



TERMS OF REFERENCE FOR THE ESTABLISHMENT OF THE MARKETING ADVERTISING AND COMMUNICATIONS MAC SECTOR COUNCIL

1. PREAMBLE

Recognizing the Constitution of the Republic of South Africa Act 108 of 1996 inter alia, section 9 on equality and unfair discrimination in the Bill of Rights states the imperative of redressing historical and social inequalities;

Further recognizing that the Broad Based Black Economic Empowerment (B-BBEE) Amendment Act of 2014 seeks to promote the achievement of the right to equality, increase broad based and effective participation of Black people in the economy and promote equal opportunity and equal access to government services; and the accompanying amended B-BBEE Generic Code of Good Practice including necessary score card and the empowerment elements contained therein;

Also considering government legislation such as the Media Development and Diversity Act, Act No.14 of 2002, which advances media transformation and diversity, as well as to promote the empowerment of Black people, with particular reference to women, youth and people with disabilities including SMMEs in the MAC sector.

In order to address certain inequalities in the Marketing Advertising and Communications (MAC) sector as identified by government in terms of the Codes of Good Practice as being of national strategic importance. Stakeholders made up of the industry associations, academia, community constituency, organised business, labour federations and the GCIS driven and facilitated MAC Sector Code.

Furthermore, taking into account that the B-BBEE Amendment Act No. 53 of 2003 states that enterprises that operate in sectors where there is a sector code of good practice may only be

measured in accordance with that code and in addition report annually to the sector Council established for that sector.

Now, therefore there is a need to monitor the signed and adopted B-BBEE MAC Sector Code for effective and efficient implementation.

2. THE PURPOSE OF THE ESTABLISHMENT OF THE B-BBEE MAC SECTOR COUNCIL

The Council, guided by the legislation and policy instruments stated in the preamble, shall be established to perform, but not exclusively, the following functions:

- 2.1. Oversee the implementation and monitoring of the Sector Codes;
- 2.2. Provide guidance on matters relating to black economic empowerment in the MAC sector;
- 2.3. Compile reports on the status of black economic empowerment in the MAC sector;
- 2.4. Share information with approved accreditation agencies conducting black economic empowerment ratings in the MAC sector;
- 2.5. Engage and advise, the sector Ministers, and other relevant regulatory entities regarding implementation of the MAC Sector Codes;
- 2.6. Develop mechanisms and strategies to monitor compliance with the MAC Sector Code;
- 2.7. Develop strategies for consultation with provincial and local stakeholders regarding the MAC Sector Codes;
- 2.8. Formulate guidelines and models for Broad-Based Empowerment of black-owned companies at local, provincial and national level.;
- 2.9. Develop and implement an interactive portal to communicate the basic methods of applying the B-BBEE scorecard for all the different elements of B-BBEE;
- 2.10. Develop baseline indicators, conducting or commissioning research for the purposes of ensuring the effective implementation of the MAC Sector Code;
- 2.11. Report to Government and the B-BBEE Advisory Council on the implementation of the MAC Sector Codes;
- 2.12. Advise on the amendments of the MAC Sector Codes and other pieces of legislation that hamper effective and efficient implementation of the transformation agenda.

3. NAME OF THE COUNCIL

The name of the Council is the B-BBEE MAC Sector Council hereafter referred to as the “the Council” or “MAC Sector Council”.

4. THE COMPOSITION OF THE COUNCIL

- 4.1. The Council shall consist of: no less than nineteen (19) members and no more than sixteen (25) members.
- 4.2. The members shall be appointed by the Minister in The Presidency, responsible for Government Communications and Information System (GCIS), who has jurisdiction over the MAC Sector.
- 4.3. When appointing members in terms of the above, regard shall be given to the need for the Council:
 - 4.3.1. To have appropriate expertise;
 - 4.3.2. To represent different relevant constituencies including academia, trade unions, business, community organizations, etc.
- 4.4. The appointed Council shall in consultation with the Line Minister and the Sector determine the model that will ensure execution of the administrative function of the Council, as well as the model for funding such functions.
- 4.5. The composition of the Council shall consist of the following members:
 - 4.5.1. Two (2) members each from the seven (7) MAC sub-sectors namely, the ACA; MASA; PRISA; OHMSA; OHMC; ARB , AIBSA;
 - 4.5.2. One (1) member from relevant Line Government Department;
 - 4.5.3. Two (2) members from organized Labour Federation or Trade Unions;
 - 4.5.4. One (1) member from NEDLAC/ Black Business Council/ Community constituency;
 - 4.5.5. One (1) member from women in the MAC sector;
 - 4.5.6. One (1) member from academia in the MAC sector;
 - 4.5.7. Four (4) members from Youth in the MAC sector; and
 - 4.5.8. One (1) member from people with disabilities in the MAC sector.

5. DISQUALIFICATION OF COUNCILORS

- 5.1. A person may not be appointed or continue as a Council Member if such person:

- 5.1.1. Has at any time been removed from an office of trust on account of misconduct; or
- 5.1.2. Has been found guilty in terms of prevention of corruption legislation, or
- 5.1.3. Has been declared an unrehabilitated insolvent person; or
- 5.1.4. Has been declared by a competent court to be mentally unfit; or
- 5.1.5. Has at any time, since 27 April 1994, been convicted of a crime by court of justice within the jurisdiction of the Republic of South Africa; or
- 5.1.6. Misses three (3) consecutive meetings without an apology.
- 5.1.7. Has attended less than 50% of Council meetings

6. GOVERNING PRINCIPLE

- 6.1. The Council shall be guided by the following basic principles:
 - 6.1.1. Independence;
 - 6.1.2. Transparency;
 - 6.1.3. Fairness;
 - 6.1.4. Integrity
 - 6.1.5. Good Corporate Governance;
 - 6.1.6. Equitable Socioeconomic Transformation.

7. ANNUAL REPORTS

- 7.1. The Council shall submit annual reports through its Secretariat to the Line Ministry, the Department of Trade, Industry and Competition (the dtic) and the B-BBEE Advisory Council where applicable.
- 7.2. Before the Secretariat submits Annual Reports of the Council to the Line Ministry, the dtic and B-BBEE Advisory Council, such reports must be tabled before the Council for approval.
- 7.3. The Annual Report of the Council shall include the following:
 - 7.4. Report on the work of the Council including its meetings held in terms of its Constitution.
 - 7.5. Programmes and activities as determined and adopted by the Council.
 - 7.6. Report on the initiatives undertaken by enterprises within the Sector, in collaboration with the Council;

- 7.7. Provide any relevant information which would be useful in assessing the state of B-BBEE in the MAC Sector; and
- 7.8. Audited financial report by an independent qualified and admitted auditor, in cases where the Council is self-funded and managing its own funds.

8. CONFLICT OF INTEREST

- 8.1. Should a Member of the Council have a personal or financial interest in any proposed or discussed matter or meeting by the Council, such a Member shall immediately disclose fully the nature of his or her interest, disclose such interest and withdraw his or her participation in such meeting in order to ensure that the decisions of the Council are taken in a fair, unbiased and proper manner.
- 8.2. Such a declaration and participation withdrawal should be duly recorded in the minutes.
- 8.3. If a Member of Council fails to declare his or her interest in a matter or decision taken by the Council, then in such instances, the Council shall have the discretion to either ratify the decision and refer such Member of Council to its disciplinary processes as referred to in this Constitution and Code of Conduct, or declare such decision null and void.

9. THE CONSTITUTION OF THE COUNCIL, CODE OF ETHICS AND CODE OF CONDUCT

- 9.1. The Council shall update, draft, amend and adopt its new Constitution, Code of Ethics and Code of Conduct.
- 9.2. The Constitution for the Council must be formulated within 60 working days of the Council being established.
- 9.3. The Constitution of the Council may be amended from time to time after consultation with the Council Members.
- 9.4. The Council may, by resolution, formulate rules to further regulate its proceedings.
- 9.5. Members shall subscribe to the Constitution of the Council, Code of Ethics and Code of Conduct.

- 9.6. The Council shall enforce the rules and procedures of its Constitution, Code of Ethics and Code of Conduct on all Members and officials of the Council and to institute disciplinary actions in all cases where the legal provisions of these instruments are breached.
- 9.7. The Chairperson of the Council, or any Member that she/he delegates to, has authority to communicate all official Council business and/or to represent the Council.
- 9.8. The Code of Conduct shall have provisions relating to how other Members of Council may communicate or conduct themselves.
- 9.9. The Constitution of the Council is not binding on the Line Department, DTIC and BEE Commission.
- 9.10. Any Councillor representing government will however be bound by the provisions of the Council's Constitution.

10. MEETINGS OF MAC SECTOR COUNCIL

- 10.1. The Council shall have at least one meeting per quarter.
- 10.2. A quorum for meetings shall be 50% plus one (1) of Council Members, present in person or virtually.
- 10.3. All Members of Council shall have the right to vote at meetings.
- 10.4. The Chairperson of the Council may call a Special Council Meeting at any time for a specific purpose. The notice of such a meeting should have a clear agenda and proposed resolutions for adoption.
- 10.5. There shall be an Annual General Meeting every year, which meeting shall be held not more than fifteen (15) months after the previous Annual General Meeting.
- 10.6. Members of the MAC Sector shall be given at least twenty-one (21) days' notice thereof.
- 10.7. The Chairperson of the Council may call a Special General Meeting at any time, provided that at least 14 days' notice of any Special General Meeting is given. The notice of such a meeting should have a clear agenda and proposed resolutions for adoption.
- 10.8. With reference to 10.4 and 10.6, where a member deems a need for a special meeting to take a decision relating to the business and mandate of the Council, such a request

shall be conveyed to the Chairperson of the Council in writing including the matter/s on which decisions /resolutions are required.

- 10.9. A final decision of the Council shall be made by a simple majority of the Members of the Council at a meeting.
- 10.10. Amendments to this Constitution shall require a two- thirds majority of the Council.
- 10.11. Due to majority members residing in Johannesburg; inadequate funds to source a permanent building, Council meeting shall take place at GCIS, online or can be hosted by MAC sector companies subject to transparency rules formulated and adopted by Council on the bidding process, which both hosting companies and Council must declare.

11. FUNDING OF THE COUNCIL

- 11.1. The funding of the operations of the Council shall be a joint responsibility between the private sector and the Line Ministry responsible for the sector.
- 11.2. The Line Ministry might provide initial funding to set up and launch the Council. Such funding will be counted as a portion of the Ministry's contribution to the entire funding of the Council.
- 11.3. The financial year of the Council shall be the period commencing on the 1st of April each year and ending on the 31st of March or such other period as the Council may determine.
- 11.4. The Council will determine a business model for its funding.
- 11.5. The Council shall exercise financial prudence, which shall include the proper keeping of books on the use of its resources such as assets, funds, and electronic systems.

12. RECRUITMENT AND REMUNERATION OF THE COUNCIL

- 12.1. The Council shall establish the Secretariat headed by the Head of Secretariat or CEO.
- 12.2. The Secretariat of the Council shall report to the Council through the Chairperson.
- 12.3. The Secretariat shall perform strategic, operational, secretariat support functions and any other functions as determined by the Council.
- 12.4. The Councillors shall be remunerated on S&T, accommodation, ground and air travels in accordance to Treasury Regulations.