

B-BBEE Commission notes ruling on PPPFA Regulations

The B-BBEE Commission has noted the ruling by the Supreme Court of Appeal that declared the Preferential Procurement Policy Framework Act (PPPFA) Regulations of 2017 invalid and confirms that the ruling has no effect on the B-BBEE Act, as amended, and its requirements.



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The B-BBEE Act permits organs of state or public entities to set B-BBEE qualification criteria for procurement and other economic activities and to exceed the criteria set in the Codes of Good Practice through section 9 (6) of the B-BBEE Act.

The declaration of the PPPFA Regulations of 2017 as invalid is not a blow to the B-BBEE requirements for tenders as reported.

The invalidity of the PPPFA Regulations of 2017 does not invalidate the B-BBEE Act, and the PPPFA Regulations were not issued under the B-BBEE Act.

The framework for the B-BBEE Act and how it is applied is clear and thus not affected by the ruling of the Supreme Court of Appeal.

In terms of section 10 (1) of the B-BBEE Act, all organs of state and public entities must apply any relevant Codes of Good Practice issued by Trade, Industry and Competition Minister in terms of section 9 of the B-BBEE Act in:

- Determining qualification criteria for the issuing of licenses concessions or other authorisations in respect of economic activity in terms of any law;
- Developing and implementing a preferential procurement policy;
- Determining qualification criteria for the sale of state-owned enterprises;
- Developing criteria for entering into partnerships with the private sector; and
- Determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment.

Section 10 (1) of the B-BBEE Act is therefore mandatory, and not optional for organs of state and public entities.

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