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Trade and Industry, Department of

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GENERAL NOTICE

NOTICE 112 OF 2007

DEPARTMENT OF TRADE AND INDUSTRY

CODES OF GOOD PRACTICE ON BLACK ECONOMIC EMPOWERMENT

I, Mandisi Mphahla, Minister of Trade and Industry, hereby –

- (a) issue the following Codes of Good Practice under Section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (b) determine that these Codes will come into operation on the date of this publication.



MANDISI MPAHLWA
MINISTER OF TRADE AND INDUSTRY
DATE: 09-02-2007



REPABOLIKI YA AFERIKA BORWA
REPUBLIC VAN SUID AFRIKA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE

Section 9(1): Codes of Good Practice

The Minister of Trade and Industry hereby issues the following Code of Good Practice under section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003.

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CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 000: GENERAL PRINCIPLES AND THE GENERIC SCORECARD

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

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1 Objectives of this statement

The objectives of this statement are to:

- 1.1 specify interpretative principles of B-BBEE;
- 1.2 specify the application of the Codes and the basis for measurement under the Codes;
- 1.3 specify the qualifying thresholds for businesses to qualify as Exempted Micro-Enterprises (EME) or Qualifying Small Enterprises (QSE);
- 1.4 specify the method of measuring start-up enterprises;
- 1.5 specify the elements of B-BBEE measurable under the Generic Scorecard;
- 1.6 specify the Generic Scorecard;
- 1.7 specify the basis for determining compliance by entities with the Codes;
- 1.8 provide for the Transitional Period before the compulsory use of the Generic Scorecard starts; and
- 1.9 define the duration for the applicability of the Codes.

2 Key principles

- 2.1 The fundamental principle for measuring B-BBEE compliance is that substance takes precedence over legal form.
- 2.2 In interpreting the provisions of the Codes any reasonable interpretation consistent with the objectives of the Act and the B-BBEE Strategy must take precedence.
- 2.3 The basis for measuring B-BBEE initiatives under the Codes is the B-BBEE compliance of the measured entities at the time of measurement.
- 2.4 Any misrepresentation or attempt to misrepresent any enterprise's true B-BBEE Status may lead to the disqualification of the entire scorecard of that enterprise.
- 2.5 Initiatives which split, separate or divide enterprises as a means of ensuring eligibility as an Exempted Micro-Enterprise, a Qualifying Small Enterprises or a Start-Up Enterprise are a circumvention of the Act and may lead to the disqualification of the entire scorecard of those enterprises concerned.
- 2.6 Any representation made by an Entity about its B-BBEE compliance must be supported by suitable evidence or documentation. An Entity that does not provide evidence or documentation supporting any initiative, must not receive any recognition for that initiative.
- 2.7 Wherever a Standard Valuation Method applies to measuring an indicator, the same standard should apply, as far as reasonably possible, consistently in all other applicable calculations in this statement.

3 Application of the Codes

- 3.1 The following entities are measurable under the Codes:
- 3.1.1 all public entities listed in schedule 2 or schedule 3 (Parts A and C) of the Public Finance Management Act;
 - 3.1.2 any public entity listed in schedule 3 (Parts B and D) which are trading entities which undertake any business with any organ of state, public entity or any other Enterprise; and
 - 3.1.3 any enterprise that undertakes any business with any organ of state or public entity;
 - 3.1.4 any other enterprise that undertakes any business, whether direct or indirect, with any entity that is subject to measurement under paragraph 3.1.1 to 3.1.3 and which is seeking to establish its own B-BBEE compliance.
- 3.2 The basis for measuring the B-BBEE compliance of an entity in terms of paragraph 3.1 is -
- 3.2.1 paragraph 4, in the case of an Exempted Micro-Enterprise (EME);
 - 3.2.2 the QSE statements in Code 800, in the case of a Qualifying Small Enterprise (QSE);
 - 3.2.3 the Generic Scorecard, in the case of other enterprises.
- 3.3 Despite 3.2, a Sector Code published in terms of Statement 003 may provide the basis for measuring enterprises within that sector.

4 Eligibility as an Exempted Micro-Enterprise

- 4.1 Any enterprise with an annual Total Revenue of R 5million or less qualifies as an Exempted Micro-Enterprises. .
- 4.2 Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100% under paragraph 6.3.
- 4.3 Despite paragraph 4.2, an Exempted Micro-Enterprise qualifies for a promotion to a B-BBEE Status of "Level Three Contributor" having a B-BBEE procurement recognition of 110% under paragraph 6.3 if it is - more than 50% owned by black people or by black women.
- 4.4 Exempted Micro-Enterprises are allowed to be measured in terms of the QSE scorecard should they wish to maximise their points and move to the next procurement recognition level.
- 4.5 Sufficient evidence of qualification as an Exempted Micro-Enterprise is an auditor's certificate or similar certificate issued by an accounting officer or verification agency.

5 Eligibility as a Qualifying Small Enterprise

- 5.1 Any enterprise with an annual Total Revenue of between R5 million and R35 million qualifies as a Qualifying Small Enterprise.

- 5.2 A Qualifying Small Enterprise must select any four of the seven Elements of B-BBEE for the purposes of measurement under the Qualifying Small Enterprise Scorecard contained in Code 800. Where a Qualifying Small Enterprise does not make a selection, its four best element scores will be used for the purposes of measurement.

6 Start-up enterprises

- 6.1 Start-up enterprises must be measured as Exempted Micro-Enterprises under this statement for the first year following their formation or incorporation. This provision applies regardless of the expected total revenue of the start-up enterprise.
- 6.2 Start-up Enterprises are deemed to have a B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100% under this paragraph
- 6.3 In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status.
- 6.4 Despite paragraph 6.1 and 6.2, Start-up Enterprises must submit a QSE Scorecard when tendering for any contract, or seeking any other business covered by section 10 of the Act, with a value higher than R 5 million but less than R35 million. For contracts above R35 million they should submit the generic scorecard. The preparation of such scorecards must use annualised data.

7 The Elements of B-BBEE in terms of the Generic Scorecard

- 7.1 The Ownership Element, as set out in Code series 100, measures the effective ownership of enterprises by black people.
- 7.2 The Management Control Element, as set out in Code series 200, measures the effective control of enterprises by black people.
- 7.3 The Employment Equity Element, as set out in Code series 300, measures initiatives intended to achieve equity in the workplace under the Act, and the Employment Equity Act.
- 7.4 The Skills Development Element, as set out in Code series 400, measures the extent to which employers carry out initiatives designed to develop the competencies of black employees.
- 7.5 The Preferential Procurement Element, as set out in Code series 500, measures the extent to which enterprises buy goods and services from suppliers with strong B-BBEE procurement recognition levels.
- 7.6 The Enterprise Development Element, as set out in Code series 600, measures the extent to which Enterprises carry out initiatives intended to assist and accelerate the development and sustainability of other Enterprises.
- 7.7 The Socio-Economic Development and Sector Specific Contributions Element, as set out in Code series 700, measures the extent to which enterprises carry out initiatives that contribute towards Socio-Economic Development or Sector Specific initiatives that promote access to the economy for black people.

8 The Generic Scorecard

- 8.1 The following table represents the Generic Scorecard and contains the:
- 8.1.1 elements of the scorecard;
- 8.1.2 weightings, and
- 8.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - 700).

Element	Weighting	Code series reference
Ownership	20 points	100
Management control	10 points	200
Employment equity	15 points	300
Skills development	15 points	400
Preferential procurement	20 points	500
Enterprise Development	15 points	600
Socio-Economic Development initiatives	5 points	700

- 8.2 Based on the overall performance of a Measured Entity using the Generic Scorecard, it receives one of the following B-BBEE Status:-

B-BBEE Status	Qualification	B-BBEE recognition level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥75 but <85 on the Generic Scorecard	110%
Level Four Contributor	≥65 but <75 on the Generic Scorecard	100%
Level Five Contributor	≥55 but <65 on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 on the Generic Scorecard	10%
Non-Compliant Contributor	<30 on the Generic Scorecard	0%

9 Enhanced recognition for certain categories of black people

Throughout the Codes, various criteria appear which advance the interests of certain categories of black people. These include:

- 9.1 black women who should form between 40 and 50% of the beneficiaries of all Elements of the Generic Scorecard; and
- 9.2 black people with disabilities, black youth, black people living in rural areas and black unemployed people who must form between 2 and 3% of the beneficiaries of all Elements of the Generic Scorecard.

10 Framework for the Accreditation of BEE Verification Agencies

- 10.1 Verification of BEE compliance is encouraged and to this end, the dti will from time to time issue clear guidelines on the verification process.
- 10.2 SANAS is a national accreditation body that operates in compliance with the requirements for accreditation bodies as defined in the International ISO/IEC Guide 62 and ISO 17011.
- 10.3 Accreditation of BEE verification agencies will be conducted by SANAS on behalf of the dti in terms of the accreditation criteria that will be developed, maintained and enforced by SANAS.

- 10.4 Such Accreditation Standards govern the terms and conditions on which the Accreditation Body may grant, refuse to grant, revoke or suspend an accreditation of a Verification Agency.
- 10.5 Those verification agencies wishing to apply for accreditation will do so through SANAS.
- 10.6 The dti encourages the establishment of an independent Industry Body that will provide guidance to the verification industry through the development and maintenance of high quality and reliable BEE verification services.
- 10.7 The dti together with the relevant Industry Body will from time to time develop Verification Methodology and other relevant practices that will be used as standards by all verification agencies.
- 10.8 The dti together with the Accreditation Body will implement such mechanisms as may be necessary to ensure that Verification Certificates are accurate and reliable.
- 10.9 The dti will establish a publicly accessible central database containing the information underlying each verification Certificate

11 Transitional period

- 11.1 For the first year after the commencement of this statement, a measured entity may elect to use -
- 11.1.1 the Generic Scorecard; or;
- 11.1.2 the transitional scorecard.
- 11.2 Thereafter, all B-BBEE compliance measurement under the Codes for Medium and Large enterprises is subject to the use of the Generic Scorecard.
- 11.3 The transitional scorecard assigns a BEE Status based on the Ownership and Management Control of the entity calculated in terms of the formula below:

$$A = B \times 1.92$$

Where

A is the indicative BEE Status during the transitional period

B is the total score achieved under Code series 100 and 200

12 Adjustment Of Thresholds

- 12.1 The Minister may, by notice in the Gazette, adjust the thresholds in paragraphs 4 to 6. Any such changes apply to compliance reports prepared for enterprises after a 12-month period following the gazetting of the adjustment.

13 Duration of the Codes

- 13.1 A Code remains in effect until amended, substituted or repealed under section 9 of the Act.
- 13.2 The Minister will review the Codes following the end of the tenth year following the commencement date of this statement, despite the aforementioned, annual reviews will take place to monitor the implementation of B-BBEE throughout the economy.

CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 003: GUIDELINES FOR DEVELOPING AND GAZETTING OF TRANSFORMATION CHARTERS AND SECTOR CODES

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

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1 Objective of this statement

The objectives of this statement are to specify:

- 1.1 the manner of gazetting Transformation Charters under section 12 of the Act;
- 1.2 the process for developing and gazetting of Sector Codes under section 9 of the Act;
- 1.3 the status of Transformation Charters and Sector Codes;
- 1.4 the status of enterprise B-BBEE plans; and
- 1.5 recommend an approach for drawing up Transformation Charters.

2 Procedure for developing and gazetting of Transformation Charters

- 2.1 The representative body of a sector seeking to gazette a Transformation Charter under section 12 must:
 - 2.1.1 apply in writing to the Minister; and
 - 2.1.2 provide evidence of compliance with section 12 of the Act.
- 2.2 The Minister may refuse an application to gazette a Transformation Charter if the applicant has failed to comply with section 12 of the Act.
- 2.3 If the Minister refuses to grant an application under paragraph 2.2.
 - 2.3.1 the Minister must notify the applicant of that decision in writing within two months; and
 - 2.3.2 an applicant may reapply for the gazetting of that Transformation Charter by revising its submission.
- 2.4 The Minister must gazette that Transformation Charter as soon as it is reasonably possible following the granting of an application under paragraph 2.1.

3 Procedure for developing and gazetting of Sector Codes

- 3.1 The following principles apply to developing Sector Codes:
 - 3.1.1 there must be common commercial and other characteristics within the entities operating in the sector which would make it feasible to formulate a transformation charter subject to the proposed Sector Code;
 - 3.1.2 the proposed Sector Code must fully address all the Elements in the Generic Scorecard;
 - 3.1.3 the proposed Sector Code must use the same definitions in respect of all beneficiaries as those used in the Codes;
 - 3.1.4 the proposed Sector Code must use the same calculation methodologies to measure compliance as those used in the Codes;

- 3.1.5 the proposed Sector Code may deviate from Targets and Weightings used in the Codes only where those deviations are justifiable based on sound economic principles, sectoral characteristics or empirical research;
- 3.1.6 the proposed Sector Code may introduce a new additional Element for measurement where such addition is justifiable based on sound economic principles, sectoral characteristics or empirical research;
- 3.1.7 the proposed Sector Code must clearly define its scope of application;
- 3.2 The representative body of a sector seeking to gazette a Sector Code under section 9 must:
 - 3.2.1 apply in writing to the Minister;
 - 3.2.2 indicate the process by which the Charter has B-BBEE developed; and
 - 3.2.3 provide evidence of compliance with section 12 of the Act.
- 3.3 The Minister must refuse an application under this paragraph 3 if the proposed Sector Code:
 - 3.3.1 inadequately addresses any of the principles of any of the Elements referred to in the Generic Scorecard as referred to in paragraph 3.1.2;
 - 3.3.2 contains deviations from the calculation methodologies applicable in measuring B-BBEE compliance as referred to in paragraph 3.1.4;
 - 3.3.3 contains deviations in the definitions of beneficiaries of B-BBEE as referred to in paragraph 3.1.3;
 - 3.3.4 contains inconsistencies in the Targets and Weightings referred to in paragraph 3.1.5 unless fully justified under that paragraph; or
 - 3.3.5 contains inadequacies or a potential for ambiguity in defining the scope of the sector as referred to in paragraph 3.1.7.
- 3.4 If on receiving the documents referred to in paragraph 3.2. the Minister decides against adopting that proposed Sector Code, the Minister may:
 - 3.4.1 refer the application back to the representative body for the sector;
 - 3.4.2 refer the documents to the Advisory Council for further consideration or recommendations.
- 3.5 The Minister may issue a draft Sector Code for public comment, in terms of section 9(5) of the Act.
- 3.6 After considering the public comment, the Minister may gazette the Transformation Charter as a Sector Code under section 9 of the Act.

4 Status of Transformation Charters and Sector Codes

- 4.1 The gazetting of a Transformation Charter under section 12 of the Act is evidence of the commitment to promote B-BBEE in the applicable sector and is not binding on organs of state or public entities.

- 4.2 Code series 000 to 700 and any statements under those Codes remain applicable to enterprises in the sector, despite the gazetting of their Transformation Charter under section 12 of the Act.
- 4.3 A Sector Code enjoys equal status with that of any other Code

5 Recommended Model for Developing Transformation Charters

- 5.1 This paragraph provides guidance to sectors wishing to develop Transformation Charters. It is not a legal requirement.
- 5.2 Recommended Model for developing Transformation Charters:
- 5.2.1 The following represents the matters needing consideration by sectors developing a Transformation Charter for gazetting under section 12 of the Act:
- 5.2.1.1 the sector seeking to gazette their Transformation Charter should interact or transact with the organs of state or public entities;
- 5.2.1.2 there should be common commercial and other characteristics within the entities forming part of the proposed sector;
- 5.2.1.3 the sector should be significant having regard to:
- 5.2.1.3.1 the national strategic importance of the sector as determined by government; and
- 5.2.1.3.2 the volume and value of transactions taking place between the sector and organs of state or public entities collectively - this is measurable by reference to the total volume and value of transactions taking place within the sector.
- 5.2.2 The following represents a recommended model for developing a Transformation Charter:
- 5.2.2.1 Public Proclamation of Charter: there must be a public proclamation of the object of developing a Transformation Charter.
- 5.2.2.2 Setting of Charter Mandate: the initiators of the Charter process propose setting the mandate of the Charter and the Charter's overall objectives. These initiators should then present a proposed mandate for the Charter, to relevant stakeholders for consideration and comment. The final mandate of the Charter must reflect the concerns and needs of the stakeholders.
- 5.2.2.3 Appointment of a Steering Committee: the initiators of the Charter process appoint a Steering Committee. This Steering Committee should represent relevant groups of stakeholders and should consist of senior and influential members of entities, organisations or departments in the sector.
- 5.2.2.4 Appointment of relevant Working Groups: the Steering Committee appoints several working groups to aid in drafting the Charter. Element specific working groups are desirable.
- 5.2.2.5 First Draft: Based on recommendations by the appointed Working Groups, the Steering Committee must compile the first draft of the Charter for presentation to stakeholders.

- 5.2.2.6 Consultation with Stakeholders: the Steering Committee will communicate the key elements of the first draft of the Transformation Charter, including a draft of its scorecard to stakeholders.
- 5.3 Recommended Consulting Process, Representatives and Stakeholder Identification:
- 5.3.1 The consultation process for developing a Transformation can take any of the following forms:
- 5.3.1.1 a major gathering of the key stakeholders in the sector;
- 5.3.1.2 workshops addressing particular issues in the Transformation Charter;
- 5.3.1.3 sector-wide road shows; or
- 5.3.1.4 other interactive mechanisms that would ensure effective communication with and participation by the relevant stakeholders.
- 5.3.2 The relevant stakeholders may include:
- 5.3.2.1 key enterprises within the sector;
- 5.3.2.2 industry bodies for the sector and the relevant chamber of commerce;
- 5.3.2.3 government, and in particular, the relevant government departments having jurisdiction over the particular sector;
- 5.3.2.4 labour bodies or the relevant trade unions;
- 5.3.2.5 industry regulators and civil society organisations; and
- 5.3.2.6 any others with a relevant interest in the sector.
- 5.3.3 The steering committee should have equitable representation to enable participation by all the different stakeholders in the Transformation Charter formulation.
- 5.3.4 Implementation of innovative mechanisms for ensuring that under resourced parties contribute in the key strategic decisions is a key consideration, especially in the following stages:
- 5.3.4.1 setting up various working groups
- 5.3.4.2 setting the mandates of the respective charter committees;
- 5.3.4.3 actively taking part in the various charter committees;
- 5.3.4.4 outlining the key principles and qualitative undertakings of the Transformation Charter;
- 5.3.4.5 setting targets and weightings for the sector as contained in the balanced B-BBEE scorecard;
- 5.3.4.6 providing for implementation, reporting and monitoring mechanisms;
- 5.3.4.7 presentation of the Transformation Charter to the Advisory Council, the ministry in the government responsible for the relevant sector and to the Minister of Trade and Industry.

- 5.3.4.8 setting the mandate and the powers of the Charter Council;
- 5.3.4.9 ensuring application of good corporate governance principles in the Steering Committee or any executive body reporting to the Charter Council.
- 5.4 The Role of Charter Councils:
 - 5.4.1 The following represents a recommended model for setting up Charter Councils:
 - 5.4.1.1 equitable composition of stakeholders in the members of the Charter Council;
 - 5.4.1.2 ensuring application of good corporate governance principles in the Charter Council.
 - 5.4.2 The functions of the Charter Council may include:
 - 5.4.2.1 to provide guidance on sector-specific matters effecting B-BBEE in entities within the sector;
 - 5.4.2.2 to compile reports on the status of broad-based black economic empowerment within the sector, and
 - 5.4.2.3 to share information with sector members, approved accreditation agencies or the Minister.
 - 5.4.3 The Charter Councils should report to the Minister and to the Advisory Council on progress made by the sector subject to the relevant Transformation Charter. Such reports should typically contain qualitative and quantitative information about sectoral performance, including details about all the elements of the sector's B-BBEE balanced scorecard.

6 Variation of Indicators in Codes 200 and 300

- 6.1 A Sector Code may allow the use of indicators that differ from those contained in Codes 200 and 300 as a means of fixing the relevant Measurement Categories.
- 6.2 Sectors adopting this approach must:
 - 6.2.1 consider using indicators that are consistent with the principles contained in the EE Regulations;
 - 6.2.2 consider all relevant factors such as seniority, expertise, scarcity of skill-set, organisational role and responsibility and geographic location;
 - 6.2.3 base the definition of occupational levels on sound and empirical research undertaken in the sector by a reputable institution; and
 - 6.2.4 if the indicators include salary scales, consider providing for a default cost of living or inflation adjustment in the salary scales, even if the sector intends to amend those salary scales annually
- 6.3 The gazetting of a Sector Code does not affect any employer's obligations to comply with the EE Act and its regulations.

CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 004: Scorecards for SPECIALISED Enterprises

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

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1 Objective of this statement

The objectives of this statement are to:

- 1.1 provide guidance about the treatment of Ownership for Specialised Enterprises, for B-BBEE purposes, of:
 - 1.1.1 companies limited by guarantee;
 - 1.1.2 Higher Education Institutions;
 - 1.1.3 Non-profit Organisations;
 - 1.1.4 public entities and other Enterprises wholly owned by organs of state;
 - 1.1.5 Public Benefit Schemes; and
 - 1.1.6 section 21 companies; and
- 1.2 specify scorecards applicable to Measured Entities subject to this statement.

2 General principles

- 2.1 Public entities and other Enterprises wholly owned by organs of state are incapable of evaluation of black ownership under Code series 100.
- 2.2 Higher Education Institutions are not public entities under the Public Finance Management Act of 1999. They are incapable of evaluation of black ownership under Code series 100.
- 2.3 Companies limited by guarantee and section 21 companies have no shareholding. They are incapable of evaluation of black ownership under Code series 100. This does not imply that companies limited by guarantee and section 21 companies sharing in the ownership of other Enterprises cannot contribute towards black ownership to such Enterprises as provided for in Statement 100.
- 2.4 Non-profit Organisations and Public Benefit Organisations generally do not have any beneficial ownership and are incapable of evaluation of black ownership under Code series 100. This does not imply that Non-profit Organisations and Public Benefit Organisations sharing in the ownership of other Enterprises as broad-based ownership schemes cannot contribute towards black ownership to such Enterprises as provided for in Statement 100.
- 2.5 Wherever any of the entities listed in paragraphs 1 and 2 require evidence of their own B-BBEE compliance, they will use the Adjusted Generic Scorecard. If those entities are also Qualifying Small Enterprises, they will use the Adjusted Qualifying Small Enterprises Scorecard.

3 The ADJUSTED Generic Scorecard

- 3.1 The following table represents the Adjusted Generic Scorecard and contains the:
- 3.1.1 Elements of the scorecard;
- 3.1.2 weightings, and
- 3.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - 700).

Element	Weighting	Code series reference
Management control	15 points	200
Employment equity	15 points	300
Skills development	20 points	400
Preferential procurement	20 points	500
Enterprise Development	15 points	600
Socio-Economic Development	15 points	700

- 3.2 All other terms of statement 000 apply to Measured Entities subject to this statement mutatis mutandis.

4 The ADJUSTED Qualifying Small Enterprises Scorecard

- 4.1 The following table represents the Adjusted Generic Scorecard and contains the:
- 4.1.1 Elements of the scorecard;
- 4.1.2 weightings, and
- 4.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - 700).

Element	Weighting	Code series reference
Management control	25 points	200
Employment equity	25 points	300
Skills development	25 points	400
Preferential procurement	25 points	500
Enterprise Development	25 points	600
Socio-Economic Development	25 points	700

- 4.2 A Measured Entity, subject to this statement, that is a Qualifying Small Enterprise must choose any four of the six Elements of B-BBEE against which their B-BBEE compliance will be measured under the Adjusted Qualifying Small Enterprise Scorecard.

5 Important Clarification

The status of Socio-Economic Development Contributions made to any of the types of entities in paragraphs 1 and 2 under Code series 700 is not dependent on such entity's scorecard result, but rather the nature of the contribution itself and the identity of that contribution's beneficiaries.

CODE SERIES 100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 100: THE GENERAL PRINCIPLES FOR MEASURING OWNERSHIP

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

Arrangement of this statement

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1 Objectives of this Statement

The objectives of this statement are to:

- 1.1 specify the scorecard for measuring the ownership Element of Broad-Based Black Economic Empowerment (B-BBEE);
- 1.2 define the key measurement principles associated with the ownership Element of B-BBEE;
- 1.3 specify the specific measurement principles applicable to various types of Enterprises;
- 1.4 specify the specific measurement principles applicable to various types of Equity Instruments;
- 1.5 specify the formula for measuring Voting Rights, Economic Interest, Realisation Points and bonus points.

2 The Ownership Scorecard

The following table represents the indicators and method for calculating a score for ownership under this statement:

Category	Ownership indicator	Weighting points	Compliance Target
2.1	Voting rights:		
	2.1.1 Exercisable Voting Rights in the Enterprise in the hands of black people	3	25%+1 vote
	2.1.2 Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
2.2	Economic Interest:		
	2.2.1 Economic Interest of black people in the Enterprise	4	25%
	2.2.2 Economic Interest of black women in the Enterprise	2	10%
	2.2.3 Economic Interest of the following black natural people in the Enterprise:	1	2.5%
	2.2.3.1 black designated groups; 2.2.3.2 black Participants in Employee Ownership Schemes; 2.2.3.3 black beneficiaries of Broad based Ownership Schemes; or 2.2.3.4 black Participants in Co-operatives		
2.3	Realisation points:		
	2.3.1 Ownership fulfilment	1	Refer to paragraph 10.1
	2.3.2 Net Value	7	Refer to Annexe C paragraph 4
2.4	Bonus points:		
	2.4.1 Involvement in the ownership of the Enterprise of black new entrants:	2	10%
	2.4.2 Involvement in the ownership of the Enterprise of black Participants:	1	10%
	2.4.2.1 in Employee Ownership Schemes; 2.4.2.2 of Broad-Based Ownership Schemes; or 2.4.2.3 Co-operatives.		

3 Key Measurement Principles

3.1 General principles:

3.1.1 An Enterprise receives points for participation by black people in its rights of ownership, using the ownership scorecard in paragraph 2. Black people may hold their rights of ownership in a Measured Entity as direct Participants or as Participants through some form of business such as:

3.1.1.1 a company with shares;

3.1.1.2 a close corporation;

3.1.1.3 a co-operative;

3.1.1.4 any form of juristic person recognised under South African law;

3.1.1.5 a partnership or other association of natural persons;

3.1.1.6 a Broad-Based Ownership Scheme;

3.1.1.7 an Employee Ownership Scheme; and

3.1.1.8 a Trust.

3.2 The Flow-Through Principle:

3.2.1 As a general principle, when measuring the rights of ownership of any category of black people in a Measured Enterprise, only rights held by natural persons are relevant. If the rights of ownership of black people pass through a juristic person, then the rights of ownership of black people in that juristic person are measurable. This principle applies across every tier of ownership in a multi-tiered chain of ownership until that chain ends with a black person holding rights of ownership.

3.2.2 The method of applying the Flow-Through Principle across one or more intervening juristic persons is as follows:

3.2.2.1 Multiply the percentage of the Participant's rights of ownership in the juristic persons through which those rights pass by the percentage rights of ownership of each of those juristic persons successively to the Measured Enterprise; and

3.2.2.2 the result of this calculation represents the percentage of rights of ownership held by the Participant.

3.3 The Modified Flow-Through Principle:

3.3.1 The Modified Flow-Through Principle applies to any BEE owned or controlled company in the ownership of the Measured Enterprise.

3.3.2 In calculating Exercisable Voting Rights under paragraph 2.1.1, and Economic Interest under paragraph 2.2.1 the following applies: Where in the chain of ownership, black people have a flow-through level of participation in excess of 50%, then only once in that chain may such black participation be treated as if it were 100% black.

3.3.3 The Modified Flow-Through Principle may only be applied in the calculation of the indicators in paragraphs 2.1.1 and 2.2.1. In all other instances, the Flow-Through Principle applies.

- 3.4 The Exclusion of specified entities when determining ownership :
- 3.4.1 When determining ownership in a measured entity, ownership held directly by organs of state or public entities must be excluded.
- 3.4.2 In calculating their Ownership score, Measured Enterprises must apply the Exclusion Principle to any portion of their Ownership held by Organs of State or Public Entities.
- 3.4.3 Despite paragraph 3.4.1 and 3.4.2, the Minister may by notice in the gazette, designate certain Public Entities as BEE Facilitators. In calculating their Ownership score, Measured Enterprises must treat BEE Facilitators as having rights of Ownership held:
- 3.4.3.1 100% by Black People;
- 3.4.3.2 40% by Black Women;
- 3.4.3.3 10% by black designated groups;
- 3.4.3.4 without any acquisition debts; and
- 3.4.3.5 without any third-party rights.
- 3.4.4 When determining ownership in a measured entity, rights of ownership of Mandated Investments may be excluded. The maximum percentage of the ownership of any measured entity that may be so excluded is 40%.
- 3.4.5 A Measured Entity electing not to exclude Mandated Investments when it is entitled to do so, may either treat all of that ownership as non-black or obtain a competent person's report estimating the extent of black rights of ownership measurable in the Measured Entity and originating from that Mandated Investment.
- 3.4.6 A Measured Entity cannot selectively include or exclude Mandated Investments and an election to exclude one mandated investment is an election to exclude all Mandated Investments and visa versa.
- 3.5 The recognition of ownership after the sale or loss of shares by black participants:
- 3.5.1 A Measured Entity is allowed to recognise a portion of black ownership after a black participant has exited through the sale or loss of shares subject to the following criteria:
- 3.5.1.1 the black participant has held shares for a period of 3 years;
- 3.5.1.2 value must have been created in the hands of black people;
- 3.5.1.3 transformation has taken place within the measured enterprise.
- 3.5.2 black participation arising from continued recognition of black ownership cannot contribute more than 40% of the score on the ownership scorecard.
- 3.5.3 In the case of a loss of shares by the black investor, the following additional rules apply:
- 3.5.3.1 a written tripartite agreement between the Measured Enterprise, the black Participant and a lender must record the loan or security arrangement, unless the Measured Entity is the lender; and
- 3.5.3.2 The period over which the points were allocated or recognised will not exceed the period over which the shares were held.

- 3.5.4 The ownership points under this paragraph that are attributable to the Measured Entity will be calculated by multiplying the following elements:
- 3.5.4.1 The value created in black hands as a percentage of the value of the Measured Entity at the date of the loss of shares as a percentage of Measured Entity's value;
- 3.5.4.2 The B-BBEE status of the Measured Entity based on the balanced scorecard at the date of measurement; and
- 3.5.4.3 The ownership points that were attributable to the Measured Enterprise on the date of sale or loss.

4 Broad-based Ownership and Employee Ownership Scheme's

- 4.1 Black Participants in Broad-Based Ownership Schemes and Employee Share Ownerships Schemes holding rights of ownership in a Measured Entity may contribute:
- 4.1.1 a maximum of 40% of the total points on the ownership scorecard of the Measured Entity if they meet the qualification criteria set out in Annexe 100(B).
- 4.1.2 100% of the total points on the ownership scorecard of the Measured Entity if they meet the additional qualification criteria set out in Annex 100(B).

5 Private Equity Funds

- 5.1 A Measured Entity may treat any of its ownership arising from a Private Equity Fund as if that ownership were held by black people, where the Private Equity Fund meets the following criteria:
- 5.1.1 more than 50% of any Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership, be held by black people;
- 5.1.2 more than 50% of profits made by the Private Equity Fund after realising any investment made by it, must by written agreement, accrue to black people;
- 5.1.3 the Private Equity Fund manager must be a BEE Owned Company as defined; and
- 5.1.4 more than 50% of the value of funds invested by any Private Equity Fund must at all times be invested in black owned enterprises that were at least 25% black owned before the investment of the Private Equity Fund.

6 Section 21 Companies and Companies Limited by Guarantee

A Measured Entity may elect to include or exclude Section 21 companies or companies limited by guarantee for the purposes of measuring ownership in terms of this statement

- 6.1 A Section 21 company or company limited by guarantee that houses a Broad-Based Ownership Scheme or an Employee Ownership Scheme is subject to the provisions governing those types of schemes and not to this paragraph.
- 6.2 When a Measured Entity elects to exclude such companies, it can do so by excluding up to 40% of the level of their ownership completely from the determination of its compliance with the ownership target.

- 6.3 A Measured Entity electing not to exclude section 21 companies or companies limited by guarantee when it is entitled to do so, may either treat all of that ownership as non-black or obtain a competent person's report estimating the extent of black rights of ownership measurable in the Measured Entity and originating from those section 21 companies or companies limited by guarantee.
- 6.4 Black Participants in a Section 21 Company holding rights of ownership in a Measured Entity may contribute:
- 6.4.1 a maximum of 40% of the total points on the ownership scorecard of the Measured Entity if they meet the qualification criteria for Broad-Based Ownership Schemes set out in Annexe 100(B).
- 6.4.2 100% of the total points on the ownership scorecard of the Measured Entity if they meet the additional qualification criteria set out for Broad-Based Ownership Schemes in Annex 100(B).

7 Trusts

- 7.1 Black Participants in a Trust holding rights of ownership in a Measured Entity may contribute:
- 7.1.1 a maximum of 40% of the total points on the ownership scorecard of the Measured Entity if the trust meets the qualification criteria for Trusts set out in Annexe 100(B).
- 7.1.2 100% of the total points on the ownership scorecard of the Measured Entity if they meet the additional qualification criteria set out for Trusts in Annex 100(B).

8 Options and share warrants:

- 8.1 Exercisable voting rights and Economic interest will be recognised where a Participant holds an instrument granting the holder the right to acquire an Equity Instrument or part thereof at a future date, if the following requirements are met:
- 8.1.1 The Exercisable Voting Rights attached to that instrument are irrevocably transferred to the holder for the option period and are exercisable by the holder before acquiring the Equity Instrument;
- 8.1.2 the value of any Economic Interest is irrevocably transferred for the option period and paid to the holder of that instrument before the exercise of that right.
- 8.1.3 The value of an instrument must be determined by using a Standard valuation method for calculating the Net value.

9 Equity Instruments Carrying Preferent Rights

- 9.1 An Equity Instrument carrying preferent rights is measurable in the same manner as an ordinary Equity Instrument.
- 9.2 An Equity Instrument carrying preferent rights that has the characteristics of a debt, regardless of whether the debt is that of an Enterprise or of a Participant, is an ordinary loan. If the debt is that of a black Participant, it may be subject to measurement under Current Equity Interest.
- 9.3 In evaluating an instrument that has a hybrid nature including the characteristics of a debt, only that portion that represents a debt, will be measured under current equity interest. The remainder is measurable as an ordinary equity instrument.

10 Net Value

- 10.1 Ownership Fulfilment occurs:
- 10.1.1 on the release of all black Participants in a Measured Entity from all third-party rights arising from the financing their transaction with the Measured Entity; or
- 10.1.2 if all black Participants in the Enterprise have never been subject to any such third-party rights.
- 10.1.3 A score of 7 points for Net Value is a requirement for awarding the Ownership Fulfilment point.

11 The Bonus Points

- 11.1 A Measured Entity with 25% black Economic Interest, can receive a maximum of 2 bonus points for a 10% holding of Economic Interest by black new entrants.
- 11.2 A Measured Entity with 25% black Economic Interest, can receive a maximum of 1 bonus point for a 10% holding of Economic Interest by black Participants in:
- 11.2.1 Employee Ownership Schemes;
- 11.2.2 Broad-Based Ownership Schemes; and
- 11.2.3 Co-Operatives.

Annexe 100A - Examples of Mandated Investments

Description of Investment	Portion Subject to Exclusion Principle
Investments made by or for a collective investment scheme as defined in the Collective Investments Scheme Control Act of 2002	full value
Investments made by or for a pension fund as defined in the Pension Fund Act of 1956	full value
Investments made by or for a medical scheme as defined in the Medical Schemes Act of 1998 out of member's funds	portion recorded as made out of member's funds
Investments made by or for long-term insurers as defined in the Long-Term Insurance Act of 1998 out of policyholder funds	portion recorded as made out of policyholder funds
Investments made by or for a friendly society as defined in the Friendly Societies Act of 1956	full value
Investments made by or for a bank as defined in the Banks Act of 1990 out of depositor funds as opposed to own reserves	depositor portion determined by apportioning investment in the ratio that depositor funds to own reserves;
Investments made by or for a mutual bank as defined in the Mutual Banks Act of 1993 out of depositor funds as opposed to own reserves	depositor portion determined by apportioning investment in the ratio that depositor funds to own reserves;

Annexe 100(B)

RULES ON CERTAIN TYPES OF ENTERPRISES

1 Rules for Broad-Based Ownership Schemes:

- 1.1 The following rules apply to Broad-Based Ownership Schemes:
- 1.1.1 the Management Fees of the scheme must not exceed 15%;
 - 1.1.2 the constitution of the scheme must record the rules governing any portion of Economic Interest received and reserved for future distribution or application;
 - 1.1.3 at least 85% of the value of benefits allocated by the scheme must accrue to black people;
 - 1.1.4 at least 50% of the fiduciaries of the scheme must be independent persons having no employment with or direct or indirect beneficial interest in the scheme;
 - 1.1.5 at least 50% of the fiduciaries of the scheme must be black people and at least 25% must be black women;
 - 1.1.6 the chairperson of the scheme must be independent; and
 - 1.1.7 on the winding-up or termination of the scheme, all accumulated Economic Interest must be transferred to beneficiaries or an entity with similar objectives.

2 Rules for Employee Share Ownership Schemes:

- 2.1 The following rules apply to Employee Share Ownership Schemes (ESOP):
- 2.1.1 the scheme constitution must define the Participants and the proportion of their claim to receive distributions;
 - 2.1.2 a written record of the name of the Participants or the use of a defined class of natural person satisfies the requirement for identification;
 - 2.1.3 a written record of fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining proportion of benefit; and
 - 2.1.4 the fiduciaries of the scheme must have no discretion on the above mentioned terms, and
- 2.2 The Participants must take part in:
- 2.2.1 appointing at least 50% of the fiduciaries of the scheme;
 - 2.2.2 managing the scheme at a level similar to the management role of shareholders in a company having shareholding;
 - 2.2.3 the constitution, or other relevant statutory documents, of the scheme must be available, on request, to any Participant in an official language in which that person is familiar; and

- 2.2.4 All accumulated Economic Interest of the scheme is payable to the Participants at the earlier of a date or event specified in the scheme constitution or on the termination or winding-up of the scheme; and
- 2.2.5 the scheme fiduciaries must present the financial reports of the scheme to Participants yearly at an annual general meeting of the scheme.

3 Rules for Trusts

- 3.1 The qualification criteria for the recognition of Trusts is as follows:
 - 3.1.1 The trust deed must define the beneficiaries and the proportion of their entitlement to receive distributions;
 - 3.1.2 A written record of the names of the beneficiaries or the use of a defined class of natural person satisfies the requirement for identification;
 - 3.1.3 A written record of fixed percentages of entitlement or the use of a formula for calculating entitlement satisfies the need for defining proportion of benefit; and
 - 3.1.4 The trustees must have no discretion on the above mentioned terms; and . On winding-up or termination of the trust, all accumulated Economic Interest must be transferred to the beneficiaries or to an entity representing the interest of the participants or class of beneficiaries.

4 Additional Criteria Applicable to Trusts:

- 4.1 For a Measured Entity to obtain the maximum points on it's Ownership scorecard from shareholding by a Trust, the Measured Entity must be in possession of a certificate issued by a competent person to the effect:
 - 4.1.1 That the Trust was created for a legitimate commercial reason which must be fully disclosed; and;
 - 4.1.2 That the terms of Trust do not directly or indirectly seek to circumvent the provisions of the Codes and the Act.

5 Additional Criteria Applicable to Broad Based Ownership Schemes and Employee Ownership Schemes:

- 5.1. For a Measured Entity to obtain the maximum points on it's ownership scorecard, the following additional requirements must be met by a Broad-Based Scheme or Employee Share Ownership Scheme:
 - 5.1.1 a track-record of operating as a Broad-Based Ownership Scheme or Employee Share Ownership Scheme, or in the absence of such a track-record demonstrable evidence of full operational capacity to operate as a Broad-Based Ownership Scheme or Employee Share Ownership Scheme;
 - 5.1.2 Operational capacity must be evidenced by suitably qualified and experienced staff in sufficient number, experienced professional advisors, operating premises and all other necessary requirements for operating a business.

Annexe 100 (C)

1 Measurement of Voting Rights

- 1.1 The calculation of the ownership indicators provided for in paragraphs 2.1.1 and 2.1.2 is as follows:

$$A = \frac{B}{C} \times D$$

Where

A is the score achieved for the Enterprise for the measured ownership indicator

B is the percentage that Exercisable Voting Rights in the hands of the category of Participants who are black people in that Enterprise holds to all Voting Rights held by all Participants of that Enterprise

C is the percentage compliance Target for Exercisable Voting Rights for the applicable measured ownership indicator in paragraph 2.1

D is the Weighting points allocated to the applicable measured ownership indicator in paragraph 2.1

- 1.2 If an Enterprise gains a score in the formula above that is more than the Weighting points in paragraph 2.1, that Enterprise will only receive the Weighting points.

2 Measurement of Economic Interest

- 2.1 The calculation of the ownership indicators provided for in paragraphs 2.2.1 to 2.2.3 is as follows:

$$A = \frac{B}{C} \times D$$

Where

A is the recognisable percentage of black Participant claim to Economic Interest in the Enterprise

B is the percentage that Economic Interest to which Participants who fall within the category of black people in that Enterprise holds to all Economic Interest to which all Participants of that Enterprise

C is the percentage compliance Target for Economic Interest for the applicable measured ownership indicator in paragraph 2.2

D is the Weighting points allocated to the applicable measured ownership indicator in paragraph 2.2

- 2.2 If an Enterprise gains a score in the formula above that is more than the Weighting points in paragraph 2.2, that Enterprise will only receive the Weighting points.

3 Calculation of Deemed Net Value

In calculating the "Deemed Net Value" referred to in paragraph 4 below, the following formula applies:

$$A = \frac{B - C}{D}$$

Where

A is the Deemed Net Value

B for the purposes of paragraph 4 below is the value of the Equity Instruments relevant to the calculation, determined on the date of measurement

B for the purposes of paragraph 5 below is the value of the Equity Instruments relevant to the calculation, determined on the date of sale or loss

C for the purposes of paragraph 4 below is the carrying value of any acquisition debts of the relevant black Participants on the date of measurement

C for the purposes of paragraph 5 below is the carrying value of any acquisition debts of the relevant black Participants on the date of sale or loss

D for the purposes of paragraph 4 and 5 below is the value of the Measured Entity on the date of measurement

D for the purposes of the exclusion principle is the value of the measurable portion of the Measured Entity on the date of measurement

4 Net Value

4.1 The "Net Value" points in paragraph 2.3.2 is the lower result of Formula A and Formula B below:

Formula A

$$A = B \times \left(\frac{1}{25\% \times C} \right) \times 7$$

Where

A is the score under paragraph 2.3.2

B is the Deemed Net Value for all black Participants in the Measured Entity determined using Formula 3

C is the time-based graduation factor of the Economic Interest compliance target outlined below:

- 10% for the first year after the current equity interest date.
- 20% for the second year after the current equity interest date.
- 40% from the first day of the third year after the current equity interest date to the last day of the fourth year after the current equity interest date.
- 60% from the first day of the fifth year after the current equity interest date to the last day of the sixth year after the current equity interest date.
- 80% from the first day of the seventh year after the current equity interest date to the last day of the eighth year after the current equity interest date.
- 100% from the first day of the ninth year after the current equity interest date to the last day of the tenth year after the current equity interest date.

Formula B

$$A = \frac{B}{C} \times 7$$

Where

A is the score under paragraph 2.3.2

B is the percentage Economic Interest in the Measured Entity of black Participants

C is the target for the ownership indicator in paragraph 2.2.1

- 4.2 If an Enterprise gains a score in paragraph 4.1 that is more than the Weighting points in paragraph 2.3.2, that Enterprise will only receive the Weighting points.
- 4.3 Ownership Fulfilment occurs:
- 4.3.1 on the release of all black Participants in a Measured Entity from all third-party rights; or
- 4.3.2 when black Participants have never been subject to any third-party.
- 4.4 A minimum score of 7 points for Current Equity Interest is a requirement for the award of the Ownership Fulfilment point.

5 Calculation of the Recognition of Ownership after the Sale or Loss of Shares by Black Participants:

The calculations in paragraphs 3.5.1 and 3.5.3 use the following formula:

$$A = B \times C \times D$$

Where

A is the percentage of rights of ownership that survive the sale of an Equity Instrument by a black Participant in paragraph 3.5

B is the percentage of rights of ownership for each of indicators in the ownership scorecard that were attributable to the black Participant immediately before his or her sale or loss

C is the Net Value percentage provided for in paragraph 3 above undertaken for the Equity Instruments sold or lost by the black Participant on the date of the sale or loss. The value of the Enterprises is measurable as at the date of measurement

D is the most recently determined BEE Recognition Level of the Measured Entity (which must be less than 1-year old) based on its Generic Scorecard result for all Elements other than ownership determined using statement 000

6 The Bonus Points

6.1 The calculation of the bonus points uses the following formula:

$$A = \frac{B}{C} \times \frac{D}{25} \times E$$

Where

A is the bonus points awarded in paragraphs 2.4.1 and 2.4.2

B is the percentage that Economic Interest to which Participants who fall within that category of black people in that Enterprise holds to the total of all Economic Interest of that Enterprise

C is the percentage compliance Target for Economic Interest for the measured ownership indicator in paragraph 2.4

D is percentage of the Economic Interest in the Measured Entity of black people up to a maximum of 25%

E is the Weighting points allocated to the applicable measured ownership indicator in paragraph 2.4

CODE SERIES 100: THE MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 102: RECOGNITION IN THE SALE OF ASSETS

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

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1 Objectives of this statement

The objectives of this statement are to:

- 1.1 Set out the conditions where the Sale of Assets, Equity Instruments and other Businesses will be recognised.
- 1.2 Set out how the Ownership points will be determined.

2 Application

2.1 A transaction in terms of this statement may involve the sale of:

- 2.1.1.1 an asset;
- 2.1.1.2 a business; or
- 2.1.1.3 Equity Instruments in an Enterprise.

3 Key Measurement Principles

3.1 General principles:

- 3.1.1 A Seller that has concluded a transaction involving a sale of asset, Equity Instrument or business with an Associated Enterprise may claim the benefits provided for in this statement in its own Ownership Scorecard.
- 3.1.2 Where a Seller has claimed benefit in terms of the Ownership scorecard for the Sale of Asset, Equity Instrument or Business it may not claim benefits under the Enterprise Development Element.

3.2 Qualification Criteria:

- 3.2.1 For Ownership points to be recognised the transaction:
 - 3.2.1.1 Must result in the creation of sustainable businesses or business opportunities in the hands of black people; and
 - 3.2.1.2 Result in the transfer of specialised skills or productive capacity to black people.
- 3.2.2 A Sale of Asset, Equity Instrument and Business must involve a separate Associated Enterprise which has:
 - 3.2.2.1 no unreasonable limitations as to its clients or customers; and
 - 3.2.2.2 clients, customers or suppliers other than the Seller.
- 3.2.3 Any operational outsourcing arrangements between the Seller and the Associated Enterprise must be negotiated at arms-length on a fair and reasonable basis.
- 3.2.4 The following transactions do not constitute Qualifying Transactions:
 - 3.2.4.1 transfers of business rights by way of license, lease or other similar legal arrangements not conferring unrestricted ownership; and
 - 3.2.4.2 sales of franchises by franchisors to franchisees, but includes sales of franchises from franchisees to other franchisees or to new franchisees.

4 Measurement Principles

- 4.1 The calculation of the ownership points in terms of paragraph 2.3.2. of the Ownership scorecard must be based on:
- 4.1.1 the value of the transaction.
 - 4.1.2 the value of Equity Instruments held by black Participants in the Associated Enterprise;
 - 4.1.3 the carrying value of the Acquisition Debt of black Participants in the Associated Enterprise; and
- 4.2 All calculations in terms of paragraph 4.1.1 to 4.1.3 must use a Standard valuation method.
- 4.3 The Seller may claim the point for Ownership Fulfilment only if both the Seller and the Associated Enterprise comply with the requirements for the award of that point.
- 4.4 Equivalency Percentages under this statement:
- 4.4.1 apply only to the ownership indicators in paragraphs 2.1 and 2.2 of the Ownership Scorecard;
 - 4.4.2 do not apply to the ownership indicators in paragraphs 2.3 and 2.4 of the Ownership Scorecard.
- 4.5 The Seller must include the Equivalency Percentages in its own Ownership Scorecard as if those percentages arose from black ownership of Equity Instruments in the Seller. The Equivalency Percentages for the indicators in paragraphs 2.1 and 2.2 of the Ownership Scorecard can be calculated in terms of Annexe 102(A).

5 Recognition Of Sale Of Asset, Equity Instruments And Businesses

- 5.1 A Seller seeking recognition of a Transaction in its Ownership Scorecard must determine that recognition under paragraph 4 in compliance with paragraph 2.3 of statement 000:
- 5.1.1 for the first three years after the transaction, based on data current on date of measurement;
 - 5.1.2 for each year thereafter, based on:
 - 5.1.2.1 the Indicator Percentages at the date of measurement; and
 - 5.1.2.2 the values of the Qualifying Transaction and benefit to the Seller at the date of measurement in the third year after the transaction.

ANNEXE 102 (A)

This formula determines the equivalency percentages for the indicators in paragraph 2.1 and 2.2 of the Ownership Scorecard.

$$A = \frac{B}{C} \times D$$

Where

A is the Equivalency Percentage for each of the indicators in paragraphs 2.1 and 2.2 of the Ownership Scorecard

B is the value of the Qualifying Transaction to the Associated Enterprise determined using a Standard valuation method

C is the value of the Seller determined using a Standard valuation method

D is the Indicator Percentages of the Associated Enterprise

CODE SERIES 100: THE MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 103: THE RECOGNITION OF EQUITY EQUIVALENTS FOR MULTINATIONALS

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

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1 Objectives of this statement

The objectives of this statement are to:

- 1.1 define the means by which Multinationals may apply for recognition of Equity Equivalent Programmes;
- 1.2 specify how contributing towards the Ownership Element of B-BBEE by Multinationals is measurable;

2 Key Measurement Principles

Any Equity Equivalent Contributions towards the Ownership Element of B-BBEE made by Multinationals are measurable against the value of their operations in the Republic of South Africa.

3 Recognition of Equity Equivalent Programmes

- 3.1 The Minister may, approve certain Equity Equivalent Programmes after the Multinational has consulted with the sectoral line ministry. Premiers or other stakeholders in any government department, provincial government or local government with respect to their equity equivalent proposal.
- 3.2 Any Equity Equivalent Programme forming part of a Sector Code constitutes an approved programme.
- 3.3 Equity Equivalent Programmes are preferably Sector Specific, but the Minister may consider requests for approval of programmes that are not Sector Specific.
- 3.4 Equity Equivalent Programmes may involve:
 - 3.4.1 programmes that support:
 - 3.4.1.1 the Accelerated and Shared Growth Initiative for South Africa;
 - 3.4.1.2 the Joint Initiative for Priority Skills;
 - 3.4.1.3 the National Skills Development Strategy;
 - 3.4.2 programmes that promote enterprise creation in respect of cooperatives that are:
 - 3.4.2.1 more than 50% owned by black people; or
 - 3.4.2.2 more than 30% owned by black women; or
 - 3.4.2.3 more than 50% owned by members of black designated groups; ;
 - 3.4.3 any other programmes that promote Socio-Economic advancement or contribute to the overall socio development of the Republic of South Africa.
- 3.5 Equity Equivalent Programmes must include:
 - 3.5.1 a full description of programme objectives and projected outcomes;
 - 3.5.2 qualification criteria for participation in the programme;
 - 3.5.3 timelines for implementation and delivery with milestones against which progress is measurable; and

- 3.5.4 details about the sponsors of the programme.
- 3.6 Equity Equivalent Programmes are limited to Multinationals subject to a Global Practice.
- 3.7 Equity Equivalent Programmes may have any of the following as their beneficiaries:
 - 3.7.1 enterprises in which:
 - 3.7.1.1 black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest;
 - 3.7.1.2 black women hold more than 30% of the exercisable voting rights and more than 30% of the economic interest; and
 - 3.7.1.3 Black Designated Groups hold more than 50% of the exercisable voting rights and more than 50% of the economic interest; or
 - 3.7.2 communities, natural persons or groups of natural persons where at least 75% of the beneficiaries are black people and the same percentage of economic value is derived by black people.

4 Measurement of Equity Equivalent Contributions on the Ownership Scorecard

- 4.1 The ownership score of a Multinational participating in an Equity Equivalent Programme is calculated in terms of paragraph 4.3. A Multinational participating in an Equity Equivalent Programme cannot receive any points for ownership under any statement in Code Series 100 other than this statement.
- 4.2 Contributions to Equity Equivalent Programmes are measured as actual contributions made using the general principle set out in code series 600 and 700 against any of the following targets:
 - 4.2.1 25% of the value of the South African operations of the Multinational, determined using a Standard Valuation; or
 - 4.2.2 4% of Total Revenue from its South African operations annually over the period of continued measurement;
- 4.3 The Ownership Score under an Equity Equivalent Programme using either of the targets in paragraphs 4.2 must be calculated in terms of Annexe 103(A).

5 Examples of Equity Equivalent Programmes

- 5.1 Enterprise creation:
 - 5.1.1 If the equity equivalent contribution of a Multinational involves the creation of a new Enterprise:
 - 5.1.1.1 the new Enterprise must qualify as a Value-Adding Enterprise;
 - 5.1.1.2 the creation of the new Enterprise must comply with the requirements for a Qualifying Transaction as defined in statement 102;
 - 5.1.1.3 the creation of the new Enterprise cannot contribute to the Multinational's score under Code series 600; and

- 5.1.1.4 the equity equivalent contribution must involve the provision of interest free loans, No-Gain Grants or Human Capital Investments to the new Enterprise equivalent in value to 50% of the new Enterprise's projected operational costs for the first 3 years following its establishment.
- 5.2 Investment in social advancement:
 - 5.2.1 An equity equivalent contribution of a Multinational that involves enhanced Socio-Economic Development.
 - 5.2.1.1 must comply fully with Code series 700; and
 - 5.2.1.2 cannot form part of the Multinational's score under Code series 700.

6 Specific Rules on Multinationals

- 6.1 Any contributions towards the ownership Element of B-BB-BBEE made by Multinational Businesses or South African Multinationals are measurable against the value of their operations in the Republic of South Africa.
- 6.2 In calculating their ownership score, Multinational Businesses and South African Multinationals must apply the Exclusion Principle to any portion of the business value of their South African operations gained from non-South African sources. A Standard valuation method must be used to determine the value of the South African operations.
- 6.3 In calculating their ownership score, Multinational Businesses may recognise sales of Equity Instruments in non-South African Enterprises to black people, on the following basis:
 - 6.3.1 the non-South African Enterprise must form part of the chain of ownership between the Multinational Business and its eventual holding company; and
 - 6.3.2 the transaction must comply with South African exchange control requirements; and
 - 6.3.3 the percentage of the value of the Equity Instruments sold to the value of the Multinational Business represents the recognisable black claim to Economic Interest; and
 - 6.3.4 the percentage of Exercisable Voting Rights ceded to the buyers of the Equity Instruments in the Multinational Business represents the recognisable black right to Exercisable Voting Rights; and
 - 6.3.5 the rights of ownership in the Equity Instruments are comparable to rights that would have accrued had the Equity Instrument B-BBEE in the Multinational Business.

ANNEXE 103(A)

This formula is for determining the Ownership Score under an Equity Equivalent Programme using either of the targets in paragraph 5.2, where the contribution is made upfront on a once off basis.

$$A = \frac{B}{C} \times 20$$

Where

A is ownership points of the Multinational in any year arising from its equity equivalent contribution

B is the value of contributions made

C is the financial value of the target of 4% of total revenue from its South African operations annually over the period of continued measurement;

This formula is for determining the Ownership Score under an Equity Equivalent Programme using either of the targets in paragraphs 5.2, where the contribution is made on an annual basis towards a ten year target is as follows:

$$A = \frac{B}{C} \times \left(\frac{1}{25\% \times D} \right) \times 20$$

Where

A is ownership points of the Multinational in any year arising from its equity equivalent contribution

B is the value of total contributions made prior to the date of measurement

C is the financial value of the target in paragraph 4.2.1. or the ten year value of contributions to be made over the life of this statement

D is the time-based graduation factor outlined below:

- 10% for the first year after the commencement of statement 000.
- 20% for the second year after the commencement of statement 000.
- 40% from the first day of the third year after the commencement date of statement 000 to the last day at the end of the fourth year after the commencement date of statement 000.
- 60% from the first day of the fifth year after the commencement date of statement 000 to the last day at the end of the sixth year after the commencement date of statement 000.
- 80% from the first day of the seventh year after the commencement date of statement 000 to the last day at the end of the eighth year after the commencement date of statement 000.
- 100% from the first day of the ninth year after the commencement date of statement 000 to the last day at the end of the tenth year after the commencement date of statement 000.