

CONSTRUCTION SECTOR CODES: BUILT ENVIRONMENT PROFESSIONALS - AUTOMATIC AND ENHANCED RECOGNITION LEVELS



Professional entities within the South African construction industry continue to face complex questions regarding Broad-Based Black Economic Empowerment (B-BBEE).

Understanding the inner workings of the Construction Sector Codes (CSC) is essential for Built Environment Professionals (BEPs) to maintain their competitive edge.

The Codes, which were published in December 2017, apply to three sub-sectors, namely:

- o Built Environment Professionals
- o Contractors
- o Construction material suppliers.

The purpose of this blog is to provide some clarification in respect of *BEE requirements* for Built Environment Professionals.

What are the sub-sectors for the Construction industry?

For ease of understanding, let us look at the definitions for the sub-sectors:

- o **Built Environment Professionals (BEPs)** – enterprises that conduct activities such as the planning, design and costing of construction projects in the built environment, as well as project management and design of a construction value chain, including environment, energy, industrial, property, transport and infrastructure. Enterprises typically classified as BEPs include, but are not limited to, consulting engineering practitioners, architects, quantity surveyors and town planners.
- o **Contractors** – enterprises that conduct construction project activities, which include civil engineering, electrical engineering, power transmission, general building and specialist construction works as per the CIBD grading tables.
- o **Construction material suppliers** – enterprises that conduct activities such as the manufacture, creation or supply of building materials and equipment used in construction, for example cement, concrete, bricks, electrical equipment, and steel. It also includes enterprises that provide plant hire services for construction-related activities.

Each of the above categories will then have their own targets and B-BBEE scorecards to follow; however, for the purpose of this blog, we focus only on the Enhanced Recognition Level requirements for **BEPs**, often referred to as “Automatic Recognition Level” (ARL) requirements.

Defining the Construction sub-sectors

The Construction Sector Codes categorise the industry into three distinct sub-sectors, each with its own targets and scorecards:

- o **Built Environment Professionals:** Enterprises conducting planning, design, costing, and project management. This includes consulting engineers, architects, quantity surveyors and town planners.
- o **Contractors:** Enterprises conducting physical construction activities such as civil or electrical engineering.
- o **Construction Material Suppliers:** Enterprises that manufacture or supply building materials or provide plant hire.

Thresholds and recognition levels of Built Environment Professionals (BEPs)

The B-BBEE status of a BEP is primarily determined by its annual turnover:

- o **Exempted Micro Enterprises (EMEs):** Turnover below R6 million.
- o **Qualifying Small Enterprises (QSEs):** Turnover between R6 million and R25 million.
- o **Generic Entities:** Turnover greater than R25 million.

For very small BEPs (turnover below R1,8 million), a B-BBEE affidavit or CIPC certificate is sufficient. These entities are not subject to the "discounting principle" for Skills Development. However, if an entity had previously opted for a SANAS certificate to gain enhancement, they must continue using SANAS certificates in future years, regardless of turnover.

Ownership compliance for Built Environmental Professionals

Ownership is the most critical element of any Construction Automatic Recognition Level verification. For BEPs, simply having black shareholders is not enough; the quality of that *ownership* is strictly regulated.

Understanding the 50% Professional & Executive rule

To qualify for full recognition of black ownership, more than 50% of the total ownership in a BEP must be held by individuals who meet two concurrent criteria:

- o **Professional Registration:** They must be registered with a recognised South African statutory professional council.
- o **Executive Management:** They must be part of the "Top Management," including Executive Directors and other senior leadership responsible for daily operations.

What are the penalties for non-compliance?

If a BEP fails to meet this 50% requirement, a significant penalty is applied: only 50% of the black ownership may be counted towards the entity's B-BBEE measurement.

Example: A QSE with 51% Black Ownership that does not meet the professional registration/executive requirement will only be awarded 25,5% Black Ownership. This reduction often results in the entity losing its ARL status entirely, leading to a non-compliant certificate or forcing a full (and often difficult) scorecard verification.

What are the restrictions on BEE Collective Ownership groups?

Due to the requirement that at least 50% of owners be part of Executive Management, collective ownership schemes (such as broad-based employee programmes) are effectively capped. These programmes cannot hold more than 49% of the ownership if the entity wishes to avoid the ownership measurement penalty.

Recognised Statutory Councils

The Construction Sector Charter Council recognises the following bodies for professional registration purposes:

1. SACAP: Architects
2. ECSA: Engineers
3. SACQSP: Quantity Surveyors
4. SACLAP: Landscape Architects
5. SACPCMP: Project and Construction Managers
6. SACPVP: Property Valuers

Conclusion

The foundation of your B-BBEE status remains your ownership structure. Ensuring that your black shareholders are both professionally registered and active in executive roles is the only way to secure a Level 1 or Level 2 recognition without a gruelling audit process.

SERR Synergy synergises all legal requirements for businesses to become fully compliant, not only with *the elements of the B-BBEE Codes of Good Practice* but also with other legal compliance requirements. As a *BEE consulting company*, we make use of a variety of verification agencies and our BEE consultants are all accustomed to their views regarding different interpretations. We have identified many innovations and solutions that can assist businesses to rise to the challenges of the BEE Codes by including this element as an integral component of a business marketing and growth strategy.

About the Author: Zelita Oberholster, a Corporate Legal Advisor Team Lead, has been with SERR since October 2016 and will mark 10 years with the firm in October. She is currently furthering her studies towards a BCom Law degree, which she is expected to complete in 2027.

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