

AFFIDAVIT

A STATEMENT UNDER OATH

By: Stella Nolan

In the B-BBEE arena, Affidavits were introduced to confirm the 'Black' Ownership and financial status of small and 'Black'-owned businesses to remove the financial burden of a B-BBEE Audit.

In the broader scheme of things, Affidavits are frequently used and for many different reasons. However, many do not have a good handle on its definition and realise that it is a sworn declaration.

An Affidavit is: "A written statement containing facts that are sworn to and signed by a deponent in the presence of a 'Commissioner of Oaths' - a person authorised to witness such an oath." In other words, when one signs an Affidavit, one is attesting, under law, that the statement contained in the Affidavit is true.

An excellent way to think of an Affidavit is like a written court testimony. In a court of law, one places one's hand on the Bible and swears to tell the truth and nothing but the truth. In terms of an Affidavit, one is merely doing this in writing. Put another way, one is under oath, but on paper.

Lying in an Affidavit can carry the charge of perjury. Therefore, before signing an Affidavit, the contents must be fully understood in its entirety, as that is what is attested to. An Affidavit must only be signed once the deponent is in complete agreement with all statements contained therein. Importantly, a 'Commissioner of Oaths' must not be an employee or ex officio of the organisation generating the Affidavit, to ensure there is no conflict of interest.

The deponent must sign an Affidavit in the presence of a 'Commissioner of Oaths' who will then sign and stamp the Affidavit, which in turn makes it binding. There is no cost attached to a 'Commissioner of Oaths' notarising an Affidavit. Vital is that any alterations, such as corrections, cross-outs or additions made to an Affidavit, are witnessed by both parties through initialling any alteration.

An Affidavit relies on the honesty and integrity of a deponent. In turn, organisations place trust in the information presented in an Affidavit to attain their Preferential Procurement targets. But by the same token, those evaluating the validity of an Affidavit should be able to recognise 'red-flag' areas and identify whether an Affidavit is in the correct format and includes all necessary information.

What criteria qualifies an organisation to present an Affidavit as proof of 'Black' Ownership and financial status?

Both an Exempt Micro Enterprise (EME) and a Qualifying Small Enterprise (QSE) that have 51% 'Black' Ownership qualify to present an Affidavit. The financial threshold criteria is an annual turnover of under R10m for an EME and between R10m and R50m for a QSE. These financial thresholds are based on the Generic Codes. The financial thresholds for organisations measured on one of the Sector Codes of Good Practice may differ due to the individual requirements of Sector Codes.

The following Sector Codes and relevant sub-categories can use the Dti Affidavit template with corresponding thresholds:

- > Amended Agri-BEE Sector Code;
- > Amended Finance Sector Code;
- > Amended Forest Sector Code;
- > Amended Information Communication & Technology Sector Code;
- > Amended Marketing Advertising & Communication Sector Code. However, Public Relations that form part of the scope has its threshold ceiling at R5m.
- > Amended Property Sector Code. Estate agencies, broking and valuation companies, as well as those that are asset-based, have different financial thresholds.



A Start-up Enterprise qualifies as an EME, which is an organisation that has been established for less than 12 months. However, such an organisation, when tendering for contracts between R10m and R50m, must submit a SANAS accredited B-BBEE Certificate measured on a QSE Scorecard. The same principle applies to contracts over R50m, which mandate that a Start-up must be weighed against the Large Enterprise scorecard. The preparation of such scorecards is based on annualised data.

What invalidates an Affidavit?

An Affidavit can be presented on the template provided by the Dti which may be printed on a letterhead. However, an Affidavit is deemed invalid if it is issued by a third party, whereby the third party's branding or markings are present on the Affidavit, such as an accounting officer or verification agency. A verification agency may measure an EME that chooses to be measured on a QSE scorecard. Though, it is vital to note that once an EME or QSE with more than 51% 'Black' Ownership opts to be measured on a higher scorecard, it will no longer be allowed to submit an Affidavit after that.

However, there is an exception to the rule. EMEs and QSEs that are 51% 'Black'-owned measured on the Transport Sector Code are required to present a SANAS accredited B-BBEE Certificate. This will remain the case until the Amended Transport Sector Code is gazetted or the current Transport Sector Code is repealed, in which case those measured on the Transport Sector Code will revert to the Generic Codes.

There are four categories of Affidavits, each with its qualifying criteria. The Dti has provided a template for each. An organisation cannot choose which Affidavit template they wish to use, as each has different criteria based on how an organisation is registered, their financial threshold and Ownership status. The Affidavit categories are broken down as follows:

B-BBEE Exempt Micro Enterprise - General	B-BBEE Exempt Micro Enterprise – Specialised Entity - General
B-BBEE Qualifying Small Enterprise - General	B-BBEE Qualifying Small Enterprise – Specialised Entity - General

The four different Affidavit templates are available on the DTI's website http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp

The following table outlines the definitions and information required for each category of Affidavit. Each template is laid out from page 30 to 37. The numbering in the table below corresponds with the numbering sequence displayed on the four Affidavits illustrated.

A deponent must declare the following information under oath on the template provided by the Dti, which will ensure that an Affidavit is indeed valid.

①	Name/s of the deponent as they appear in the identity document.
②	Identity number as it appears in the identity document.
③	Indicate designation of the deponent to confirm that they are duly authorised to depose an Affidavit on behalf of the organisation.
④	The name of the organisation as it appears in the registration documents.
⑤	Indicate whether the organisation trades under a different name to the one registered.
⑥	Company registration number as per the enterprise registration documents issued by the CIPC at the time of registration.
⑦	Registered physical address where business is conducted.

⑧	Indicate the type of organisation as per the registration document. For example, is it a CC, (Pty) Ltd, Sole Proprietor. In terms of the specialised scorecard, the description may include non-profit organisations, public benefit schemes, public benefit organisations, organisations exclusively owned by organs-of-state, otherwise those limited by guarantee or higher education.
⑨	Indicate the sector the organisation represents and the nature of the business.
⑩	Insert the percentage of 'Black' Ownership, beneficiaries of which are defined on page one of the Affidavit. 'Black'-owned means a juristic person, having shareholding or similar member interest, that is B-BBEE controlled, in which 'Black' Participants enjoy a percentage of exercisable Voting Rights, Economic Interest and have earned all points under Net Value. These are determined under Code series 100, the total of such rights being measured using the 'Flow-Through' Principle. (see page 18).
⑪	Insert the percentage of 'Black'-woman Ownership, percentage of 'Black' Women holding Voting Rights, Economic Interest and have earned all points under Net Value. These are determined under Code series 100, the total of such rights being measured using the 'Flow-Through' Principle. (See page 18).
⑫	Insert the percentage of Ownership held by 'Black' Designated Groups. The definition is outlined on page one of the Affidavit.
⑬	What is the total Ownership held by 'Black' Youth which are people between the ages of 14 and 30 as defined in the National Youth Commission Act of 1996?
⑭	What is the total Ownership held by 'Black' People with disabilities as defined in the Code of Good Practice on the employment of people with disabilities issued under the Employment Equity Act?
⑮	What is the total Ownership held by 'Black' Unemployed People? This category relates to 'Black' People that are not attending, and not required by law to attend, an educational institution and not awaiting admission to such an institution.
⑯	What is the total Ownership held by 'Black' People living in rural and undeveloped areas?
⑰	Insert the total Ownership held by 'Black' Military Veterans. The Defence Sector Code clarifies the qualifying criteria for 'Black Military Veterans'. For this Sector Code, any 'Black' South African Citizen who: <ul style="list-style-type: none"> > Rendered military service to any of the Non-Statutory Military Organisations that were involved in South Africa's Liberation between 1960 and 1994; > Served in the Union Defence Force before 1961; > Became a member of the new South African National Defence Force after 1994; and > Completed his or her military training but no longer performs military services and has not been dishonourably discharged from that military organisation or force. The definition does not exclude any person referred to in paragraph 4.5.1 or 4.5.2 who could not complete his or her military training due to an injury during military training or contracted a disease.
⑱	Include the date of the financial year-end from which the financial results in the Affidavit is derived. For example – February 2019.
⑲	Tick the box that indicates the 'Black' Ownership status, which will allocate an organisation's Preferential Procurement Recognition level.
⑳	Full signature of the deponent. The signing must be concluded in the presence of a 'Commissioner of Oaths' with no conflict of interest.
㉑	Must include the day, month and year the Affidavit was notarised. Important to note, the date must be the same date that appears on the notarised stamp or the Affidavit is deemed invalid..
㉒	'Commissioner of Oaths' to sign and stamp the Affidavit. To reiterate – if the day, month and year featuring under the deponent's signature in any way differs from that of the 'Commissioner of Oaths' the Affidavit is deemed invalid.



B-BBEE Exempt Micro Enterprise - General

The qualifying criteria for this Affidavit category on the Generic Codes is an organisation with an annual income of R10m or less. Although this Affidavit category is not sector-specific, deponents must be aware of the financial threshold their Sector Code mandates as some differ from the Generic Codes.

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE - GENERAL

I, the undersigned,

Full name & Surname	1
Identity number	2

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner of the following enterprise and am duly authorised to act on its behalf: 3

Enterprise Name:	4
Trading Name (If Applicable):	5
Registration Number:	6
Enterprise Physical Address:	7
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):	8
Nature of Business:	9
Definition of "Black People" 10	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; 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 naturalization prior to that date;"
Definition of "Black Designated Groups" 12	"Black Designated Groups means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"

3. I hereby declare under Oath that:

- The Enterprise is 10 % Black Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is 11 % Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is 12 % Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Owned % Breakdown as per the definition stated above:
 - Black Youth % = 13 %
 - Black Disabled % = 14 %
 - Black Unemployed % = 15 %
 - Black People living in Rural areas % = 16 %
 - Black Military Veterans % = 17 %
- Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of 18, the annual Total Revenue was R10,000,000.00 (Ten Million Rands) or less
- Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box.**

100% Black Owned	Level One (135% B-BBEE procurement recognition level)	<u>19</u>
At least 51% Black Owned	Level Two (125% B-BBEE procurement recognition level)	<u>19</u>
Less than 51% Black Owned	Level Four (100% B-BBEE procurement recognition level)	<u>19</u>

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the Owners of the Enterprise which I represent in this matter.
5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: 20

Date: 21

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Commissioner of Oaths
Signature & stamp

Please refer to pages 28 and 29 for number reference purposes

B-BBEE Qualifying Small Enterprise - General

The qualifying criteria for this Affidavit category on the Generic Codes is an organisation with an annual income between R10m and R50m that is more than 51% 'Black'-owned. Although this Affidavit is not sector-specific, organisations must be aware of the financial threshold their Sector Code mandates as some differ from the Generic Codes.

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE - GENERAL

I, the undersigned,

Full name & Surname	1
Identity number	2

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner of the following enterprise and am duly authorised to act on its behalf: 3

Enterprise Name:	4
Trading Name (If Applicable):	5
Registration Number:	6
Enterprise Physical Address:	7
Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):	8
Nature of Business:	9
Definition of "Black People" 10	<p>As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 "Black People" is a generic term which means Africans, Coloureds and Indians –</p> <p>(a) who are citizens of the Republic of South Africa by birth or descent; or</p> <p>(b) who became citizens of the Republic of South Africa by naturalisation-</p> <p>i. before 27 April 1994; or</p> <p>ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;"</p>
Definition of "Black Designated Groups" 12	<p>"Black Designated Groups means:</p> <p>(a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;</p> <p>(b) Black people who are youth as defined in the National Youth Commission Act of 1996;</p> <p>(c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act;</p> <p>(d) Black people living in rural and under developed areas;</p> <p>(e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;"</p>

3. I hereby declare under Oath that:

- The Enterprise is 10 % Black Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is 11 % Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is 12 % Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Owned % Breakdown as per the definition stated above:
 - Black Youth % = 13 %
 - Black Disabled % = 14 %
 - Black Unemployed % = 15 %
 - Black People living in Rural areas % = 16 %
 - Black Military Veterans % = 17 %
- Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of 18, the annual Total Revenue was between R10,000,000.00 (Ten Million Rands) and R50,000,000.00 (Fifty Million Rands),
- Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% Black Owned	Level One (135% B-BBEE procurement recognition level)	<u>19</u>
At Least 51% black owned	Level Two (125% B-BBEE procurement recognition level)	<u>19</u>

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: 20

Date: 21

22

 Commissioner of Oaths
 Signature & stamp

Please refer to pages 28 and 29 for number reference purposes

B-BBEE Exempt Micro Enterprise – Specialised Entity – General

Specialised Entities are non-profit organisations, public benefit schemes, public benefit organisations, organisations exclusively owned by organs-of-state, those limited by guarantee or higher education, to which a Sector Code does not apply. The qualifying criterion for this Affidavit on the Generic Codes is an organisation with an annual income of less than R10m.

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE – SPECIALISED ENTITY - GENERAL

I, the undersigned,

Full name & Surname	1
Identity number	2

Hereby declare under oath as follows:

- The contents of this statement are to the best of my knowledge a true reflection of the facts.
- I am a Director of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:	4
Trading Name (If Applicable):	5
Registration Number:	6
Enterprise Physical Address:	7
Type of Entity (NPO, PBO etc.):	8
Nature of Business:	9
Definition of “Black People” 10	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 “Black People” is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; 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 naturalization prior to that date;”
Definition of “Black Designated Groups” 12	“Black Designated Groups means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;”

3. I hereby declare under Oath that:

- The Enterprise has 10 % Black Beneficiaries as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise has 11 % Black Female Beneficiaries as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise has 12 % Black Designated Group Beneficiaries as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Beneficiary % Breakdown as per the definition stated above:
 - Black Youth % = 13 %
 - Black Disabled % = 14 %
 - Black Unemployed % = 15 %
 - Black People living in Rural areas % = 16 %
 - Black Military Veterans % = 17 %
- Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of 18, the annual Total Revenue/Allocated Budget/Gross Receipts was R10,000,000.00 (Ten Million Rands) or less
- Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box.**

At Least 75% Black Beneficiaries	Level One (135% B-BBEE procurement recognition level)	<u>19</u>
At Least 51% Black Beneficiaries	Level Two (125% B-BBEE procurement recognition level)	<u>19</u>
Less than 51% Black Beneficiaries	Level Four (100% B-BBEE procurement recognition level)	<u>19</u>

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the Owners of the Enterprise which I represent in this matter.
5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: 20

Date: 21

22

Commissioner of Oaths
Signature & stamp

Please refer to pages 28 and 29 for number reference purposes

B-BBEE Qualifying Small Enterprise – Specialised Entity - General

Specialised Entities are non-profit organisations, public benefit schemes, public benefit organisations, organisations exclusively owned by organs-of-state, those limited by guarantee or higher education, to which a Sector Code does not apply. The qualifying criterion for this Affidavit on the Generic Codes is an organisation with an annual income of between R10m and R50m.

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE – SPECIALISED ENTITY - GENERAL

I, the undersigned,

Full name & Surname	1
Identity number	2

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.

2. I am a Director of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:	
Trading Name (If Applicable):	4
Registration Number:	5
Enterprise Physical Address:	6 7
Type of Entity (NPO, PBO etc.):	8
Nature of Business:	9
Definition of “Black People” 10	As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 “Black People” is a generic term which means Africans, Coloureds and Indians – (a) who are citizens of the Republic of South Africa by birth or descent; 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 naturalization prior to that date;”
Definition of “Black Designated Groups” 12	“Black Designated Groups means: (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under developed areas; (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;”

3. I hereby declare under Oath that:

- The Enterprise has 10 % Black Beneficiaries as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise has 11 % Black Female Beneficiaries as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise has 12 % Black Designated Group Beneficiaries as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Beneficiary % Breakdown as per the definition stated above:
 - Black Youth % = 13 %
 - Black Disabled % = 14 %
 - Black Unemployed % = 15 %
 - Black People living in Rural areas % = 16 %
 - Black Military Veterans % = 17 %
- Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of 18, the annual Total Revenue/Allocated Budget/Gross Receipts was between R10,000,000.00 (Ten Million Rands) and R50,000,000.00 (Fifty Million Rands)
- Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

At Least 75% Black Beneficiaries	Level One (135% B-BBEE procurement recognition level)	<u>19</u>
At Least 51% Black Beneficiaries	Level Two (125% B-BBEE procurement recognition level)	<u>19</u>

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: 20

Date: 21

22
Commissioner of Oaths
Signature & stamp

Please refer to pages 28 and 29 for number reference purposes

For organisations that qualify to present an Affidavit to confirm their organisation's 'Black' Ownership and financial status, the process is simple. But bear in mind that the a B-BBEE Audit and the Companies Act, in many cases, do obligate an organisation to verify some information, specifically in line with Ownership, financial status and tax clearance.

Although the intent of providing an Affidavit to confirm 'Black' Ownership and financial status was to remove the burden from small and 'Black'-owned businesses, it does bring about challenges to organisations at the time of verification. One such challenge is a deponent not correctly applying the Ownership calculation and, since the Commissioner of Oaths is mostly not a B-BBEE specialist, this miscalculation goes unchallenged. Unfortunately, such shortfalls in applying the Ownership calculation only become evident at the time of verification, which can impact an organisation's Preferential Procurement score.

Content vetted by: Authentic Rating Solutions