

September 17, 2021

What are the Property Practitioner's B-BBEE compliance requirements in terms of the new Property Practitioners Act?



What are the Property Practitioner's Broad-Based Black Economic Empowerment (B-BBEE) compliance requirements in terms of the new Property Practitioners Act, 2019 (Act No. 22 of 2019)?

In a previous article we addressed the *basics of the Property Practitioners Act and B-BBEE certificate requirements*, in this blog we will explore the statutory requirements of a Property Management and Property Facility Management company in the context of the Broad-Based Black Economic Empowerment (B-BBEE) compliance requirements.

What is property management?

Although not defined in the Amended Property Sector Codes (APSC) of 09 June 2017 nor the Property Practitioners Act, 2019 (Act No. 22 of 2019), a property management company's business is, as a rule, to manage property services for sectional title schemes and home owners associations (HOA). A property management company's sectional title and home owners management service can entail additional services such as–

- billing of owner levy statements and collection of monthly levies;
- preparation of annual budgets of income and expenditure and keeping record of approved expenses in the form of financial management and monthly reports;
- administering Annual General Meetings (AGMs);
- compliance with legislative requirements regarding insurance broking services;
- providing annual maintenance inspections and developing the maintenance plan; and
- supplying caretaker service providers such as gardeners, security guards and maintenance workers at the property, as required.

The services provided by a property managing company can be developed and customised to meet the specific building requirements.

In order to determine the statutory and B-BBEE compliance requirements for property management companies, we firstly refer to compliance in terms of the Property Sector Codes and, secondly, to the requirements set out in the Property Practitioners Act, 2019 (Act No. 22 of 2019).

The Amended Property Sector Codes (APSC) of 09 June 2017:

Three core groups of businesses in the property sector have been identified by the APSC, namely residential, commercial, and 'other sectors' within the property value chain.

The 'other sectors' group consists of Property Development, Property Ownership and Property Services. The following types of business activities fall within the scope of the Property Services category: Property Management, Facility Management, Real Estate Brokers (Broking) and Estate Agents.

From a B-BBEE point of view, businesses in all sectors, including the Real Estate or Property sector, are classified according to their size. Their classification requirements are as follows:

◦ **Exempted Micro Enterprises (EMEs)**

- Entities such as Estate Agents, Property Valuers and Property Brokers with a turnover below R2,5 million;
- For other service-based entities, such as Property Management and Facility Management, the annual turnover threshold is below R10 million;
- The classification of asset-based entities (i.e. properties that are owned) is not based on annual turnover, but on the value of the property/properties as assets which must be valued below R80 million to qualify as EME.

◦ **Qualifying Small Enterprises (QSEs)**

- Entities such as Estate Agents, Property Valuers and Property Brokers with an annual turnover of between R2,5 million and R35 million;
- Other property services such as Property Management and Facility Management with an annual turnover of between R10 million and R50 million;
- Asset-based entities with an asset value of between R80 million and R400 million.

◦ **Generic Enterprises**

- Estate Agents, Property Valuers and Property Brokers with an annual turnover above R35 million;
- Other services such as Property Management and Facility Management with an annual turnover above R50 million;
- Asset-based entities with an asset value above R400 million.

For a complete list of the above categories, refer to paragraph 6 of the APSC.

For entities that fall within the scope of the three B-BBEE categories to be B-BBEE compliant, namely EMEs, QSEs and Generic entities, the following requirements must be met:

- EMEs only require an affidavit to confirm their annual turnover and automatically qualify for a level 4 B-BBEE status;
- QSEs will be measured in terms of the elements on a QSE scorecard; and
- Generic entities are measured on the elements of a Generic scorecard.

Entities that fall within the scope of EME and QSE categories, which are also 51% or 100% black owned, are automatically recognised on a level 2 (if at least 51% black ownership) and level 1 (if 100% black ownership) B-BBEE status level.

Property Practitioners Act, 2019 (Act No. 22 of 2019) (“the Act”)

The Act was signed into law by the President on 19 September 2019; however, no date for implementation has been set as yet.

The Act expands the present activities of the Estate Agency Affairs Board (EAAB), which only regulates estate agents, to include the regulation of all “property practitioners” in future.

“Property practitioners” (**PPs**) are defined in section 1 of the Act and include all entities within the real estate sector. Section 2 of the Act stipulates that the Act will apply to all activities pertaining to property such as–

“marketing, promotion, managing, sale, letting, financing and purchasing of immovable property, and to any rights, obligations, interests, duties or powers associated with or relevant to such property”.

The Act furthermore makes provision for the regulation of the industry by the Property Practitioners Regulatory Authority (PPRA). The PPRA will be responsible for issuing Fidelity Fund Certificates (FFC). Section 47 of the Act states that in order to be issued with an FFC, all PPs must apply for an FFC every three years. Section 48 of the Act provides that no person or entity may operate as a PP without an FFC. Should a PP conduct business without an FFC, the PP will be guilty of an offence as stipulated in section 48(3) of the Act.

Disqualification of a PP from being issued with an FFC is governed by section 50 of the Act. Subsection 50(a)(x) states: “(a) any person who ... (x) is not in possession of a valid BEE certificate”.

A matter of ambiguity and uncertainty relates to the term “BEE certificate” indicated as a requirement in section 50(a)(x). It is unclear whether reference to a “BEE certificate” includes the affidavit that EMEs are compelled to use.

The consensus is that it does include an affidavit because the B-BBEE Codes apply generically and serve as the apex criteria coupled with the APSC, which equates an affidavit to a B-BBEE certificate, and provide for an affidavit to serve as proof of an EME’s B-BBEE status. Furthermore, an affidavit is the **only document** permitted within the broad legal framework of B-BBEE to prove the B-BBEE status and compliance levels of EMEs. It is generally expected that an amendment will be effected to the Act to provide clarity on this aspect, which will in all probability read “BEE certificate or affidavit”.

Conclusion

If a Property Management or Property Facility Management company has an annual turnover below R10 million, the entity falls within the EME category. This type of entity is only required to submit the prescribed affidavit. Furthermore, once the Act is in force, it will be sufficient to comply with the prospective section 50 requirement of a “valid B-BBEE certificate” as one of the requirements to avoid being disqualified for the issuance of an FFC, and to legitimately operate and act as a PP.

SERR Synergy assists businesses with the development and implementation of B-BBEE strategies by taking all the B-BBEE scorecard elements into consideration. We provide B-BBEE consultation services to businesses, ranging from basic elementary requests to the most complex and integrated B-BBEE solutions specifically aimed at addressing B-BBEE challenges.

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Sources acknowledged:

- The Amended Property Sector Codes (APSC) of 09 June 2017
- Property Practitioners Act, 2019 (Act No. 22 of 2019).

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