

# AFFIDAVITS

## THE PRESCRIBED FORMAT



Upon the publication of the Codes of Good Practice in 2007, the prescribed format for all businesses in presenting their B-BBEE credentials was a B-BBEE certificate issued by a SANAS-accredited B-BBEE rating agency or, until 2016, one prepared by the Standards Department of the Independent Regulatory Board for Auditors (IRBA).

The 2013 amendments to the Codes of Good Practice, to remove the financial burden of a B-BBEE verification, allowed all Exempted Micro Enterprises (EMEs) to present a B-BBEE affidavit (affidavit) or CIPC B-BBEE certificate to confirm their level of 'Black' Ownership and Financial Revenue Threshold. Further amendments meant that Qualifying Small Enterprises with at least 51% 'Black' Ownership (BO QSE) could do the same. The amendments apply to all public and private organisations, as well as organs of state. On 3<sup>rd</sup> September 2018, Practice Guide 1 of 2018 was issued as a non-binding guide, purely to assist with the interpretation to ensure consistency in the application of the Act.

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Although the rationale behind an affidavit to confirm 'Black' Ownership and financial revenue was to remove the burden from small and 'Black'-owned businesses, it does bring about challenges for an organisation at the time of its B-BBEE verification. One such challenge is brought about by the deponent incorrectly applying the Ownership calculation. Since the Commissioner of Oaths is likely not a B-BBEE specialist, such a miscalculation may go unchallenged. Unfortunately, such shortfalls in applying the Ownership calculation only become evident at the time of a B-BBEE verification, which can impact an organisation's Preferential Procurement score.

- All sets of published Codes have a prescribed affidavit format, each with its financial threshold. The published Practice Note guides EMEs and BO QSEs in correctly submitting an affidavit in the prescribed format.
- > Generic Enterprises are organisations that do not belong to a specific sector that falls within the ambit of a published Sector Code.
  - > Sector Specific Enterprises, where an organisation falls within the ambit of a Sector Code of Good Practice promulgated under the B-BBEE Act. Qualification is based on the sector from which an organisation derives more than 50% of its revenue.
  - > Specialised Enterprises exclude ownership status from the measurement benchmark. Such organisations qualify as non-profit organisations, public benefit schemes, organisations exclusively owned by organs-of-state, and those limited by guarantee or higher education.

Affidavit Prescribed Formats	Category	Financial Threshold
Generic Enterprises	BO QSE	Between R10m and R50m
	EME	Less than R10m
Sector Specific Enterprises	BO QSE	Between R10m and R50m
	EME	Less than R10m
Construction Sector Code	EME Contractor	Less than R3m
	EME BEP	Less than R1.8m
Defence Sector Code	BO QSE	Between R5m and R50m
	EME	Less than R5m
Forest Sector Code	BO QSE	Between R10m and R50m
	EME	Less than R10m
Financial Sector Code	BO QSE	Between R10m and R50m
	EME	Less than R10m
Information Communication Technology Sector Code (ICT)	BO QSE	Between R10m and R50m
	EME	Less than R10m
Marketing, Advertising & Communication Sector Code (MAC)		
> Public Relations	BO QSE	Between R5m and R10m
> Marketing, Advertising & Communications	EME	Less than R5m
Property Sector Code	BO QSE	Between R5m and R10m
		Less than R5m
	BO QSE	Between R2.5m and R35m
		Less than R2.5m
> Asset-based	BO QSE	Between R80m and R400m
Tourism Sector Code	BO QSE	Between R5m and R45m
	EME	Less than R5m
Specialised Enterprises	BO QSE	Between R10m and R50m
	EME	Less than R10m

If an EME or BO QSE presents its B-BBEE status in any format other than a prescribed affidavit, it is invalid.

### Exceptions to the rule

- > EMEs or BO QSEs falling within the ambit of the Transport Sector Code, as it has not been amended since 2007. Such organisations must present a B-BBEE certificate issued by an accredited SANAS B-BBEE rating agency or one prepared by their Accounting Officer.
- > As per section 6.4 in Code Series 000, EMEs and BO QSEs that opt to tender for work to the value of R50m and above need to go through a B-BBEE verification through a SANAS-accredited B-BBEE rating agency.

An affidavit relies on the honesty and integrity of a deponent. In turn, organisations trust 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.

A deponent must ensure that the affidavit they present is representative of their business which also qualifies to use an affidavit to confirm its Ownership and financial revenue. For example, a QSE with less than 51% Ownership may not complete an affidavit; they must go through the B-BBEE verification process.

### Validity of an affidavit for B-BBEE purposes

The deponent must sign an affidavit in the presence of a 'Commissioner of Oaths' as per the requirements in the Justices of Peace and Commissioners of Oaths Act, 1963. Notably, a Commissioner of Oaths must be independent; therefore, they may not have had any direct connection to a deponent to avoid any conflict of interest. A Commissioner of Oaths signs and stamps the affidavit, binding it. No cost is attached to a 'Commissioner of Oaths' notarising an affidavit.

Vital to ensuring an affidavit's validity is:

- > The date appearing on the affidavit and date stamp by the 'Commissioner of Oaths' must be the same.
- > Any alterations, such as corrections, cross-outs or additions made to an affidavit, must be witnessed by both parties by initialling any alteration.





The information requirements of an affidavit deponent are:

- 1

Name of the deponent as it appears in the identity document. The deponent must be an Owner, Director or Member of a business.
- 2

The deponent's South African identity number.
- 3

Indicate the designation of the deponent. It will confirm that they are duly authorised to depose an affidavit on behalf of the organisation.
- 4

The name of the organisation as it appears on the registration documents.
- 5

Indicate whether the organisation trades under a different name than the one registered.
- 6

Company registration number as per the enterprise registration documents issued by the CIPC at the time of registration.
- 7

Company VAT number, if applicable.
- 8

The physical address where the business is operational.
- 9

Indicate the sector the organisation represents and the nature of the business.
- 10

'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 measured using the 'Flow-Through' Principle. If applicable, insert the percentage of 'Black' Ownership and beneficiaries, the definition of which is on page one of the affidavit.

11 If applicable, 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 measured using the 'Flow-Through' Principle.

12 If applicable, insert the percentage of Ownership held by 'Black' Designated Groups. The definition appears on page one of the affidavit.

13 If applicable, insert the total Ownership held by 'Black' Youth, which are people between the ages of 14 and 35.

14 If applicable, insert 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 If applicable, insert the total Ownership held by 'Black' Unemployed People, which 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 If applicable, insert the total Ownership held by 'Black' People living in rural and undeveloped areas.

17 If applicable, insert the total Ownership held by 'Black' Military Veterans. The Defence Sector Code clarifies the qualifying criteria for 'Black Military Veterans'. For this definition, it relates to any 'Black' South African Citizen who:

- > 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 their military training but no longer perform military services and were not dishonourably discharged from that military organisation or force. The definition does not exclude any person referred to in paragraphs 4.5.1 or 4.5.2 who could not complete their military training due to an injury during military training or contracted a disease.

18 Include the date of the latest financial year-end-for example, 28<sup>th</sup> February 2022.

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 deponent must sign the affidavit in the presence of a 'Commissioner of Oaths' with no conflict of interest.

21 Must include the day, month and year of notarisation. Important to note that the date must be the date that appears on the notarised stamp or the affidavit is 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.

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE - GENERAL

I, the undersigned,

Full name & Surname

Identity number

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 (Select one) of the following enterprise and am duly authorised to act on its behalf:

Enterprise Name:

Trading Name (If Applicable):

Registration Number:

Vat Number (If applicable):

Enterprise Physical Address:

Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):

Nature of Business:

Definition of “Black People”

Definition of “Black Designated Groups”

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;”

“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;”