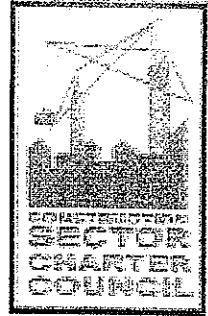


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# BBBEE 2013/45

**Honourable Ms J Fubb**

Chairperson of the Portfolio Committee on Trade and Industry  
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The Chairperson

**REGULATORY SUBMISSION: CONSTRUCTION SECTOR CHARTER COUNCIL (CSCC)'s COMMENTS ON THE BROAD BASED BLACK ECONOMIC EMPOWERMENT AMENDMENT BILL (THE BILL).**

Thank you for the opportunity to comment on the proposed changes to the BBBEE Act, 53 of 2003. The following contains the inputs and suggestions made by the CSCC to the proposed Amendment Bill. Where necessary, we will even appreciate the opportunity to make oral presentation during one of the allocated dates during the parliamentary programme.

**ABOUT US**

As you would probably be aware, the Construction Sector Charter Council (CSCC) was established as the result of the gazetting of the Construction Sector Code by the Minister of Trade and Industry on the 05th of June 2009. This was done in terms of Section 9 (1) of the Broad Based Black Economic Empowerment Act 53 Of 2003. This gazette meant that all construction sector and related businesses must report and be measurable in accordance with the construction sector code and not the BBBEE generic Codes of Good Practice managed by the Department of Trade and Industry.

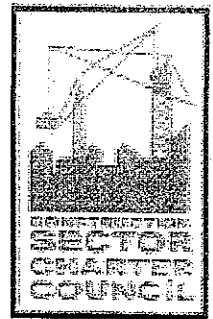
For the purposes of this, the CSCC is entrusted with overseeing and monitoring the implementation of the Construction Codes of Good Practice. It is empowered to act with executive capacity and provides the necessary links to the relevant government institutions and provides the annual report to the BBBEE Advisory council and the relevant government department.

The CSCC is generally in support of most of the amendments contained in the Amendment Bill and will only make the following comments contained in the right side of the column.



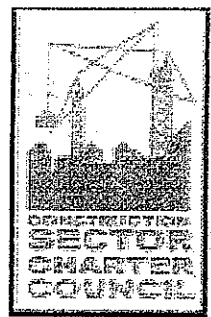
CURRENT SECTION AND PROVISIONS	OUR SUBMISSION
<p><b><u>Amendment of Section 1 of Act 53, of 2003</u></b></p> <p>In respect of BBEE Verification Professional, the proposed amendment state that :</p> <p>Section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (hereinafter referred to as the principal Act), is hereby amended –</p> <p><b>‘B-BBEE verification professional’</b> means a person who performs any work in connection with rating the status of enterprises in terms of broad-based black economic empowerment compliance for a rating agency accredited in terms of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006);</p>	<p><b>The CSCC Proposes the insertion of the following to the definition of the BBEE Verification Professional :</b></p> <p><i>That over and above the current definition, it should include someone who has received a certificate of conformity by a sector charter council gazetted in terms of section 9 (1) of the BBEE Act.</i></p> <p><b><u>RATIONALE :</u></b></p> <p>In order to preserve the competence and quality of Verification Certificates, this is meant to ensure that Verification Professionals that issue certificates in terms of gazetted sector codes are sanctioned and authorised by sector charter councils, who in return shall ensure that there is for accuracy and consistency in the verification process.</p>
<p>In Respect of Fronting practise, under section 1 (e) (iii), the Amendment Bill proposes that :</p> <p><b>‘knowing’, ‘knowingly’ or ‘knows’,</b> when used with respect to a person, and in relation to a particular matter, means that the person either—</p> <p>(a) had actual knowledge of that matter; or</p> <p>(b) was in a position in which the person reasonably ought to have—</p> <p>(i) had actual knowledge;</p> <p>(ii) investigated the matter to an extent that would have provided the person with actual knowledge; or</p> <p>(iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;”</p>	<p><b>The CSCC Proposes the insertion of the following definition of fronting :</b></p> <p><i>.....Where black-owned enterprises willingly allow their status or empowerment credentials to be used by another BEE non-compliant enterprise with in return for and exchange of financial considerations or compensation</i></p> <p><b><u>RATIONALE :</u></b></p> <p>This practice is common and widespread in the Construction Sector and although the black-owned enterprise receives financial compensation this has the effect of diluting the true impact and progress of empowerment.</p>

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<p>Section 8 of the amendment Bill deals with the remuneration of BBBEE Advisory Council Members.</p>	<p><b>The CSCC proposes that in the same spirit, the BBBEE Act provides for the insertion of :</b></p> <p><i>It is proposed that the funding of these councils for operational expenses be made compulsory by all signatories to the charters. The funding of the sector councils created as a result of the gazette of sector code is critical given their responsibility of overseeing the implementation of the gazette sector codes, which also helps in enhancing transformation, it is important that their capacity of fulfilling their mandate is enhanced.</i></p> <p><b>RATIONALE</b></p> <p>This will ensure that the capacity of sector charter councils is enhanced and increased.</p>
<p><b><u>Amendment of Section 9 of Act 53 of 2003</u></b></p> <p>In respect of Sector Charters, the proposed amendment state that :</p> <p>Section 9 of the principal Act is hereby amended—  <i>(a)</i> by the substitution in subsection (1) for paragraph <i>(e)</i> of the following paragraph:</p> <p><i>“(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]”;</i></p>	<p><b>The CSCC proposes the insertion of the following additions :</b></p> <p><i>.....and, to the extent that these are not inconsistent with the spirit and purpose of this BBBEE Act, the introduction of norms and standards that seek to enhance the implementation of the targets set out in the gazetted sector codes, including the implementation of different measurement targets and indicators, that are specific to that Sector.</i></p> <p><b>RATIONALE :</b></p> <p>This will empower sector and industry empowerment bodies, such as sector charter councils to introduce and put in place measures to increase and enhance transformation targets that are relevant to their Sector, and introduce initiatives without being challenged and constrained by the minimums imposed by the Act.</p>

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**Section 13H** deals with the delegation and Assignment of certain responsibilities by the Commissioner.

The Commissioner may delegate any power conferred on him or her or any duty assigned to him or her under this Act, to any other person with appropriate knowledge and experience who is appointed to or contracted with the Commission to assist it in the carrying out of its functions.

(2) Notwithstanding subsection (1), the Commissioner may not delegate the powers referred to in section 13D (1) or (4) or 13E(2).

(3) A delegation or assignment under subsection (1) must be in writing and—

(a) may be subject to any conditions or restrictions determined by the Commissioner;

(b) does not prevent the exercise of the relevant power by the Commissioner; and (c) may be withdrawn or amended by the Commissioner.

**The CSCC proposes the insertion of the following additions:**

*That the delegation also include relevant input from Sector Councils, when matters subject to investigation requires the special attention and expertise of the sector that has been gazetted in terms of this Act.*

#### **RATIONALE**

This will ensure that the sector and specific industry empowerment bodies such as the Sector Charter Councils, compliment the investigative effect and powers of the BBBEE Commission.

We trust that the above is self-explanatory and hold ourselves available to engage with your office in clarifying some of these matters relating to our submission.

Regards

#### **Thabo Masombuka**

**Chief Executive Officer (CEO)**

Construction Sector Charter Council (CSCC)

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