applicant's attorneys in writing of your intention to do so by
 2025, and in such notice to appoint an address referred to in Rule 6(5)(a) at which the second service of all documents in these proceedings;
- (b) to file your answering affidavit, if any, by 24 January 2025.

TAKE NOTICE FURTHER that in the event that you file an answering affidavit, the Applicant will file its replying affidavit by **31 January 2025**.

TAKE NOTICE FURTHER that if no notice of intention to oppose and/or answering papers are received, application will be made after the expiry of the period set out above, on a date to be determined by the Registrar, for an order as set out in Part A.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY FOR THE RELIEF SET OUT IN PART A OF THIS APPLICATION.

PART B

TAKE NOTICE that the applicant intends making application to the above Honourable Court at 10h00 on ______ or so soon thereafter as the matter may be heard, for the following orders:

- 1 Reviewing and setting aside the first respondent's decision to publish the Legal Sector Code.
- 2 Declaring that the Legal Sector Code is invalid, unconstitutional and of no force or effective and and of the force of the sector and the s
- 3 The first respondent, together with any respondent that opposes this relief, is ordered to pay the costs of the application, including the costs of two counsel, jointly and severally the one paying the other to be absolved.
- 4 Granting such further or alternative relief as may be appropriate.

TAKE NOTICE FURTHER that the accompanying founding affidavit of **BRENT ETIENNE BOTHA**, together with annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that the first respondent is required, within 15 (fifteen) days, to file with the Registrar, the full record of all and any proceedings contemplated in Rule 53(1)(b) relevant to the decision referred to in prayer 1 above, as well as the reasons for that decision, and to notify the applicant that it has done so.

TRAR OF THE HIGH COURT OF

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TAKE NOTICE FURTHER that the applicant may, within 10 (ten) days after the Registrar of this Honourable Court has made the records available, amend, add to and/or vary the relief sought in this notice of motion and supplement its founding affidavit.

TAKE NOTICE FURTHER that should you intend opposing Part B of this application, you are required to:

- (a) notify the applicant's' attorneys of your intention to oppose within 15 (fiffeen) days
 from the date of this notice of motion or any amendment thereof;
- (b) in such notice, to appoint an address referred to in Rule 6(5)(b) and Rule 53(5)(a) at which you will accept notice and service of all documents in these proceedings;
- (c) file your answering affidavits, if any, within 30 (thirty) days after expiry of the time for the filing of any amended relief or supplementary founding affidavit referred to above.

TAKE NOTICE FURTHER that, in the event that you file any answering affidavit, the applicant will file its replying affidavit within 10 (ten) days.

TAKE NOTICE FURTHER that the applicant has appointed NORTON ROSE FULBRIGHT, at the address set out below, as the address in terms of Rule 6(5)(b) at which it will accept service of all notices and process in these proceedings.

TAKE NOTICE FURTHER that if no notice of intention to oppose is received, application will be made after the expiry of the period set out above, on a date to be determined by the Registrar, for an order as set out in Part B.

DATED at SANDTON on this the 19TH day of DECEMBER 2024.

Digitally signed by André Vos 📼 Date: 2024.12 19

Norton Rose Fulbright South Africation

Attorneys for the Applicant 34 Fredman Drive (Service Address) Docex 215, Johannesburg Tel: 011 685 8865 / 011 685 8964 Email: liesl.williams@nortonrosefulbright.com andre.vos@nortonrosefulbright.com Ref: LSC100 / Ms L Williams / Mr AP Vos c/o **Mothle Jooma Sabdia Inc** First Floor, Duncan Manor **150 Brooks Street** Cnr. Jan Shoba and Brooks Street Brooklyn, Pretoria Tel: 012 362 3137 Fax: 086 650 4579 Email: Ebrahimi@mis-inc.co.za Ref: Mr E Jooma

To:

The Registrar of the above Honourable Court Pretoria (uploaded to Court Online)

And to:

The Minister of Trade, Industry and Competition First respondent 77 Meintjies Street, Sunnyside Pretoria, Gauteng Email: Ministry@thedtic.gov.za

Received on <u>20</u> December 2024

respondent



And to:

Director General: Trade, Industry and Competition 77 Meintjies Street, Sunnyside Pretoria, Gauteng Email: NMjuza@thedtic.gov.za INeethling@thedtic.gov.za

Received on <u>20</u> December 2024

For: First respondent

And to:

The South African Legal Practice Council Received on ____ December 2024 Second respondent 851 River View Park Street **Riverview Office Park** Halfway Gardens Midrand Email: info@lpc.org.za

For: Second respondent

And to:

Minister of Justice and The **Constitutional Development Third Respondent**

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Momentum Centre 17th Floor 329 Pretorius Street Pretoria Email: Ministry@justice.gov.za

Received on <u>2</u> December 2024

Third respondent For:

And to:

Justice and General: Director **Constitutional Development** THE HOH COURT OF GAUTENO DIVISION. **Momentum Centre** Received on 20 December 2024 17th Floor 329 Pretorius Street THE HIGH Pretoria Email: DocMashabane@justice.gov.za RaManzini@justice.gov.za For: Third respondent .

And to:

State Attorney, Pretoria Salu Building Ground floor 316 Thabo Sehume Street Cnr Francis Baard & Thabo Sehume Streets Pretoria

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For: first and third respondents

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IN THE HIGH COURT OF SOUTH AFRICA Gauteng Division, Pretoria

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CASE NO: 2024-149523

In the matter between:

Norton Rose Fulbright South Africa Inc

Plaintiff / Applicant / Appellant

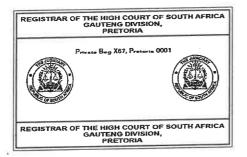
and

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Minister of Trade, Industry and Competition,The South African Legal Practice Council,The Minister of Justice and Constitutional Development Defendant / Respondent

Founding Affidavit

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Registrar of High Court of South Africa , Gauteng Division,Pretoria

20/12/2024-9:05:40 AM

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No.:

In the matter between:

NORTON ROSE FULBRIGHT SOUTH AFRICA INC

and

MINISTER OF TRADE, INDUSTRY AND COMPETITION

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

FOUNDING AFFIDAVIT

First Respondent

Applicant

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I, the undersigned,

BRENT ETIENNE BOTHA

Say under oath that:

- 1 I am a Director and the Chief Executive Officer of the applicant, Norton Rose Fulbright South Africa Inc ("NRFSA"). I am duly authorised to depose to this affidavit on NRFSA's behalf.
- 2 The contents of this affidavit are within my personal knowledge, unless the context are within my personal knowledge, unless the context are to the best of my knowledge both true and correction ((()))
- 3 Where I make legal submissions, I do so on the basis of my own legal knowledge, as well as the advice of NRFSA's counsel, whose advice I accept as correct.

PARTIES

- 4 The applicant is NORTON ROSE FULBRIGHT SOUTH AFRICA INC ("NRFSA").
 - 4.1 NRFSA is a personal liability company, practising as a firm of attorneys, with registration number 1984/003385/21.
 - 4.2 NRFSA has its principal place of business at 15 Alice Lane, Sandton 2196.
- 5 The first respondent is the MINISTER OF TRADE, INDUSTRY AND COMPETITION.
 - 5.1 The Minister of Trade, Industry and Competition is cited in his representative capacity as the head of the Department of Trade, Industry and Competition ("DTIC"), which is responsible for the publication of sector codes under the Broad-Based Black Economic Act 53 of 2003 (the "B-BBEE Act").
 - 5.2 The Minister of Trade, Industry and Competition is located at the dtic campus,
 77 Meintjies Street, Sunnyside, Pretoria, Gauteng, 0002.

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- 6 The second respondent is the SOUTH AFRICAN LEGAL PRACTICE COUNCIL (the "Legal Practice Council").
 - 6.1 The Legal Practice Council is a statutory body established in terms of section 4 of the Legal Practice Act 28 of 2014, to regulate the affairs of and exercise jurisdiction over all legal practitioners in South Africa – that is, attorneys, advocates and candidate legal practitioners.
 - 6.2 The Legal Practice Council has its national office at 851 River View Park Street, Riverview Office Park, Halfway Gardens, Midrand.
 - 6.3 The Legal Practice Council is cited for its interest in these proceedings. No
- 7 The third respondent is the MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT ("Minister of Justice").
 - 7.1 The Minister of Justice is cited in her representative capacity as the head of the Department of Justice and Constitutional Development.
 - 7.2 The Minister of Justice is the "line Ministry", referred to in Statement 003 under the Codes of Good Practice on Broad-Based Black Economic Empowerment, 2015.
 - 7.3 The Minister of Justice is located at Momentum Centre, 17th Floor, 329Pretorius Street, Pretoria.
 - 7.4 The Minister of Justice is cited for her interest in these proceedings. No relief is sought against her, save for costs in the event of opposition.

INTRODUCTION AND OVERVIEW

- 8 On 20 September 2024, the Minister of Trade, Industry and Competition published, in the Government Gazette, the *Codes of Good Practice on Broad-Based Black Economic Empowerment: Legal Sector Code* (the "Legal Sector Code"). The Legal Sector Code took immediate effect on the same day it was gazetted.
- 9 Prior to the gazetting of the Legal Sector Code, law firms such as NRFSA were subject to the revised Codes of Good Practice on Broad-Based Black Economic Empowerment (the "Generic Codes").
- 10 NRFSA takes great pride in the level and extent of its compliance with the seneric Codes. For four consecutive years, it has achieved the highest possible level of B-BEFFERENCE compliance that of a Level One contributor. It has taken significant steps to transform itself and its supply chain, and has consistently scored full points under the Generic Codes for elements such as enterprise development, supplier development and socio-economic development. In its most recent verification, it also achieved full points for procurement.
- 11 The Legal Sector Code departs from the Generic Codes in numerous material respects. It changes the manner in which ownership, management control, enterprise development and skills development are measured. It altogether does away with socioeconomic development as an element and supplier development as a sub-element. It imposes targets that are unreasonable, impractical and unrealistic, given the nature of large law firms. And it does all of this with immediate effect.
- 12 The impact of the Legal Sector Code is severe and irreparable. In an instant, as at the date of its next B-BBEE verification (which is in April 2025), NRFSA will drop from a Level One B-BBEE contributor to a Level Six B-BBEE contributor. This will, in turn,

severely affect its ability to attract local clients, and all but extinguish its ability to obtain work directly from the state.

- 13 Worse still, because the Legal Sector Code operates in a manner that is effectively *retrospective* in relation to the current year of measurement, its effect is instantly to negate tens of millions of rands of expenditure *already spent*, which would, under the Generic Codes, have counted towards NRFSA's B-BBEE score, but does not count under the Legal Sector Code.
- 14 It is important for me to state, at the outset, that NRFSA is firmly committed to transformation and empowerment in the legal profession. It also believe in the end of a sector code for the legal profession. This application is there is the end of a Legal Sector Code, or on the objective of achieving greater transformation and empowerment in the legal sector.
- 15 However, the Legal Sector Code is an unlawful, irrational and unconstitutional means to achieve that objective. It deviates radically from the Generic Codes in ways that are entirely unjustifiable. It fails to comply with numerous principles under Statement 003 of the Generic Codes – government's promulgated guideline for the development of sector codes. To the extent that it constitutes a restitutionary measure under the Constitution, it fails to comply with the strictures imposed by our highest Court for measures taken under section 9(2) of the Constitution. And the fact that it requires immediate implementation, without any transitional or grace period, violates basic rule of law principles.
- 16 For these reasons, NRFSA has brought this two-part application.
- 17 In Part A, NRFSA applies for an interim order suspending the operation of the Legal Sector Code, pending the final determination of Part B.

- 18 In Part B, NRFSA applies for an order reviewing and setting aside the Legal Sector Code, and declaring it unconstitutional, invalid and of no force and effect.
- 19 The remainder of this affidavit is structured as follows:
 - 19.1 First, I set out the legal framework within which the Legal Sector Code was promulgated, including the B-BBEE Act, the Generic Codes, and particularly Statement 003.
 - 19.2 Second, I explain relevant aspects of the process by which the Legal Sector Code was promulgated, including NRFSA's involvement in that process
 - 19.3 Third, I describe the Legal Sector Code, with a particular focus on () its salient terms, as compared with the Generic Codes and (ii) its imminent impact on NRFSA.
 - 19.4 Fourth, I address the requirements for the relief in Part A of this application that is, interim relief pending the final determination of Part B.
 - 19.5 Fifth, I address Part B of this application. In particular, I address the standard of review, and the six grounds of review upon which NRFSA relies.

LEGAL FRAMEWORK

The B-BBEE Act

- 20 The B-BBEE Act has among its purposes:
 - 20.1 the promotion of economic transformation in order to enable meaningful participation by black people in the economy. "Black people" is defined as Africans, Coloureds and Indians a) who are citizens of the Republic of South Africa by birth or decent, or b) who became citizens of the Republic of South Africa by naturalisation i) before 27 April 1994, or ii) on or after 27 April 1994

and who would have been entitled to acquire citizenship by naturalisation prior to that date;

- 20.2 achieving a substantial change in the racial composition of ownership and management structures and in the skill occupations of existing and new enterprises;
- 20.3 increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training; and
- 20.4 increasing effective economic participation and black-owned and enhancing access to financial and non-financial support.
- 21 Section 9(1) of the B-BBEE Act empowers the Minister of Trade, Industry and Competition to issue *"codes of good practice"*. All codes of good practice are issued in terms of this provision.
- 22 Section 9(1) provides, in particular that:

"In order to promote the purposes of the Act, the Minister may by notice in the Gazette issue codes of good practice on black economic empowerment that may include-

- (a) the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
- (b) qualification criteria for preferential purposes for procurement and other economic activities;
- (c) indicators to measure broad-based black economic empowerment;

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- (d) the weighting to be attached to broad-based black economic empowerment indicators referred to in paragraph (c);
- (e) guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters and codes of good practice for their sector; and
- (f) any other matter necessary to achieve the objectives of this Act."
- 23 In terms of section 9(2), a "strategy" issued by the Minister of Trade, Industry and Competition in terms of section 11 must be taken into account in preparing any code of good practice.
- 24 Section 9(3) provides that a code of good practice may specify targets, consistent with the objectives of the Act, and the period within which those targets must be achieved.
- 25 In terms of section 9(4), a code of good practice may distinguish between black men and black women in order to promote the achievement of equality for women, as provided in section 9(2) of the Constitution.
- 26 Section 9(5) provides that, prior to issuing a code of good practice, the Minister of Trade, Industry and Competition must:
 - 26.1 publish the draft code of good practice for public comment; and
 - 26.2 allow a minimum of 60 days to comment on the draft.
- 27 In terms of section 10, every organ of state and public entity must apply any relevant code of good practice issued in terms of the Act in:
 - 27.1 determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;
 - 27.2 developing and implementing a preferential procurement policy;

- 27.3 determining qualification criteria for the sale of state-owned enterprises;
- 27.4 developing criteria for entering into partnerships with the private sector; and
- 27.5 determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment.
- I pause at this point to note the significance of section 10. The fact that all organs of state and all public entities <u>must</u> apply the relevant code of good practice for issuing licences, developing and implementing procurement policies, and determining qualification criteria, for public-private partnerships, and for the awarding of incentives and grants, means, in effect, that an entity's B-BBEE score is indispensable for the state, and particularly for securing state work. This is a subject to which I return later in this affidavit, in explaining the impact of the Legal Sector Code.
- 29 Section 10(3) provides that an enterprise in a sector in respect of which the Minister of Trade, Industry and Competition has issued a sector code of good practice in terms of section 9, may only be measured for compliance with the requirements of B-BBEE in accordance with that code.
- 30 In other words, where an enterprise operates in a particular sector, and the Minister of Trade, Industry and Competition has issued a sector code in that sector, the enterprise must be measured in accordance with that sector code. It cannot be measured in accordance with the Generic Codes or any other sector code. This means that, now that the Legal Sector Code has been issued, every entity in the legal sector that is registered with the Legal Practice Council must be measured under that Code.
- 31 Section 10(4) obliges enterprises operating in a sector in which a sector code has been issued to report annually on their B-BBEE compliance to the relevant sector council.

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The Generic Codes

- 32 On 11 October 2013, the Minister promulgated the revised Generic Codes. I attach the Generic Codes marked "FA1". In this section, I provide a broad overview of the elements of Generic Codes, and particularly the Generic Scorecard, and explain how these elements are measured. I do so because, later in this affidavit, I shall draw attention to various ways in which the Legal Sector Code constitutes a radical departure from the Generic Codes, and explain the impact that this has on NRFSA and entities like it.
- 33 Statement 000 under the Generic Codes is headed "General Principles and the Generic Scorecard". The purpose of the statement is to specify, amongst other application of and measurement under the Generic Codes, the elements measurable under the Generic Scorecard, the Generic Scorecard itself, and the basis for determining compliance by entities with the Codes.
- 34 The Generic Scorecard contains five elements. Enterprises are measured against each of these elements to determine their overall B-BBEE recognition level. Each element under the Generic Scorecard has a *weighting* and a compliance *target*. The *weighting* is the total number of points that the particular element can contribute to an entity's overall score. The *target* is the level of compliance with a particular element that, if achieved, will earn an enterprise the maximum available points.
- 35 Where an entity reaches a level of compliance below the target, it is awarded points in proportion to the extent of its compliance. So, if an entity achieves 50% of a target, which carries a weighting of 6 points, then it will receive 3 points. Where an entity *exceeds* the compliance target, it will still only earn 100% of the available points for that element.
- 36 Based on the sum of the points that an entity obtains across all five elements, it achieves a total number of B-BBEE points. Those points, in turn, link the entity to a particular B-BBEE Level, which is, in turn, linked to a particular B-BBEE recognition level.

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37 The table below sets out the B-BBEE status levels, and their corresponding qualification points and B-BBEE recognition levels:

B-BBEE Status	Qualification	B-BBEE recognition level	
Level One Contributor	=100 points	135%	
Level Two Contributor	=95 but <100 points	125%	
Level Three Contributor	=90 but <95 points	110%	
Level Four Contributor	=80 but <90 points	100%	URT OF SOUTH AFRICA
Level Five Contributor	=75 but <80 points	80%	
Level Six Contributor	=70 but <75 points	60%	IRT OF SOUTH AFRICA
Level Seven Contributor	=55 but <70 points	50%	
Level Eight Contributor	=40 but <55 points	10%	
Non-Compliant Contributor	<40 points	0%	

- 38 Paragraph 4 creates the concept of an Exempted Micro Enterprise ("EME"), which is defined as any enterprise with an annual total revenue of R10 million or less. An EME is *deemed* to have a B-BBEE status of Level Four, with a B-BBEE recognition level of 100%, without more. An EME which is 100% black-owned qualifies as a Level One contributor, with a recognition level of 135%. An EME which is at least 51% black-owned qualifies as a Level Two contributor, with a recognition level of 125%.
- 39 Paragraph 5 creates the concept of a Qualifying Small Enterprise ("QSE"), which is defined as any enterprise with an annual total revenue of between R10 million and R50 million. A QSE is required to comply with all the elements of B-BBEE for purposes of measurement, save that a QSE which is 100% black-owned qualifies as a Level One contributor with a B-BBEE recognition level of 135%, and a QSE which is 51% black-owned qualifies as a Level Two contributor with a B-BBEE recognition level of 1/25%.

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- 40 Paragraph 6 provides that any enterprise with an annual total revenue of R50 million or more qualifies as a Large Enterprise. A Large Enterprise must comply with all the elements of B-BBEE for purposes of measurement.
- In other words, there are effectively two routes to obtaining a particular B-BBEE Level. First, certain small and medium sized entities – i.e. all EMEs, and QSEs with at least 51% ownership – can obtain "automatic" B-BBEE levels, without demonstrating compliance with all the elements of B-BBEE, and, at most, on the basis of ownership alone. Large Enterprises, as well as QSEs with less than 51% black ownership, must comply with all the elements of B-BBEE for purposes of measurement.
- 42 Paragraph 8 of Statement 000 describes the elements of B-BBEE in terms of the Generic Scorecard. Paragraph 9 contains the Generic Scorecard itself, including the relative weightings attached to each element.
- 43 Before turning to the detail of each element under the Generic Codes, I note that the Generic Scorecard introduces the concept of "*priority elements*". These are elements which carry a 40% sub-minimum requirement, and a failure to meet the sub-minimum results in the entity having its B-BBEE status level automatically discounted by one level.
- 44 In essence, the Generic Scorecard contains the following <u>five</u> elements:
 - 44.1 The <u>Ownership Element</u>, which is described further in Code series 100, and which measures the effective ownership of enterprises by black people. The Ownership Element has an overall weighting of 25 points.
 - 44.1.1 The Ownership Element under the Generic Codes is concerned with two factors.
 - 44.1.2 First, it is concerned with <u>voting rights</u>. Voting rights in the hands of black people carry a weighting of 4 points, and a target of 25%

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plus 1 vote. Voting rights in the hands of black women carry a weighting of 2 points and a target of 10%.

- Second, it is concerned with <u>economic interest</u>. This is a claim against an entity representing a return on ownership in essence, the right to a *pro rata* share of dividends when they are declared. Economic interest rights to which black people are entitled carry a weighting of 4 points, and a target of 25%. Economic interest rights to which black women are entitled carry a weighting of 2 points, and a target of 10%. Economic interest rights to which specified black natural persons are being black "*designated groups*" (unemployed black <u>people</u>, black youth, black people with disabilities, black people living in rural areas and black military veterans), black people in broad-based ownership schemes and black participants in cooperatives carry a weighting of 3 points and a target of 3%.
- 44.1.4 Economic interest rights to which "*new entrants*" are entitled being people who, prior to holding equity in the measured entity, had not held equity instruments in any entity with a total value of more than R50 million – carry a weighting of 2 points and a target of 2%.
- 44.1.5 Lastly, the Ownership Element measures "*net value*", which is a metric to measure the actual value of a company's black shareholding, unencumbered by debt or liabilities. It is calculated by considering the value of the equity and the debt portion of the shares. Net value carries a weighting of 8 points. It is the only

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priority element under Ownership, which means that if an entity does not achieve 3.2 points out of 8 (40%), it will be automatically discounted one Level.

- 44.2 The <u>Management Control Element</u>, which is described further in Code series 200, and which measures the effective control of enterprises by black people. The Management Control Element has an overall weighting of 19 points. The Management Control Element is concerned with the following factors:
 - 44.2.1 <u>Board participation</u>, which includes exercisable votine **control control** black board members as a percentage of all board **members** (with a weighting of 2 points and a target of 50%) and of black female board members as a percentage of all board members (with a weighting of 1 point and a target of 25%); of black executive directors as a percentage of all executive directors (with a weighting of 2 points and a target of 50%); and of black female executive directors as a percentage of all executive directors (with a weighting of 2 points and a target of 50%); and of black female executive directors as a percentage of all executive directors (with a weighting of 1 points and a target of 50%); and of black female executive directors as a percentage of all executive directors (with a weighting of 1 point and a target of 25%).
 - 44.2.2 <u>Other executive management</u>, which refers to black executive management as a percentage of all executive management (with a weighting of 2 points and a target of 60%) and black female executive management as a percentage of all executive management (with a weighting of 1 point and a target of 30%).

44.2.3 <u>Senior management</u>, which refers to black employees in senior management as a percentage of all senior management (with a weighting of 2 points and a target of 60%) and black female

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employees in senior management as a percentage of all senior management (with a weighting of 1 point and a target of 30%).

- 44.2.4 <u>Middle management</u>, which refers to black employees in middle management as a percentage of all middle management (with a weighting of 2 points and a target of 75%) and black female employees in middle management as a percentage of all middle management (with a weighting of 1 point and a target of 38%).
- 44.2.5 Junior management, which refers to black employees in junior management as a percentage of all junior management weighting of 1 point and a target of 88%) and black to be the transfer of the transfer
- 44.2.6 While the measurement of board participation and other executive management is undertaken on the basis of a simple *"head count"*, the same is not true of senior, middle and junior management. Instead, for purposes of measuring compliance with these management targets, the targets are broken down according to the prevailing Economically Active Population ("EAP") data for different race groups (i.e. for African, Coloured and Indian males and females). This essentially maps the racial breakdown of an entity's employees against national or regional EAP figures, and assigns a maximum number of points to each category, thereby measuring representivity.
- 44.2.7 Lastly, black employees with disabilities as a percentage of all employees (with a weighting of 2 points and a target of 2%).

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44.3 The <u>Skills Development Element</u>, which is described further in Code series 300, and which measures the extent to which employers carry out initiatives designed to develop the competencies of black employees and black people internally and externally. The Skills Development Element has an overall weighting of 20 points, plus 5 bonus points. Skills Development as a whole constitutes a priority element, which means that it carries a subminimum requirement of 8 points (40% of 20 points), failing which the relevant entity's B-BBEE status level is reduced by one level.

44.4 The Skills Development Element is concerned with the following factors

- 44.4.1 First, skills development <u>expenditure</u> on programmes <u>percentage</u> of the "*Leviable Amount*" essentially an entity's total payroll, subject to certain exclusions. This is broken down further into expenditure on learning programmes for black people (carrying a weighting of 6 points and a target of 3.5%), bursaries for black students at higher education institutions (carrying a weighting of 4 points and a target of 2.5%) and learning programmes for black employees with disabilities (carrying a weighting of 4 points and a target of 0.3%).
- 44.4.2 Second, the <u>number</u> of black people participating in learnerships, apprenticeships and internships, as a percentage of total employees. This carries a weighting of 6 points and a target of 5%.
- 44.4.3 The Skills Development Element also includes a bonus element for the <u>number</u> of black people absorbed by the entity at the end

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of the internship, learnership and apprenticeship programme. This carries a weighting of 5 points and a target of 100%.

- 44.5 The Enterprise and Supplier Development Element, which is described further in Code series 400, and which measures the extent to which entities buy goods and services from empowering suppliers with strong B-BBEE recognition levels, as well as the extent to which enterprises carry out supplier development and enterprise development initiatives intended to assist and accelerate the growth and sustainability of black enterprises.
- 44.6 The Enterprise and Supplier Development Element has an overall weighting of 42 points, plus 4 bonus points. It is broken down into the Preferential Procurement Element, the Supplier Development Element and the Enterprise Development Element.
- 44.7 Enterprise and Supplier Development is a priority element, which means that it carries a sub-minimum requirement of 40% of the total weighting points for each of the three categories – i.e. Preferential Procurement (40% of the 25 points); Supplier Development (40% of the 10 points) and Enterprise Development (40% of the 5 points). A failure to achieve any sub-minimum results in an entity having its overall B-BBEE Level reduced automatically by one.
- 44.8 Preferential Procurement is concerned with the following factors:
 - 44.8.1 B-BBEE procurement spend from all empowering suppliers based on the B-BBEE procurement recognition levels as a percentage of total measured procurement spend (**"TMPS"**) (comprising cost of sales, operational expenditure and capital expenditure, but <u>excluding</u> taxation, salaries/wages and "pass-

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through third-party procurement") (carrying a weighting of 5 points and a target of 80%);

- 44.8.2 B-BBEE procurement spend from all empowering (i.e. B-BBEE compliant) suppliers that are QSEs based on the applicable B-BBEE procurement recognition levels as a percentage of TMPS (carrying a weighting of 3 points and a target of 15%);
- 44.8.3 B-BBEE procurement spend from all empowering EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of TMPS (carrying a weighting of 4 point a procure of a point o
- 44.8.4 B-BBEE procurement spend from empowering suppliers that are at least 51% black-owned based on the applicable B-BBEE procurement recognition levels as a percentage of TMPS (carrying a weighting of 11 points and a target of 50%);
- 44.8.5 B-BBEE procurement spend from empowering suppliers that are at least 30% black women owned based on the applicable B-BBEE procurement recognition levels as a percentage of TMPS (carrying a weighting of 4 points and a target of 12%);
- 44.8.6 Bonus points are available for B-BBEE procurement spend from empowering designated group suppliers that are at least 51% black-owned (carrying a weighting of 2 points and a target of 2%).
- 44.9 I pause here to note that preferential procurement is essentially what drivesB-BBEE through the South African economy.

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From a private procurement perspective, the Generic Codes 44.9.1 incentivise entities to procure from more empowered suppliers, in order to improve such entities' own B-BBEE scores. The way that this works is that the targets for preferential procurement are calculated as spend from B-BBEE compliant suppliers, based on B-BBEE recognition levels, as a percentage of TMPS. Therefore, for example, where an entity procures from a Level Four supplier, for example, each R1 it spends will be recognised as R1 for purposes of calculating its B-BBEE procurement spend. However, where an entity procures from a level One supplier, each R1 it spends will be recognised as R135 for purposes of calculating its B-BBEE procurement spend. And if an entity procures from a Level Five supplier, each R1 it spends will only be recognised as R0.80 for purposes of calculating its B-BBEE procurement spend. Every private enterprise thus improves its own B-BBEE score by procuring from other entities with high levels of B-BBEE compliance, and it is thereby incentivized to procure from suppliers with higher B-BBEE levels.

44.9.2 From a <u>public</u> procurement perspective:

(a) As already explained, all organs of state are required to apply the relevant code of good practice for issuing licences, developing and implementing procurement policies, and determining qualification criteria, criteria for public-private partnerships, and criteria for the awarding of incentives and grants.

- (b) The PPPFA Regulations, 2017, prior to being declared unconstitutional and invalid, allowed B-BBEE status to be a pre-qualification criterion, and, for purposes of pricepreference evaluation, allocated points to entities based on their overall B-BBEE Level.
- (c) Under the more recent PPPFA Regulations, 2022, tenders can include "specific goals", which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the base of recent and disability, and which must be clearly the tender documentation.
- (d) The Public Procurement Act 28 of 2014, which is yet to come into force, will require procuring institutions to apply certain pre-qualification criteria to promote preferences in the allocation of contracts, which <u>include</u> a bidder having a prescribed minimum percentage of preferential procurement from enterprises owned and managed by black people in terms of the applicable code of good practice.
- 44.9.3 In these ways, entities throughout the economy are incentivised to obtain the highest possible B-BBEE compliance level they can to make themselves more attractive as suppliers of goods and services to other private entities and, ultimately, to the state.
- 44.10 Supplier Development is concerned with the annual value of all "Supplier Development Contributions" made by the measured entity as a percentage of the target (carrying a weighting of 10 points and a target of 2% of net profit after tax). Supplier Development Contributions are monetary or pon-monetary

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contributions carried out for the benefit of value-adding suppliers, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries.

- 44.11 Enterprise Development is concerned with annual value of "Enterprise Development Contributions" and "Sector Specific Programmes" made by the measured entity as a percentage of the target (carrying a weighting of 5 points and a target of 1% of net profit after tax). It carries bonus points for graduation of one or more Enterprise Development beneficiaries to the Supplier Development level (with a weighting of 1); and creating one of directly as a result of Supplier Development and Enterprise Development initiatives by the measured entity (with a weighting of 1).
- 44.12 Enterprise Development Contributions are monetary or non-monetary contributions carried out for beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries.
- 45 The Socio-Economic Development Element, which is described further in Code series 500, and which measures the extent to which entities carry out initiatives that contribute towards socio-economic development or sector-specific initiatives that promote access to the economy for black people. The Socio-Economic Development Element has an overall weighting of 5 points.
- 46 The Socio-Economic Development Element is concerned with the annual value of all *"Socio-Economic Development Contributions"* made by the measured entity as a percentage of the target (carrying a weighting of 5 points and a target of 1% of net profit after tax). Socio-Economic Development Contributions are monetary or non-monetary contributions implemented for communities, natural persons or groups of natural

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persons, where at least 75% of the beneficiaries are black people, and which have as their objective the promotion of sustainable access for the beneficiaries to the economy.

Statement 003

- 47 The Generic Codes are the starting point for any specific sector codes. In particular, Statement 003 of the Generic Codes, promulgated in 2015, which is titled "Amended Guidelines for Developing and Gazetting of Sector Code" sets out the process by which sector codes are developed and published, and the approach to drawing up sector codes, I attach Statement 003 marked "FA2".
- 48 Paragraph 3.1 of Statement 003 describes the 11 principles that appendix the development of a sector code.



- 49 These are as follows:
 - 49.1 Principle 1: There must be common commercial and other characteristics within the entities operating in the sector which would make it feasible to formulate a transformation charter subject to the proposed sector code.
 - 49.2 Principle 2: the proposed sector code must fully address all the Elements in the Generic Scorecard.
 - 49.3 Principle 3: the proposed sector code must use the same definitions in respect of all beneficiaries as those used in the Generic Codes.
 - 49.4 Principle 4: the proposed sector code must use the same calculation methodologies to measure compliance as those used in the Generic Codes.
 - 49.5 Principle 5: the proposed sector code may deviate from targets and weightings used in the Generic Codes only where those deviations are

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justifiable based on sound economic principles, sectorial characteristics or empirical research.

- 49.6 Principle 6: a sector code developed in terms of this statement must set targets which are over and above the minimum targets set out in the Generic Codes.
- 49.7 Principle 7: the proposed sector code may deviate from the thresholds set out in the Generic Codes, only where those deviations are justifiable based on sound economic principles, sectorial characteristics or empirical research
- 49.8 Principle 8: the proposed sector code may introduce a new addition are meant for measurement where such addition is justifiable based on sound economic principles, sectorial characteristics or empirical research.
- 49.9 Principle 9: the proposed sector code must clearly define its scope of application.
- 49.10 Principle 10: There must be support by the "Line Ministry" responsible for the sector and the Minister of Trade, Industry and Competition responsible for the gazette of the sector code. There must have been a clear demonstration that the Line Ministry was part of the drafting of the Sector Code and a letter of support must be sent to the Minister of Trade, Industry and Competition.
- 49.11 Principle 11: No transitional period shall be provided for the implementation of a sector code.
- 50 Paragraph 3.2 of Statement 003 goes on to provide that the "sector body", supported by the Line ministry, must apply in writing to the Minister of Trade, Industry and Competition for gazetting of a sector code. It must indicate the process by which the sector code was developed (para 3.2.2), and provide evidence of compliance with section 12 of the B-

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BBEE Act (para 3.2.3). Section 12 of the B-BBEE Act applies to transformation charters for particular sectors. It appears that paragraph 3.2 makes section 12 applicable to sector codes, *mutatis mutandis*. The implication therefore appears to be that the sector body must provide evidence that the sector code complies with the substantive requirements of section 12 – and particularly that it has been developed by major stakeholders in the sector and advances the objects of the B-BBEE Act.

- 51 Paragraph 3.2.4 reiterates that the Minister shall issue the draft sector code for public comment "before it is approved and gazetted as a final binding document", and paragraph 3.2.5 states that a committee that consists of the Sector Charter line ministry and the DTIC "shall analyse and consider the incorporation" public public comments and inputs from members of the public".
- 52 Statement 003 then lists the following grounds of refusal to gazette a sector code:
 - 52.1 the fundamental principles of any of the elements of the Generic Codes are not adequately addressed;
 - 52.2 if there are deviations in the calculation, methodologies and definitions applicable to measuring B-BBEE compliance;
 - 52.3 if inconsistencies in the targets and weightings are not *"fully justified*" or there is ambiguity with regards to the sectoral scope of application.
- 53 The role of Sector Charter Councils is addressed in paragraph 6 of Statement 003. This paragraph provides, amongst other things, that:
 - 53.1 The main responsibility of a Sector Charter Council is to develop the sector codes and to monitor their implementation.
 - 53.2 The "recommended model" for setting up a Sector Charter Council is as follows:

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- 53.2.1 equitable representation of stakeholders in the membership of the Council;
- 53.2.2 ensuring the application of good corporate governance principles in the Council;
- 53.2.3 the line ministry is responsible for driving the process of establishing a Sector Charter Council *"with the sector"*; and the appointment of Council members shall be approved by the Line Ministry *"as recommended by the sector stakeholder*."
- 53.2.4 The funding of the operations of Sector Charter Courties is the joint responsibility of the private sector and the applicable line ministry.
- 54 While this is a matter for argument, and will be addressed as such, I respectfully submit that:
 - 54.1 Statement 003 is in the nature of a policy or guideline, the purpose of which is to achieve reasonable and consistent decision-making, and deviation from which is only permissible where there is a reasonable basis to do so, or where its application would lead to irrational or otherwise unlawful results.
 - 54.2 At a very minimum, the extent of compliance with Statement 003 constitutes a materially relevant consideration, which the Minister of Trade, Industry and Competition is required to take into account in deciding whether to issue a sector code.

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THE PROCESS

- 55 The first draft Legal Sector Code was published by the Legal Practice Council for public comment on 8 November 2020. I attach the cover letter and first draft Legal Sector Code marked **"FA3"**.
 - 55.1 The Legal Practice Council explained in its cover letter to the draft Code that it had resolved to embark on a process to facilitate the development and adoption of a B-BBEE Legal Sector Code in terms of section 9 of the B-BBEE Act, in order to advance the transformation of the legal profession
 - 55.2 It explained that it did so in pursuance of the objects of the Legal Frence Act. It also stated that the reasons for the development of a Legal Sector Code included that each industry is unique, including the legal profession; that the Generic Scorecard cannot accommodate industry or profession nuances; and that a sector code would have a better chance of being supported by the profession.
 - 55.3 The Legal Practice Council invited interested parties to submit comments on the draft Code by 15 December 2020.
- 56 The Legal Practice Council also established a Steering Committee to oversee the development of the Legal Sector Code. It was comprised of representatives of various associations in the legal sector.
- 57 Representatives of NRFSA attended a briefing session organised by the Legal Practice Council in early December 2020. It was made clear by the Legal Practice Council at this session that substantial changes would be made to the first draft Legal Sector Code. NRFSA therefore elected not to comment on the first draft, and instead to await the publication of a subsequent draft.

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- 58 The second draft Legal Sector Code was published on 11 February 2021. Written comments on the draft were invited by 3 March 2021. I attach the second draft Legal Sector Code marked "FA4".
- 59 NRFSA submitted comments on the second draft Legal Sector Code on 15 March 2021.
 I attach the comments marked "FA5". NRFSA made the following representations:
 - 59.1 In numerous respects, the draft Legal Sector Code deviated materially from the Generic Codes, in circumstances where it was not apparent that such a deviation was necessary or warranted, and in ways that were countertransformative.
 - 59.2 The draft Legal Sector Code was, in many respect, punitive to those that draft not comply, which was a departure from the elective regulatory regime under the Generic Codes, and was *ultra vires* the B-BBEE Act.
 - 59.3 In relation to procurement, the draft Legal Sector Code sought to apply to and bind entities outside the legal sector, including those that procured legal services, rather than the measured entities themselves.
 - 59.4 The absence of any transitional period for the implementation of the Legal Sector Code was punitive. NRFSA therefore proposed that only verifications conducted after a certain period following the effective date would be in terms of the Legal Sector Code.
 - 59.5 The draft Legal Sector Code had moved away from using the objectively determined occupational levels set out in the Employment Equity legislation to measure the Management Control Element, and instead used subjectively determined job titles in respect of which there was no uniformity across the sector.

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- 59.6 The black ownership targets in the draft Legal Sector Code were not achievable or rational, because they exceeded the proportion of black people in the profession.
- 59.7 Regarding socio-economic development, the pro bono obligations under the draft Legal Sector Code were impossible to achieve, and appeared to be intended to drive practitioners to make the alternative financial contribution instead. There was also no rational relation between the number of pro bono hours, and the extent of the alternate option of a financial contribution.
- 61 The Legal Practice Council apparently (according to the final, gazetted Legal Sector Code) submitted the amended draft Legal Sector Code to the Minister of Trade, Industry and Competition in August 2021.
- 62 The Minister of Trade, Industry and Competition, purportedly acting upon the recommendation of the Minister of Justice, gazetted the draft Legal Sector Code for public comment on 22 July 2022. I attach the gazetted draft Legal Sector Code marked "FA6". The gazetted draft Legal Sector Code did not incorporate any of the submissions which NRFSA had made on the second draft Legal Sector Code.

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- 63 The Minister of Trade, Industry and Competition invited comments within 60 days of the date of publication.
- 64 NRFSA submitted its comments on the gazetted draft Legal Sector Code on 20 September 2022. I attach the comments marked "FA7". By way of brief summary, NRFSA made the following comments:
 - 64.1 the gazetted draft Legal Sector Code did not comply with the principles contained in Statement 003, in that:
 - 64.1.1 although all five elements of the Generic Codes are in name in the Legal Sector Code, there were material in sister of the dements that resulted in the Legal Sector Code not fully addressing the elements of the Generic Codes scorecard;
 - 64.1.2 generally, there was a lack of alignment between the definitions in the gazetted draft Legal Sector Code and the Generic Codes, particularly in that the beneficiaries of B-BBEE initiatives contemplated in the gazetted draft Legal Sector Code did not align with those in the Generic Codes;
 - 64.1.3 the calculation methodologies set out in the Generic Codes could not be used for the purposes of the gazetted draft Legal Sector Code;
 - 64.1.4 there were material deviations in the targets and weightings used in the gazetted draft Legal Sector Code as compared to the Generic Codes, which were in many cases completely unworkable, taking into account the operations of a law firm;

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- 64.1.5 the total number of points available in the Generic Codes (120) was higher than the total number of points available in the gazetted draft Legal Sector Code (102), while the procurement recognition levels were the same under both, making it more difficult to achieve a B-BBEE procurement recognition level in terms of the gazetted draft Legal Sector Code. There were also fundamental changes under the gazetted draft Legal Sector Code to the thresholds for EMEs, QSEs, and large enterprises;
- 64.1.6 the gazetted draft Legal Sector Code created new sub-elements. such as the alternative Socio-Economic Development scorecard, which would enable large firms to avoid rendering problems bono services;
- 64.1.7 the gazetted draft Legal Sector Code did not clearly or correctly define its scope of application;
- 64.1.8 there was no actual evidence of the Minister of Justice's involvement in or support for the gazetted draft Legal Sector Code;
- 64.2 the gazetted draft Legal Sector Code discriminated against large law firms, and, as a consequence, against black members and employees of large law firms;
- 64.3 the gazetted draft Legal Sector Code contained misleading and divisive language, which suggested, for example, that the large firms had become multi-national "*at the expense of the local transformation and empowerment policies*", in circumstances where all the large firms elected to be measured under the Generic Codes, and most had achieved Level 1 status;

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- 64.4 the gazetted draft Legal Sector Code sought, impermissibly, to apply to and bind entities outside the legal sector, such as the procurers of legal services;
- 64.5 the gazetted draft Legal Sector Code would entail material changes which law firms would not be able to implement immediately, and even if it were not implemented with a transition period, should be amended to provide for prescribed period within which measured entities may still be measured in accordance with the Generic Codes.
- 65 On 22 September 2022, the six largest law firms in South Africa Bowman Gilfillan Inc. Cliffe Dekker Hofmeyr Inc, Edward Nathan Sonnenbergs Inc, NRFSA, Weber Ventzel and Werksmans Inc – made a joint submission on the gazetted draft Legal to the Minister of Trade, Industry and Competition, which I attach marked "FA8".
- 66 The six firms reiterated their individual and collective support for, and recognition of the importance of the meaningful and sustainable transformation of the legal professional sector, including through the drafting of an effective sector code for the legal professional sector.
- 67 The joint submission set out the six firms' concerns as to the legality and constitutionality of the gazetted draft Legal Sector Code, provided a detailed analysis of the targets and related provisions of the gazetted draft Legal Sector Code from the perspective of large law firms, and described the unique supporting role that large law firms play in the South African economy.
- 68 It appears that in March 2023, the DTIC established a Technical Committee to consider the public comments. This is apparent from a notice issued by the Legal Practice Council to practitioners in July 2024, which I describe below.
- 69 The DTIC Technical Committee responded to the concerns raised by the six large law firms. The Technical Committee's response was a terse denial that the gazetted draft

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Legal Sector Code was unconstitutional or unlawful in each of the ways contended for by the six large law firms. I attach the Technical Committee's response marked "FA9".

- 70 On 19 May 2023, the Legal Practice Council Steering Committee wrote to NRFSA with clarificatory questions regarding its submission of 20 September 2022. I attach the correspondence marked "FA10". In particular, the Steering Committee requested further detail and particularity regarding:
 - 70.1 NRFSA's concern that the draft Legal Sector Code placed irrational and unsubstantiated obligations on large law firms which would result in drastically reduced BEE statuses for large law firms; and
 - 70.2 NRFSA's concern that a law firm's poor B-BBEE status would have a material impact on the nature and volume of instructions received, resulting in less work available to be undertaken by all legal practitioners, including black legal practitioners.
- 71 NRFSA responded on 30 May 2023. In its response, which I attach marked "FA11", NRFSA explained that:
 - 71.1 Because the total number of points available under the Generic Codes is 120, and the total number of points available under the draft Legal Sector Code was 102, it was automatically more difficult to achieve a Level under the draft Legal Sector Code than under the Generic Codes.
 - 71.2 The omission of the net value aspect of the ownership scorecard from the draft Legal Sector Code would mean that no law firm could comply with this priority element and would automatically be discounted by one level.
 - 71.3 A reduction in the B-BBEE level of a law firm would have the knock on consequence that it could not use the "YES" programme to enhance its level,

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because in order to apply the permitted enhancement a law firm must have improved or maintained its B-BBEE level.

- 71.4 The draft Legal Sector Code included various new bespoke sub-elements, which are not contemplated in the Generic Codes, and law firms would likely not have the necessary initiatives in place to meet the new requirements and would accordingly score zero points.
- 71.5 In respect of the Ownership Element, taking NRFSA's ownership data and transposing it onto the Ownership Element under the draft Legal Sector Code. NRFSA would suffer a material decrease in the number of points
- 71.6 In respect of the Management Control Element, NRFSA pointed to the draft Legal Sector Code's significant deviation from the Generic Codes in relation to the categorisation of management levels based on job title and not occupational level, and the narrowing of the scope of application to legal staff and not all staff.
- 71.7 In respect of the Skills Development Element, NRFSA explained that the draft Legal Sector Code deviated significantly from the Generic Codes, as there was no overlap in the measurement criteria under the draft Legal Sector Code and the Generic Codes.
- 71.8 In respect of Enterprise and Supplier Development, NRFSA explained that the draft Legal Sector Code deviated significantly from the Generic Codes, particularly regarding amalgamation of enterprise development and supplier development into a single sub-element, and the inclusion of pass-through, third party procurement costs as a law firm's procurement.
- 71.9 In respect of the Socio-Economic Development Element, NRFSA explained that draft Legal Sector Code deviated significantly from the Generic Codes,

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particularly in relation to misalignment regarding compliance targets, the linking of community service in the Legal Practice Act to socio-economic development, lack of clarity in relation to the identification of beneficiaries and the assistance to be provided, and the limitation of the scope of Socioeconomic Development to the provision of pro bono assistance.

- 71.10 As a supplier of services to South African commercial clients, such clients require that NRFSA has a B-BBEE status that will assist them to improve their own B-BBEE scores.
- 71.11 In addition, NRFSA has contractual arrangements with a number of tients in terms of which it has committed to achieving a minimum Level (oten a Level of terms of better). Failure to achieve the minimum Level would result in a breach of contract with the clients, and also cancellation of existing and future instructions.
- 71.12 For example, many financial institutions have a number of different law firms appointed to their approved panel of lawyers. A requirement for the panel appointment is to achieve a minimum B-BBEE Level, and the requirement to stay on the panel is to maintain the minimum.
- 72 I understand from the Legal Practice Council's notice of 11 July 2024, addressed below, that the Technical Committee completed the process of considering public comments in August 2023, and submitted the draft Legal Sector Code to the Steering Committee for approval, and that the Steering Committee approved the draft in September 2023. The Minister of Justice approved the Legal Sector Code and submitted it to the Minister of Trade, Industry and Competition on 11 October 2023 for gazetting.
- 73 It is evident, however, that the Minister of Trade, Industry and Competition had concerns about the draft Legal Sector Code. He did not gazette the Code, despite requests from

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the Steering Committee and various organisations to do so. Ultimately, various organisations represented on the Steering Committee brought a High Court application in February 2024 to compel the Minister to gazette the Legal Practice Code. Only then did the Minister of Trade, Industry and Competition engage with the Steering Committee and request further amendments.

- 74 On 26 March 2024, the Deputy Minister of Justice invited representatives of the six major law firms to a meeting the following day. A revised draft of the Legal Practice Code was shared with the firms shortly before the meeting. I attach this draft marked "FA12".
- 75 At the meeting on 27 March 2024, the Deputy Minister invited the six major and the six major submit comments on the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft Code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon the latest draft code at a subsequent meeting to be held soon t
- 76 On 8 April 2024, representatives of the six major law firms met again with the Deputy Minister of Justice regarding the latest draft of the Legal Sector Code.
- 77 Following the meeting, on 9 April 2024, NRFSA addressed correspondence to the Deputy Minister, which I attach marked "FA13", in which it summarised the key points raised at the meeting. These included that:
 - 77.1 there had been no opportunity to engage with the actual drafters of the Legal Sector Code, and that many of the law firms' concerns had been disregarded at subcommittee level;
 - the Legal Sector Code failed to comply with all 11 principles in Statement 003;
 - 77.3 immediate implementation of the Legal Sector Code would cause major disruption to existing supply chains;

- 77.4 compliance with sub-minimum thresholds would be significantly more difficult under the Legal Sector Code, and consequently the risk of discounting significantly higher;
- 77.5 there was a lack of clarity in the described objectives and the linked measurement criteria;
- 77.6 the Legal Sector Code was founded on a misunderstanding of what procurement is from a B-BBEE and accounting perspective, particularly in relation to spend on advocates; and
- 77.7 the Legal Sector Code deviated substantially from the Generation of the scorecard.
- On 11 July 2024, the Legal Practice Council published a notice to all legal practitioners, which I attach marked "FA14", explaining the process followed to-date for the publication of the Legal Practice Code, including the fact that the revised Code had been resubmitted to the Minister of Trade, Industry and Competition on 19 June 2024, but that he had still not gazetted the Code.
- 79 The Legal Sector Code was ultimately gazetted on 20 September 2024. I attach the final Legal Sector Code marked "FA15".

THE LEGAL SECTOR CODE

The scheme of the Legal Sector Code

- 80 The Legal Sector Code was published on 20 September 2024.
- 81 In this section, I provide a broad overview of the Legal Sector Code, and the applicable scorecard under it. In doing so, I compare and contrast various provisions of the Legal

Sector Code with the equivalent provisions of the Generic Codes. I focus, in particular, on the scorecard as it applies to <u>large law firms</u>.

- The Legal Sector Code defines an "Exempted Legal Enterprise" as an entity that has an annual turnover of less than R5 million. That is a lower threshold than under the Generic Codes, which prescribe an annual turnover threshold for EMEs of R10 million.
- The Legal Sector Code defines a QSE as an entity that earns an annual turnover of between R5 million and R25 million. That too is a lower threshold than under the Generic Codes, which prescribe an annual turnover threshold for QSEs of between R50 million.
- 84 The upshot is that a greater number of law firms will be required to comply with the entirety of the scorecard than were required to comply with the Generic scorecard.
- 85 A large "LSME" a legal sector measured entity is any law firm that earns above R25 million.
- The B-BBEE Scorecard under the Legal Sector Code contains four of the five elements in the Generic Codes: Ownership, Management Control, Skills Development, and Enterprise and Supplier Development. Each element in the Legal Sector Code has a weighting and a compliance target. The compliance target is staggered – there is a target at Year 1, Year 3 and Year 5. The target at Year 1 is the target that an entity is required to meet during its current measurement period, as determined whenever it is next verified.
- 87 The <u>Ownership Element</u> for large law firms has an overall weighting of 25 points. Unlike under the Generic Codes, the Ownership Element as a whole, and not merely the net value component (which does not exist under the Legal Sector Code), is a priority element. Therefore, the sub-minimum for the Ownership Element is 40% of the total

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weighting points (i.e. 10 out of 25 points), failing which an entity has its B-BBEE status level discounted by one level.

- 87.1 The Ownership Element under the Legal Sector Code is concerned with three factors.
 - First, it is concerned with voting rights. Voting rights in the hands
 of black legal practitioners carry a weighting of 6 points, and a
 target of 30% by Year 1, 40% by Year 3, and 50% by Year 5.
 Voting rights in the hands of black women legal practitioners carry a weighting of 4 points and a target of 15%, 20
 in Years 1, 3 and 5 respectively.
 - 87.1.2 Second, it is concerned with <u>economic interest</u>. Economic interest rights to which black legal practitioners are entitled carry a weighting of 6 points, and a target of 30% by Year 1, 40% by Year 3, and 50% by Year 5. Economic interest rights to which black women legal practitioners are entitled carry a weighting of 4 points and a target of 15%, 20% and 25% in Years 1, 3 and 5 respectively.
 - 87.1.3 Third, it is concerned with ownership by <u>black designated</u> <u>categories</u>, excluding women (i.e. black youth under 35, black people with disabilities, and black people from rural areas):
 - (a) Exercisable voting rights held by black designated categories carries a weighting of 2.5 points and a target of 1%, 3% and 5% in Years 1, 3 and 5 respectively.

- (b) Economic interest rights to which black designated categories are entitled, carry a weighting of 2.5 points and a target of 1%, 3% and 5% in Years 1, 3 and 5 respectively.
- 87.1.4 Unlike under the Generic Codes, the Legal Sector Code does not allow points for "*new entrants*" or for "*net value*".
- 87.1.5 It is also notable that, unlike under the Generic Codes, the Legal Sector Code is limited to black *legal practitioners*, and not to black people generally. Moreover, it imposes higher black ownership than under the Generic Codes – for the sector code in the sector code in the sector exercise black ownership is increased from 25% under the sector Code in Year 1 and 50% in Year 5; and black women ownership has increased from 10% to 15% in Year 1 and 25% in Year 5.
- 87.1.6 In addition, it is notable that the Legal Sector Code has introduced a self-standing requirement for ownership by designated categories, *excluding* women. As I shall explain later in this affidavit, given that it is rare for anyone to make equity partnership in a law firm when they qualify as youth (i.e. under the age of 35), and that black people from rural areas are, almost by definition, not employed at urban law firms, this is an almost impossible requirement for law firms such as NRFSA to meet.
- 88 The Management Control Element for large law firms has an overall weighting of 24 points.
 - 88.1 The Management Control Element under the Legal Sector Code is concerned with the following factors:

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- 88.1.1 Board participation, meaning the percentage of black legal practitioners who are equity directors as a percentage of board members (with a weighting of 4 points and a target of 30% by Year 1, 40% by Year 3 and 50% by Year 5) and of black female black legal practitioners who are equity directors as a percentage of board members (with a weighting of 2 points and a target of 15% by Year 1, 20% by Year 3 and 25% by Year 5).
- 88.1.2 Executive management, meaning the percentage of black legal practitioners as a total number of members of members of management (with a weighting of 3 points and a tage of persons from designated categories as a total number of members of executive management (with a weighting of 1 point and a target of 10% in Year 1, 15% in Year 3 and 20% in Year 5).
- 88.1.3 Heads of department ("HODs"), meaning the number of black legal practitioners in senior management as a percentage of HODs and practice group leaders ("PGLs") (with a weighting of 3 points and a target of 20% in Year 1, 25% in Year 3 and 30% in Year 5) and the number of persons drawn from black designated categories of legal practitioners as a percentage of HODs and/or PGLs (with a weighting of 1 point and a target of 10% in Year 1, 15% in Year 3 and 20% in Year 5).
- 88.1.4 Middle management, meaning black legal practitioners as a total of senior associates (with a weighting of 3 points and a target of 40% in Year 1, 50% in Year 3 and 60% in Year 5) and black legal

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practitioners from designated categories as a total of senior associates (with a weighting of 1 point, and a target of 10% in Year 1, 15% in Year 3 and 20% in Year 5).

- 38.1.5 Junior management, meaning black legal practitioners as a total of associates or professional assistants (with a weighting of 3 points and a target of 40% in Year 1, 50% in Year 3 and 60% in Year 5) and black legal practitioners from designated categories who are associates or professional assistants (with a weighting of 1 point, and a target of 12% in Year 1, 15% in Year 1, 15
- 88.1.6 Support and consulting staff, which measures the appointment of black people in support roles (with a weighting of 1 point, and a target of 6% in Year 1, 9% in Year 3 and 13% in Year 5).
- 88.1.7 Management role of people who are not legal practitioners, which measures the appointment of persons from designated categories in support roles (with a weighting of 1 point, and a target of 3% in Year 1, 6% in Year 3 and 10% in Year 5).
- Again, as with Ownership, the Legal Sector Code differs from the Generic Codes in that it focuses almost exclusively on legal practitioners (only 2 points out of 24 recognise support staff). What this means for a law firm, is that a substantial portion of its staff – such as those in finance, human resources, information technology and the like – who are not legal practitioners, but without whom a law firm cannot function, and who might hold senior management positions, are not counted for purposes of Management Control.

- 88.3 In addition, because the category of "management role of people who are not legal practitioners", is limited to persons from designated categories, which excludes even black men, there is only one category in which black, male non-lawyers are counted, which is "support and consulting staff", with an overall weighting of only 1 point. Put differently, if a law firm employs black men in senior executive and managerial non-legal positions within the firm, they are not counted at all towards that firm's overall B-BBEE score.
- 89 The <u>Skills Development Element</u> for large law firms has an overall weighting of 15 points. The Skills Development Element as a whole is a priority element. The sub-minimum for the Skills Development Element is 40% of the total weighting points (i.e. 6 out of 15 points), failing which an entity has its B-BBEE status level discounted by one level.
 - 89.1 The scorecard explains that any reference to target percentage, unless specifically indicated to the contrary, means the percentage of the entity's leviable amount (essentially the entity's total payroll, subject to certain exclusions) on an annual basis.
 - 89.2 The Skills Development Element under the Legal Sector Code is concerned with the following factors:
 - 89.2.1 Spend incurred on training programmes on the number of black candidate legal practitioners ("CLPs") against the total number of CLPs that are enrolled/registered within the firm in a particular year (with a weighting of 4 points, and a target of 2.5% in Year 1, 3.5% in Year 3 and 3.5% in Year 5).
 - 89.2.2 Expenditure incurred as a result of training in specialised areas of law of black CLPs and post-qualification training/for black

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legal practitioners (with a weighting of 4 points, and a target of 2% in Year 1, 2.5% in Year 3 and 3% in Year 5).

89.2.3 Number of black trainees and/or candidate attorneys registered by a firm in particular programmes, namely Practice Management Training, Trial Advocacy Training and any other post-admission courses (with a weighting of 3 points, and a target of 2.5% in Year 1, 3.5% in Year 3 and 3.5% in Year 5). It is difficult to make sense of this factor: while reference is made to trainees and candidate attorneys, the specific listed are for admitted attorneys, and the category speaks of "black legal practitioners".

89.2.4 Implementation of certain programmes for a minimum period of 1 month, namely internships for law graduates who are not candidate attorneys, and for candidate attorneys who have completed articles but are unable to obtain employment; and <u>vacation placement</u> for law students, for a period of 1 to 3 months in one measurement period (with a weighting of 4 points, and a target of 2.5% in Year 1, Year 3 and Year 5).

89.2.5 Bonus points are awarded for:

- (a) retention and absorption of black CLPs who are attorneys in the firm after admission as legal practitioners (with a weighting of 4 points, and a target of 50% of the total number in Year 1, Year 3 and Year 5);
- (b) notably, expenditure incurred as the result of payment of topup monthly remuneration/stipend of black CLPs ps a total

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number in the firm is recognised <u>only</u> for QSEs, and not for large law firms;

- (c) training of persons from designated categories in areas that enhance their ability and skills to provide efficient support services in a law firm (with a weighting of 3 points, and a target of 2% in Year 1, 2.5% in Year 3 and 3% in Year 5).
- 89.3 Again, insofar as black non-legal employees are concerned, skills development is only recognised if it is targeted at persons from categories. The upshot, once more, is that expenditure on the training of non-legal lawyers who are black men does not count at all towards a firm the BBEE Court of Court at the source of the source of
- 90 The Preferential Procurement and Enterprise Development ("PSED") Element for large law firms has an overall weighting of 45 points.
 - 90.1 The Preferential Procurement aspect of this element is broken down into two parts:
 - 90.1.1 Procurement from advocates, including:
 - (a) procurement of legal services from black advocates (with a weighting of 10 points, and a target of 40% in Year 1, 50% in Year 3 and 60% in Year 5).
 - (b) procurement of legal services from a black woman advocate
 (with a weighting of 8 points, and a target of 20% in Year 1, 25% in Year 3 and 30% in Year 5)
 - 90.1.2 General procurement, including:

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- (a) procurement spend from suppliers that are at least 51% black
 owned (with a weighting of 4 points, and a target of 25% in
 Year 1, 30% in Year 3 and 30% in Year 5);
- (b) procurement spend from suppliers that are at least 51% black owned and are EMEs and QSEs (with a weighting of 5 points, and a target of 25% in Year 1, 30% in Year 3 and 30% in Year 5);
- (c) procurement spend from suppliers that are at east 51% owned by persons from designated categories with a start of the second of the sec
- 90.2 Significant differences between the Generic Code and the Legal Sector Code insofar as procurement is concerned, include the following:
 - 90.2.1 Whereas the Generic Codes are limited to procurement expenditure by the measured entity, the Legal Sector Code includes procurement of legal services from advocates, which are not procured by the law firm itself, but by its clients.
 - 90.2.2 Whereas the Generic Codes are based on total measured procurement spend – a defined term, with certain express inclusions and exclusions – the Legal Sector Code speaks of procurement as a percentage of total measured expenditure on goods, equipment and assets. It is therefore unclear what is included and excluded from this expenditure.
 - 90.2.3 In addition, whereas the critical inquiry when an entity procures from a supplier under the Generic Codes is the B-BB

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that supplier, under the Legal Sector Code suppliers must be at least 51% black-owned. Any entity that is less than 51% black owned does not count towards the procurement points of the law firm.

- 90.3 The Enterprise Development aspect of this element is broken down into the following factors:
 - 90.3.1 sub-contracting or partnering with an ELE Level 1 or 51% blackowned LSME (with a weighting of 3 points, and a target of 30% in Year 1, 33% in Year 3 and 36% in Year 5);

90.3.2 sub-contracting or partnering with a 51% black-owned LSMF or 51% LSME owned by persons from designated categories with a weighting of 3 points, and a target of 15% in Year 1, 20% in Year 3 and 25% in Year 5);

- 90.3.3 contributions made towards the development of black-owned ELEs and new entrants as a percentage of NPAT (with a weighting of 4 points, and a target of 1% in Year 1, Year 3 and Year 5);
- 90.3.4 monetary contributions made by LSMEs to the Legal Sector Transformation Fund (with a weighting of 4 points, and a target of R10 000 in Year 1, R13 000 in Year 3 and R18 000 in Year 5);
- 90.3.5 The Legal Sector Transformation Fund has not yet been established. It is accordingly not possible, at this stage, for entities to earn any points based on contributions to the Legal Sector Transformation Fund.

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- 91 Notably, the Legal Sector Code, unlike the Generic Codes, does not award any points for Socio-Economic Development. It also does not award points for supplier development (in the sense of making a contribution for the benefit of value-adding suppliers).
- 92 Lastly, the Legal Sector Code introduces the **Specialised Scorecard.**
 - 92.1 It provides that all organs of state and public entities, procuring legal services from legal practitioners, shall be measured in terms of the Specialised Scorecard insofar as the procurement of legal services is concerned.
 - 92.2 The Specialised Scorecard is broken down into the following factor
 - 92.2.1 Procurement of legal services by the Office of the State Attorney, public entities and organs of state and particularly:
 - (a) procurement of legal services from a black advocate and/or
 LSMEs that are black owned (with a weighting of 5 points, and a target of 70% in Year 1, 80% in Year 3 and 80% in Year 5);
 - (b) procurement of legal services from a black woman advocate and/or firms of attorneys that are black owned (with a weighting of 5 points, and a target of 40% in Year 1, 45% in Year 3 and 50% in Year 5);
 - (c) procurement of legal services from a white advocate who is briefed with a black junior advocate (with a weighting of 4 points, and a target of 35% in Year 1, 40% in Year 3 and 45% in Year 5);

- (d) procurement of legal services from black LSMEs in complex matters in specialised areas of law by organs of state, public entities and the state attorney, including from black-owned ELEs and B-BBEE Level 1 or black owned QSEs above R5 million but less than R25 million (with a weighting of 7 points, and a target of 45% in Year 1, 50% in Year 3 and 55% in Year 5), and from LSMEs owned by persons drawn from designated categories (with a weighting of 4 points, and a target of 25% in Year 1, 30% in Year 3 and 35% in Year 5).
- 92.2.2 Supplier Development, and particularly the allocation large law firms on condition that they partner and/or sub-contract with a firm that is at least 51% black owned (with a weighting of 10 points, and a target of 25% in Year 1, 30% in Year 3 and 35% in Year 5).
- 92.2.3 Targeted procurement from designated categories of LSMEs, particularly procurement from LSMEs owned by black legal practitioners and black women legal practitioners (with a weighting of 10 points, and a target of 65% in Year 1, 70% in Year 3 and 75% in Year 5).

The impact of the Legal Sector Code on NRFSA

93 In the section above, I have outlined, in broad but fairly detailed terms, the salient aspects of the Legal Sector Code. I now turn to analyse the *impact* of the Legal Sector Code on NRFSA (and no doubt many firms who are similarly placed).

THE HIGH COURT OF GAUTENG DIVISION,

NRFSA's compliance under the Generic Codes

- 94 B-BBEE measurement is backward-looking. In essence, each entity measures its level of B-BBEE compliance over a "measurement period" which corresponds with its financial year. In the case of NRFSA, its financial year, and thus its measurement period, is 1 January to 31 December. Therefore, as at the date of this affidavit, NRFSA's most recent, completed measurement period is 1 January 2023 to 31 December 2023. Within days of filing this affidavit, NRFSA's 2024 measurement period (1 January 2024 to 31 December 2024) will come to an end.
- 95 After the conclusion of the measurement period, a measured entity is required entity is required entity is required an approved B-BBEE verification agency to undertake a B-BBEE verification. In the case of NRFSA, its B-BBEE verification is undertaken during the month of April. NRFSA's current B-BBEE certificate, which I attach marked "FA16", was issued on 29 April 2024 and expires on 28 April 2025. It is a verification of NRFSA's B-BBEE compliance during the period 1 January to 31 December 2023.
- 96 Under the Generic Codes, in its most recent measurement period, NRFSA was a <u>Level</u> <u>One</u> Contributor – the highest attainable level. In sum, as reflected in its B-BBEE verification certificate:
 - 96.1 NRFSA had black ownership of 26.24% and black women ownership of 7.01%.
 - 96.2 NRFSA scored:
 - 96.2.1 20.94 out of 25 points for Ownership;
 - 96.2.2 11.81 out of 19 points for Management Control;
 - 96.2.3 18.94 out of 20 points for Skills Development;

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- 96.2.4 42 out of 42 (plus 4 bonus points) for Enterprise & Supplier Development; and
- 96.2.5 5 points out of 5 for Socio-Economic Development.
- 96.3 In total, it scored 102.69 points, making it a Level One contributor, with a 135% recognition level.
- 97 While NRFSA has invested substantial time, money and resources into maximising its level of compliance under the Generic Codes, its compliance with the Generic Codes has never been a tick-box exercises. NRFSA is genuinely committed to the biet transforming the legal profession and the country more broadly.
- 98 Simply in order to illustrate certain of the measures that NRFSA has implemented in the past, including over the most recent measurement period, 1 provide the following examples.
- 99 In the context of Enterprise Development:
 - 99.1 In 2023, NRFSA onboarded a 100% black female-owned law firm as an Enterprise Development beneficiary. NRFSA continues to support this firm in 2024.
 - 99.2 By way of supporting this firm, NRFSA:
 - 99.2.1 paid for the owner of the firm to participate in an advanced business incubation course, through which she now has an experienced business mentor to advise and assist her with her plans to continue growing her firm;

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- 99.2.2 provided the owner of the firm with a LexisNexis software licence, which has facilitated her ability to undertake legal research;
- 99.2.3 provided the owner of the firm with mentoring from select NRFSA lawyers (who practice in areas in which she practices), as well as NRFSA's CEO and CFO;
- 99.2.4 introduced the firm to a large corporate client, from which it subsequently received work.
- 99.3 In 2024, NRFSA continued to provide Enterprise Development as some to the second second
 - 99.3.1 continuing to provide the mentoring services of NRFSA's lawyers, including its former CEO, current CEO, and CFO;
 - 99.3.2 creating bespoke training for the owner of the firm, in respect of representing her brand on social media, reviewing and responding to bids and tenders, and targeted client marketing;
 - 99.3.3 purchasing two laptops, one for her associate (who was robbed of their laptop) and one for the candidate attorney she will soon be employing; and
 - 99.3.4 providing funding to enable her to create two new offices and furnish them appropriately.
- 99.4 These initiatives have contributed to the growth of a black woman-owned business, which now intends to employ a candidate attorney and a part-time business development employee.

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100 in the context of Supplier Development:

- 100.1 In 2023, NRFSA onboarded a 100% black youth-owned cleaning company as a supplier, and included it in its Supplier Development programme. The support NRFSA has provided includes:
 - 100.1.1 In 2023, NRFSA paid for the entity to participate in business incubation through Black Umbrellas.
 - 100.1.2 In 2024, NRFSA continued to provide additional Supplier Development assistance. Specifically, NRFSA purchased a much-needed laptop, as well as software for the laptop site in the laptop of the laptop.
 - 100.1.3 In addition, NRFSA has paid for access to an online "leads generation" platform.
- 100.2 Over the course of 2023 and 2024, NRFSA has provided grant funding to a job placement company to create a total of three jobs over the two years.
- 100.3 In 2018, NRFSA granted a loan to a 100% black female owned florist business. It later extended the loan repayment term by three years to assist the business manage its cash flow. NRFSA has also provided the business with financial accountants, supported the beneficiary with financial and related advice, and with pro bono legal support and HR training and support. The florist has become a key supplier of the firm for floral arrangements and for functions.
- 101 In the context of Skills Development, NRFSA runs an internal learnership each year for persons with disabilities. Through their participation in the learnership, learners obtain Business Administration Services NQF3 qualifications and gain valuable work

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experience. In 2023, NRFSA offered employment to five learners after completion of the 2022 learnership.

- 102 NRFSA also supports a children's home, which cares for children with severe to profound mental disabilities.
 - 102.1 NRFSA has raised funds from Norton Rose Fulbright globally to build suitable accommodation, allowing the home to move from the rental accommodation in which it was based, which did not meet the special needs of the residents, and which precluded the home from accessing much needed
 - 102.2 Two NRFSA directors, and one NRFSA consultant, sit on the board of the home and provide guidance and assistance to its management.
 - 102.3 NRFSA also continues to raise funds for the home to ensure that necessary maintenance takes place.
 - 102.4 NRFSA's first-year candidate attorneys in the Johannesburg office raise funds for the home, and hold an annual Christmas party for the residents and staff, providing gifts and festive cheer.
 - 102.5 NRFSA also offers ongoing pro bono legal services to the management of the home, as well as HR assistance and the like.
- 103 Against the backdrop of NRFSA's demonstrable commitment to, and investment in, compliance with the Generic Codes, and transformation more broadly, I now turn to the impact of the Legal Sector Code.

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