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## GENERAL NOTICE

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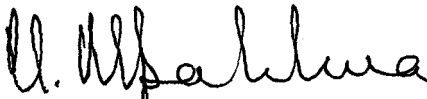
### NOTICE 112 OF 2007

#### DEPARTMENT OF TRADE AND INDUSTRY

##### **CODES OF GOOD PRACTICE ON BLACK ECONOMIC EMPOWERMENT**

I, Mandisi Mpahlwa, 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

REPUBLIEK 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

### Arrangement of this statement

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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 5 million or less qualifies as an Exempted Micro-Enterprise, .
- 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 1C 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

Arrangement of this statement

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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 Charter 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

#### Arrangement of this statement

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| 5    | <i>Important Clarification</i>                             | 3    |

## 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 (Codeseries 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 (Codeseries 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 Go-operatives                                      |                  |                              |
| 2.3      | Realisation points:  |                  |                              |
|          | 2.3.1 Ownership fulfilment   | 1                | Refer to paragraph 10.1      |
|          | 2.3.2 Net Value  | 7                | Refer to Annex 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 13 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 Annex 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**

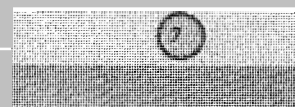
- 9.1 An Equity Instrument carrying preferent rights is measurable in the same manner as an ordinary Equity instrument.
- 9.2 An Equity Instrument carrying preferent rights that has the characteristics of a debt, regardless of whether the debt is that of an Enterprise or of a Participant, is an ordinary 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.
- 10.13 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 members 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 entitlements 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 its 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 its 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

$$A = B \times \left( \frac{1}{1^{50\%} \times C} \right) \times 7$$

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

### Arrangement of this statement

| Para | Subject   | Page |
|------|---|------|
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| 4    | <i>Measurement Principles</i>   | 3    |
| 5    | <i>Recognition of Sale of Assets, Equity Instruments and Business</i> | 3    |
| 5    | <i>Annexe 102(A)</i>  | 4    |

## **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

### Arrangement of this statement

| Para | Subject   | Page |
|------|---|------|
| 1    | Objectives of this statement  | 2    |
| 2    | Key measurement principles  | 2    |
| 3    | Recognition of Equity Equivalent Programmes                               | 2    |
| 4    | Measurement of Equity Equivalent Contributions on the Ownership Scorecard | 3    |
| 5    | Two Specific Examples of Equity Equivalent Programmes                     | 3    |
| 6    | Specific rules on Multinationals  | 4    |
| 7    | Annexe 103  | 5    |

## 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 5-BBEE by Multinationals is measurable,

## 2 Key Measurement Principles

Any Equity Equivalent Contributions towards the Ownership Element of 5-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 principles 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.

## CODE SERIES 200: MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 200: THE GENERAL PRINCIPLES FOR MEASURING MANAGEMENT CONTROL

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

#### Arrangement of this statement

| Para | Subject  | Page |
|------|--|------|
| 1    | <i>Objectives of this statement</i>                    | 2    |
| 2    | <i>Management control scorecard</i>                    | 2    |
| 3    | <i>Common examples of Top Management</i>               | 2    |
| 4    | <i>Key measurement principles</i>                      | 2    |
| 5    | <i>Calculating the Adjusted Recognition for Gender</i> | 3    |
| 6    | <i>Calculating compliance</i>                          | 3    |
| 7    | <i>Annexe 200(A)</i>                                   | 4    |

## 1 Objectives of this Statement

The objectives of this statement are to specify:

- 1.1 the scorecard for measuring the Management Control Element of B-BBEE;
- 1.2 define the key measurement principles associated with the Management Control Element of B-BBEE; and
- 1.3 the calculations for measuring compliance.

## 2 Management Control Scorecard

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

| Category                        | Management Control Indicator   | Weighting points | Compliance Target |
|---------------------------------|--|------------------|-------------------|
| <b>2.1 Board participation:</b> |  |                  |                   |
|                                 | 2.1.1 Exercisable Voting Rights of black Board members using the Adjusted Recognition for Gender | 3                | 50%               |
|                                 | 2.1.2 Black Executive Directors using the Adjusted Recognition for Gender                        | 2                | 50%               |
| <b>2.2 Top Management:</b>      |  |                  |                   |
|                                 | 2.2.1 Black Senior Top Management using the Adjusted Recognition for Gender                      | 3                | 40%               |
|                                 | 2.2.2 Black Other Top Management using the Adjusted Recognition for Gender                       | 2                | 40%               |
| <b>2.3 Bonus points:</b>        |  |                  |                   |
|                                 | Black Independent Non-Executive Board Members  | 1                | 40%               |

## 3 Common Examples of top Management

The inclusion of the following examples of Top Management is for guidance purposes only

- 3.1 Senior Top Management positions include the chief executive officer, the chief operating officer, the chief financial officer and other people holding similar positions
- 3.2 Other Top Management positions include the chief information officer, the head of marketing, the head of sales, the head of public relations, the head of transformation, the head of human resources and other people holding similar positions

## 4 Key Measurement Principles

- 4.1 A Measured Entity receives points by meeting the targets for participation of black people and black women at Board and Top Management level
- 4.2 A Measured Entity must use the data in calculating its score under the Management Control scorecard used in its returns filed with the Department of Labour under the Employment Equity Act. This does not apply to Measured Entities exempt from filing such returns
- 4.3 A Measured Entity that does not distinguish between Top Management and Senior Management may include its Senior Management under this statement. If a Measured Entity adopts this approach -



- 4.3.1 the corresponding targets for Senior Management in Code series 300 will apply to the Management Control scorecard,
- 4.3.2 Senior Management included in this statement is not measurable under statement 300
- 4.4 If a Measured Entity does not distinguish between Senior Top Management and Other Top Management, then Top Management is measurable as a single indicator with a Weighting of 5 points under paragraphs 2.2.1 and 2.2.2
- 4.5 If Measured Entities do appoint Non-Executive Independent Board Members, they are encouraged to appoint persons who do not serve in that capacity for any other Measured Entity.

## **5 Calculating the Adjusted Recognition for Gender**

The Adjusted Recognition for Gender is calculated in terms of formula "A" in Annexe 200(A).

## **6 Calculating Compliance**

- 6.1 The Management Control indicators provided for in the Management Control Scorecard must be calculated in terms of formulas 'B' and 'C' in Annexe 200(A)
- 6.2 If a Measured Entity gains a score for a Management Control indicator that is more than the relevant weighting points, that Enterprise will only receive the Weighting points.



## ANNEXE 200(A)

## A: Calculation of the Adjusted Recognition for Gender

$$A = \frac{B}{2} + C$$

C is limited to a maximum of 50% of the target

Where

A is the Adjusted Recognition for Gender

B is the percentage of employees in the measurement category that are black people

C is the percentage of employees in the measurement category that are black women

## B: Calculating Compliance

The calculation of the management indicators provided for in paragraphs 2.1.1, 2.1.2., 2.2.1 and 2.2.2 is as follows:

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

C is limited to a maximum of 50% of the target

Where

A is the score for measured management indicator

B is the Adjusted Recognition for Gender calculated in paragraph 5

C is the target for that measurement category as per paragraph 2

D is the Weighting for measured indicator as per paragraph 2

C. The calculation of the management indicator provided for in paragraph 2.3 is as follows:

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

Where

A is the score for the management indicator in paragraph 2.3 of the number of black Independent Non-Executive Board Members of the Measured Entity as a percentage of the total number of Independent Non-Executive Board Members of the Measured Entity

C is the target for Independent Non-Executive Board Members of the Measured Entity in paragraph 2.3

D is the Weighting points in paragraph 2.3

## CODE SERIES 300: MEASUREMENT OF THE EMPLOYMENT EQUITY ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 300: THE GENERAL PRINCIPLES FOR MEASURING EMPLOYMENT EQUITY

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

#### Arrangement of this statement

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|------|--|------|
| 1    | <i>Objectives of this statement</i>                    | 2    |
| 2    | <i>Employment Equity scorecard</i>                     | 2    |
| 3    | <i>Key measurement principles</i>                      | 2    |
| 4    | <i>Calculating the Adjusted Recognition for Gender</i> | 3    |
| 5    | <i>Measurement of the employment equity criteria</i>   | 3    |
| 6    | <i>Annexe 300(A)</i>                                   | 4    |

## 1 Objectives of this statement

The objectives of this statement are to

- 1.1 specify the scorecard for measuring Employment Equity contributions to B-BBEE;
- 1.2 define the key measurement principles for measuring the Employment Equity contributions to B-BBEE; and
- 1.3 define the formula for calculating the score for Employment Equity.

## 2 Employment Equity Scorecard

- 2.1 The following table represents the criteria used for deriving a score for Employment Equity under this statement:

| Measurement Category & Criteria  | Weighting points | Compliance targets |             |
|--|------------------|--------------------|-------------|
|  |                  | Years 0 - 5        | Years 6 -10 |
| 2.1.1 Black Disabled Employees as a percentage of all employees using the Adjusted Recognition for Gender                  | 2                | 2%                 | 3%          |
| 2.1.2 Black employees in Senior Management as a percentage of all such employees using the Adjusted Recognition for Gender | 5                | 43%                | 60%         |
| 2.1.3 Black employees in Middle Management as a percentage of all such employees using the Adjusted Recognition for Gender | 4                | 63%                | 75%         |
| 2.1.4 Black employees in junior Management as a percentage of all such employees using the Adjusted Recognition for Gender | 4                | 63%                | 80%         |
| 2.1.5 Bonus point for meeting or exceeding the EAP targets in each category under 2.1.1 to 2.1.4                           | 3                |                    |             |

- 2.2 The Weighting points in the Employment Equity scorecard represent the maximum number of points possible for each of the criteria.

## 3 Key Measurement Principles

- 3.1 Wherever possible, a Measured Entity must use the data that it files with the Department of Labour under the Employment Equity Act in calculating its score under the employment equity scorecard.
  - 3.1.1 No Measured Entity shall receive any points under the Employment Equity Scorecard unless they have achieved a sub-minimum of 40% of each of the targets set out on the Employment Equity Scorecard in respect of the both five year periods.

- 3.2 In order for a Measured Entity to achieve bonus points at a particular level, the entity needs to meet or exceed the **EAP** targets
- 3.3 A Measured Entity exempt from filing returns must compile its data for calculating its score under the Employment Equity Scorecard using the guidelines set out in the Employment Equity Act and its EE Regulations.
- 3.4 If the organisational structure of a Measured Entity does not distinguish between Middle Management and Junior Management, it can consolidate those Measurement Categories against the targets for Junior Management. The weighting points for the Measurement Categories must be adjusted as follows:
- 3.4.1 Senior Management - 8 points;
- 3.4.2 Junior Management - 6 points
- 3.5 Black women employees in each Measurement Category qualify for enhanced recognition using the Adjusted Recognition for Gender.

#### **4 Calculating the Adjusted Recognition for Gender**

The Adjusted Recognition for Gender is calculated in terms of the formula set out in Annex (300A).

#### **5 Measurement of the Employment Equity Criteria**

The criteria in the Employment Equity scorecard is measured in terms of the formula set out in Annex 300(A)



## ANNEX 300 (A)

## A: CALCULATING THE ADJUSTED RECOGNITION FOR GENDER

The calculation of the Adjusted Recognition for Gender is as follows:

$$A = \frac{B}{2} + C$$

C is limited to a maximum of 50% of the target

Where

A is the Adjusted Recognition for Gender

B is the percentage of employees in the measurement category that are black people

C is the percentage of employees in the measurement category that are black women

## B: Measurement of the Employment Equity Criteria

This equation explains the method of measurement of the criteria in the Employment Equity scorecard;

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

Where

A is the score for measurement category indicator

B is the Adjusted Recognition for Gender calculated in paragraph 4

C is the target for that measurement category as per paragraph 2

D is the Weighting for measured indicator as per paragraph 2



# CODE SERIES 400: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

## STATEMENT 400: THE GENERAL PRINCIPLES FOR MEASURING SKILLS DEVELOPMENT

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

### Arrangement of this statement

| Para | Subject   | Page |
|------|---|------|
| 1    | Objectives of this statement                    | 2    |
| 2    | The Skills Development Scorecard                | 2    |
| 3    | Key measurement principles                      | 2    |
| 4    | Calculating the Adjusted Recognition for Gender | 3    |
| 5    | Measurement of skills development indicators    | 3    |
| 6    | The Learning Programme Matrix                   | 3    |
| 7    | Annexe 400 (A)                                  | 4    |
| 8    | Annexe 400 (B)                                  | 5    |



## ■ Objectives of this Statement

The objectives of this statement are to specify

- 1.1 the scorecard for measuring the Skills Development Element of B-BBEE,
- 1.2 define the key measurement principles associated with the Skills Development Element; and
- 1.3 the formula for measuring the Skills Development Element of B-BBEE.

## 2 The Skills Development Scorecard

- 2.1 The following table represents the criteria used for deriving a score for Skills Development under this statement.

| Category | Skills Development Element  | Weighting points | Compliance Target |
|----------|---|------------------|-------------------|
| 2.1.1    | Skills Development Expenditure on any program specified in the Learning Programmes Matrix'  |                  |                   |
|          | 2.1.1.1 Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for black employees as a percentage of Leviable Amount using the Adjusted Recognition for Gender                    | 6                | 3%                |
|          | 2.1.1.2 Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for black employees with disabilities as a percentage of Leviable Amount using the Adjusted Recognition for Gender. | 3                | 0.3%              |
| 2.1.2    | Learnerships  |                  |                   |
|          | 2.1.2.1 Number of black employees participating in Learnerships or Category B, C and D Programmes as a percentage of total employees using the Adjusted Recognition for Gender  | 6                | 5%                |

- 2.2 The Weighting points in the Skills Development scorecard represent the maximum number of points possible for each of the criteria.

## 3 Key Measurement Principles

- 3.1 Measured Entities receive points on the Skills Development scorecard only if:
  - 3.3.1 they are in compliance with the requirements of the Skills Development Act and the Skills Development Levies Act;
  - 3.1.2 they have registered with the applicable SETA,
  - 3.1.3 they have developed a Workplace Skills Plan; and
  - 3.14 they have implemented programmes targeted at developing Priority Skills generally, and specifically, for black employees.
- 3.2 Expenses on scholarships and bursaries for employees does not constitute Skills Development Expenditure if the Measured Entity can recover any portion of those expenses from the employee or if the grant of the scholarship or bursary *is* conditional. Despite the aforegoing, if the right of recovery or the condition involves either of the following obligations of the employee, the expenses are recognisable:
  - 3.2.1 the obligation of successful completion in their studies within the time period allocated, or

- 3.2.2 the obligation of continued employment by the Measured Entity for a period following successful completion of their studies is not more than the period of their studies
- 3.3 Any Skills Development Expenditure by a Measured Entity that is an ABET programme is recognisable at a multiple of 1.25 to the actual value of such Skills Development Expenditure
- 3.4 Skills Development Expenditure includes any legitimate expenses incurred for any Learning Programme offered by a Measured Entity to its employees evidenced by an invoice or appropriate internal accounting record.
- 3.5 Skills Development Expenditure arising from Uncertified Learning Programmes or from Category G Learning Programmes under the Learning Programmes Matrix cannot represent more than 15% of the total value of Skills Development Expenditure
- 3.6 Legitimate training expenses includes:
- 3.6.1 costs of training materials;
- 3.6.2 costs of trainers;
- 3.6.3 costs of training facilities including costs of catering;
- 3.6.4 scholarships and bursaries;
- 3.6.5 course fees.
- 3.6.6 accommodation and travel; and
- 3.6.7 administration costs such as the organization of training including, where appropriate, the cost to the Measured Entity of employing a skills development facilitator or a training manager.
- 3.7 Salaries or wages paid to an employee participating as a learner in any Learning Programme only constitute Skills Development Expenditure if the Learning Programme is a Learnership or falls within Category B; C; or D of the Learning Programme Matrix.

#### **4 Calculating the Adjusted Recognition for Gender**

The calculation of the Adjusted Recognition for Gender is set out in formula "A" in Annexe 400(B)

#### **5 Measurement of Skills Development Indicators**

The formula that explains the method of measurement of the criteria in the Skills Development scorecard is in terms of formula "B" in Annexe 400(B)

#### **6 The Learning Programme Matrix**

The Minister may from time to time, by notice in the gazette, revise or substitute the Learning Programme Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity for the first 12-month period following the gazetting of a revision or substitution

## Annexe 400A - Learning Programme Matrix

| Cat | Narrative Description   | Delivery Mode   | Learning Site   | Learning Achievement  |
|-----|---|---|---|---|
| A   | Institution-based theoretical instruction alone - formally assessed by the institution  | Institutional instruction   | Institutions such as universities and colleges, schools, ABET providers               | Recognised theoretical knowledge resulting in the achievement of a degree, diploma or certificate issued by an accredited or registered formal institution of learning  |
| B   | Institution-based theoretical instruction as well as some practical learning with an employer or in a simulated work environment - formally assessed through the institution                              | Mixed mode delivery with institutional instruction as well as supervised learning in an appropriate workplace or simulated work environment | Institutions such as universities and colleges, schools, ABET providers and workplace | Theoretical knowledge and workplace experience with set requirements resulting in the achievement of a degree, diploma or certificate issued by an accredited or registered formal institution of learning  |
| C   | Recognised or registered structured experiential learning in the workplace that is required after the achievement of a qualification - formally assessed by a statutory occupational or professional body | Structured learning in the workplace with mentoring or coaching   | Workplace   | Occupational or professional knowledge and experience formally recognised through registration or licensing   |
| D   | Occupationally-directed instructional and work-based learning programme that requires a formal contract - formally assessed by an accredited body   | Institutional instruction together with structured, supervised experiential learning in the workplace                                       | Institution and workplace   | Theoretical knowledge and workplace learning, resulting in the achievement of a South African Qualifications Authority registered qualification, a certificate or other similar occupational or professional qualification issued by an accredited or registered formal institution of learning |
| E   | Occupationally-directed instructional and work-based learning programme that does not require a formal contract - formally assessed by an accredited body   | Structured, supervised experiential learning in the workplace which may include some institutional instruction                              | Workplace and some institutional as well as ABET providers                            | Credits awarded for registered unit standards   |
| F   | Occupationally-directed informal instructional programmes   | Structured information sharing or direct instruction involving workshops, seminars and conferences and short courses                        | Institutions, conferences and meetings  | Continuing professional development, attendance certificates and credits against registered unit standards (in some instances)  |
| G   | Work-based informal programmes  | Informal training   | Workplace   | Increased understanding of job or work context or improved performance or skills  |



## ANNEXE 400(B)

**A: Calculating the Adjusted Recognition for Gender**

The calculation of the Adjusted Recognition for Gender is as follows

$$A = \frac{B}{2} + C$$

C is limited to a maximum of 50% of the target

Where

A is the Adjusted Recognition for Gender

B is the percentage of employees in the measurement category that are black people

C is the percentage of employees in the measurement category that are black women

**B: Measurement of Skills Development Indicators**

This formula explains the method of measurement of the criteria in the Skills Development scorecard:

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

Where

A is the score for any given criteria as referred to in the scorecard under statement 400

B is the Adjusted Recognition for Gender calculated under the calculation of the adjusted recognition for gender

C is the target for the applicable criteria as referred to in the scorecard under statement 400

D is the Weighting for the applicable criteria as referred in the scorecard under statement 400



# CODE SERIES 500: MEASUREMENT OF THE PREFERENTIAL PROCUREMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

## STATEMENT 500: THE GENERAL PRINCIPLES FOR MEASURING PREFERENTIAL PROCUREMENT

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  | 2    |
| 2    | Preferential Procurement Scorecard                                  | 2    |
| 3    | Key Measurement Principles  | 2    |
| 4    | Black Owned Professional Services Providers and Entrepreneurs       | 3    |
| 5    | Total Measured Procurement Spend                                    | 3    |
| 6    | Exclusions from Total Measured Procurement Spend                    | 4    |
| 7    | Measurement of B-BBEE Procurement Spend                             | 5    |
| 8    | The calculation of Preferential Procurement contributions to B-BBEE | 5    |
| 9    | Annexe 500(A)   | 6    |



## ■ Objectives of this Statement

The objectives of this statement are to specify:

- 1.1 the Preferential Procurement scorecard;
- 1.2 the key measurement principles applicable to calculating Preferential Procurement contributions to B-BBEE;
- 1.3 a basis for the award of an enhanced recognition status to certain categories of Preferential Procurement;
- 1.4 principles applicable when calculating B-BBEE Procurement Spend; and
- 1.5 the formula for calculating the individual criteria specified in the Preferential Procurement scorecard

## 2 Preferential Procurement Scorecard

- 2.1 The following table represents the criteria for deriving a score for Preferential Procurement under this statement

| Criteria   | Weighting points | Compliance targets |              |
|--|------------------|--------------------|--------------|
|  |                  | Years 0 - 5        | Years 6 - 10 |
| 2.1.1 B-BBEE Procurement Spend from all Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend   | 12               | 50%                | 70%          |
| 2.1.2 B-BBEE Procurement Spend from Qualifying Small Enterprises or Exempted Micro-Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend | 3                | 10%                | 15%          |
| 2.1.3 B-BBEE Procurement Spend from any of the following Suppliers as a percentage of Total Measured Procurement Spend:  | 5                | 15%                | 20%          |
| 2.1.3.1 Suppliers that are 50% black owned (3 out of 5 points); or   |                  |                    |              |
| 2.1.3.2 Suppliers that are 30% black women owned. (2 out of 5 points)  |                  |                    |              |

## 3 Key Measurement Principles

- 3.1 The Weighting points in the Preferential Procurement scorecard represent the maximum number of points possible for each of the criteria.
- 3.2 All goods and services procured by the Measured Entity, other than any portion specifically excluded in terms of this statement, is measurable in calculating its Total Measured Procurement Spend
- 3.3 If a Measured Entity procures goods and services from a Supplier that is:
  - 3.3.1 a recipient of enterprise development contributions from the Measured Entity under Code series 600, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.2; and
  - 3.3.2 a Value-Adding Supplier, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.25.
- 3.4 This statement applies to all areas of procurement.

#### 4 Black Owned Professional Service Providers and Entrepreneurs

- 4.1 A key intention of this statement is to promote the use by Measured Entities of black owned professional service providers and entrepreneurs as suppliers.
- 4.2 Black owned professional service providers and entrepreneurs that comply with all the elements of the Codes:
  - 4.2.1 qualify for recognition in all three criteria in the preferential procurement scorecard; and
  - 4.2.2 qualify as value-adding suppliers thereby attracting the benefits in paragraph 3.3.2

#### 5 Total Measured Procurement Spend

The following procurement is measurable within Total Measured Procurement Spend:

- 5.1 Cost of sales: all goods and services procured that comprise the cost of the sales of the Measured Entity;
- 5.2 Operational expenditure: all goods and services procured that comprise the operational expenditure of the Measured Entity;
- 5.3 Capital expenditure: all capital expenditure incurred by the Measured Entity;
- 5.4 Public sector procurement: all goods and services procured from organs of state and public entities listed in Schedules 2 and 3 to the Public Finance Management Act of 1998;
- 5.5 Monopolistic procurement: all goods and services procured from suppliers that enjoy a monopolistic position;
- 5.6 Third-party procurement: all procurement for a third-party or a client, where the cost of that procurement is an expense recorded in the Measured Entity's annual financial statements;
- 5.7 Labour brokers and independent contractors: any procurement of the Measured Entity which is Outsourced Labour Expenditure;
- 5.8 Pension and medical aid contributions: payments made to any post retirement funding scheme or to a medical aid or similar medical insurer by a Measured Entity for its employees, excluding any portions of such payments which are a contribution to a capital investment of the employee. The scheme or insurer must issue a certificate dividing payments between the capital investment portion and the balance to establish the amount that is measurable within Total Measured Procurement Spend;
- 5.9 Trade commissions: any commissions or similar payments payable by a Measured Entity to any other person pursuant to the business or trade of the Measured Entity;
- 5.10 Empowerment related expenditure: all goods and services procured in carrying out B-BE EE. The Total Measured Procurement Spend does not include the actual contribution portion recognised under Code series 600 or 700 but does include any expenditure incurred in facilitating those contributions;
- 5.11 Imports: all goods and services that are imported or procured from a non-South African source; and

- 5.12 Intra-group procurement. except as provided in statement 002, all goods and services procured from subsidiaries or holding companies of the Measured Entity

## 6 Exclusions from Total Measured Procurement Spend

The following list is the only permissible exclusions from Total Measured Procurement Spend recognisable in terms of paragraph 5:

- 6.1 Taxation: any amount payable to any person which represents a lawful tax or levy imposed by an organ of state authorised to impose such tax or levy, including rates imposed by a municipality or other local government,
- 6.2 Public sector procurement:
- 6.2.1 all goods and services procured from organs of state and public entities listed in Schedule 1 of the Public Finance Management Act of 1999. Despite this, procurement by a Measured Entity from a local government authority, which is a reseller of that service, is measurable at the B-BBEE Recognition Level of the primary Supplier of the service; and
- 6.2.2 in any event, any procurement of any goods or services from any organ of state or public entity that enjoys a statutory or regulated monopoly in the supply of such goods or services, is excluded;
- 6.3 Salaries, wages, remunerations, and emoluments. any amount payable to an employee as an element of their salary or wage and any emolument or similar payment paid to a director of a Measured Entity,
- 6.4 Pass-through third-party procurement: all procurement for a third-party or a client that is recorded as an expense in the third-party or client's annual financial statements but is not recorded as such in the Measured Entity's annual financial statements:
- 6.5 Empowerment related procurement:
- 6.5.1 investments in or loans to an Associated Enterprise,
- 6.5.2 investments, loans or donations qualifying for recognition under any statement under Code series 600 or 700,
- 6.6 Imports: the following imported goods and services.
- 6.6.1 imported capital goods or components for value-added production in South Africa provided that:
- 6.6.1.1 there is no existing local production of such capital goods or components; and
- 6.6.1.2 importing those capital goods or components promotes further value-added production within South Africa,
- 6.6.2 imported goods and services other than those listed in paragraph 6.6.1 if there is no local production of those goods or services including, but not limited to, imported goods or services that -
- 6.6.2.1 carry a brand different to the locally produced goods or services; or
- 6.6.2.2 have different technical specifications to the locally produced goods or services

## **7 Measurement of B-BBEE Procurement Spend**

- 7.1 B-BBEE Procurement Spend is the value of the procurement falling within paragraph 5 and not excluded by paragraph 6. If a supplier falls within a category of supplier listed in paragraph 3.3 or 4, the value of procurement from that supplier is multiplied by the applicable factor listed in paragraph 3.3.
- 7.2 B-BBEE Procurement Spend can be measured in terms of formula "A" in Annexure 500(A).
- 7.3 The B-BBEE Procurement Spend for a Measured Entity in respect of a supplier is calculated by multiplying the spend contemplated by paragraph 5 (and not excluded by paragraph 6) in respect of that supplier by the supplier's B-BBEE Recognition Level.
- 7.4 A Measured Entity's Total Procurement Spend is the total of all amounts calculated in terms of paragraph 7.3.

## **8 The Calculation of Preferential Procurement Contributions to B-BBEE**

- 8.1 A Measured Entity receives a score for procurement in proportion to the extent that it meets the compliance target.
- 8.2 The Measured Entity's score for Preferential Procurement contributions to B-BBEE under the preferential procurement scorecard can be calculated in terms of formula "8" in Annexure 500(A).

## ANNEXE 500(A)

## A B-BBEE PROCUREMENT SPEND.

$$A = \text{sum of } (B \times C)$$

Where

**A** is the calculated total B-BBEE Procurement Spend for the Measured Entity. It is equal to the sum of the result of the product of B and C for each Supplier of the Measured Entity not excluded under the exclusion from total measured procurement spend;

**B** is the value of procurement falling within Total measured procurement spend and not excluded under the exclusion from total measured procurement spend from each Supplier of the Measured Entity;

**C** is the B-BBEE Procurement Recognition Level of each such Supplier of the Measured Entity.

## 5 THE CALCULATION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS TO B-BBEE

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

Where

**A** is the calculated preferential procurement score for each criteria in the scorecard under statement 500 for the Measured Entity;

**B** is the total B-BBEE Procurement Spend of the Measured Entity calculated under measurement of B-BBEE Procurement Spend as a percentage of Total Measured Procurement Spend of that Measured Entity;

**C** is the compliance target for each criteria specified in the scorecard under statement 500;

**D** is the Weighting points allocated to each criteria specified in the scorecard under statement 500.

## CODE SERIES 600: MEASUREMENT OF ENTERPRISE DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 600: THE GENERAL PRINCIPLES FOR MEASURING ENTERPRISE DEVELOPMENT ELEMENT

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

#### Arrangement of this statement

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| 2    | <i>The Enterprise Development scorecard</i>    | 2    |
| 3    | <i>Key Measurement Principles</i>              | 2    |
| 4    | <i>Measurement of Qualifying Contributions</i> | 5    |
| 5    | <i>The Benefit Factor Matrix</i>               | 5    |
| 6    | <i>Annexe 600 (A) - Benefit Factor Matrix</i>  | 6    |
| 7    | <i>Annexe 600 (B) - Formula</i>                | 7    |



## 1 Objectives of this statement

The objectives of this statement are to specify:

- 1.1 the Enterprise Development (ED) scorecard;
- 1.2 the key measurement principles for calculating Qualifying Enterprise Development Contributions; and
- 1.3 the formula for calculating the individual criteria specified in the ED scorecard.

## 2 The Enterprise Development Scorecard

2.1.1 The NPAT or average target applies unless:

2.1.1.1 the company does not make a profit last year or on average over the last five years

2.1.1.2 the net profit margin is less than a quarter of the norm in the industry.

2.1.2 If the Turnover is to be used, the target will be set at

2.1.2.1  $3\% \times \text{Indicative Profit Margin (NPAT/Turnover)} \times \text{Turnover}$

2.1.2.2 Indicative profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm.

2.2 The following table represents the criteria and method used for deriving a score for Enterprise Development under this statement:

| Criteria   | Weighting Points | Compliance Target |
|--|------------------|-------------------|
| Average annual value of all Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target. | 15               | 3% of NPAT        |

2.3 The weighting points in the ED scorecard represent the maximum number of points possible for each of the criteria.

## 3 Key Measurement Principles

3.1 General principles:

3.1.1 Measured Entities receive recognition for any Qualifying Enterprise Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method

3.1.2 Qualifying Enterprise Development Contributions of any Measured Entity are recognisable cumulatively.

3.1.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date), until the date of measurement

3.1.2.2 The inception date chosen by the Measured Entity must not be earlier than 5 years before the commencement date of this statement, and binds the Measured Entity for the duration of this statement

3.1.2.3 No portion of the value of any Qualifying Enterprise Development Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement

- 3.2 Recognition of Enterprise Development Contributions.
- 3.2.1 Enterprise Development Contributions consist of monetary or non-monetary, recoverable or non-recoverable contributions actually initiated and implemented in favour of beneficiary entities by a Measured Entity with the specific objective of assisting or accelerating the development, sustainability and ultimate financial and operational independence of that beneficiary. This is commonly accomplished through the expansion of those beneficiaries' financial and/or operational capacity.
- 3.2.2 The full value of Category A Enterprise Development Contributions, adjusted using the Benefit Factor, multiplied by 1.25 is recognisable.
- 3.2.3 The full value of Category B Enterprise Development Contributions is recognisable.
- 3.2.4 Recognition of Enterprise Development Contribution is limited to Qualifying Enterprise Development Contributions made to beneficiary entities. However, historical contributions to non-qualifying beneficiaries are considered as Qualifying Enterprise Development Contributions if
- 3.2.4.1 those contributions were initiated by the Measured Entity in favour of the beneficiary on the understanding that the beneficiary, as a result of those Enterprise Development Contributions, would over time meet the requirements of a beneficiary entity. For the purposes of this paragraph-
- 3.2.4.1.1 contributions commenced before the commencement date of the Codes, must be shown to have involved agreement between the Measured Entity and the beneficiary that the support received be used, at least in part, for the purposes of improving the beneficiary's overall BEE compliance level, and
- 3.2.4.1.2 contributions commenced after the commencement date of the Codes, must be in terms of a written agreement between the Measured Entity and the beneficiary recording that support received be used, at least in part, for the purposes of meeting the definitional requirements of a beneficiary entity, and
- 3.2.4.2 the beneficiary has met the definitional requirements of a beneficiary entity.
- 3.2.5 The following is a non-exhaustive list of Enterprise Development Contributions:
- 3.2.5.1 grant Contributions to beneficiary entities,
- 3.2.5.2 investments in beneficiary entities;
- 3.2.5.3 loans made to beneficiary entities;
- 3.2.5.4 guarantees given or security provided on behalf of beneficiaries,
- 3.2.5.5 credit facilities made available to beneficiary entities;
- 3.2.5.6 direct costs incurred by a Measured Entity in assisting and hastening development of beneficiary entities;
- 3.2.5.7 overhead costs of a Measured Entity directly attributable to Enterprise Development Contributions,
- 3.2.5.8 Enterprise Development or developmental capital advanced to beneficiary entities,
- 3.2.5.9 preferential credit terms granted by a Measured Entity to beneficiary entities;
- 3.2.5.10 preferential terms granted by a Measured Entity in respect of its supply of **goods** or services to beneficiary entities,

- 3.2.5.11 contributions made to settling service costs relating to the operational or financial capacity or efficiency levels of a beneficiary entities.
- 3.2.5.12 payments made by the Measured Entity to third parties to perform enterprise development on the Measured Entity's behalf:
- 3.2.5.13 discounts given to beneficiary entities in relation to the acquisition and maintenance costs associated with the grant to those beneficiary entities of franchise, licence, agency, distribution or other similar business rights,
- 3.2.5.14 the creation or development of capacity and expertise for beneficiary entities needed to manufacture or produce goods or services previously not manufactured, produced or provided in the Republic of South Africa,
- 3.2.5.15 facilitating access to credit for beneficiary entities without access to similar credit facilities through traditional means owing to a lack of credit history, high-risk or lack of collateral,
- 3.2.5.16 provision of training or mentoring to beneficiary entities which will assist the beneficiary entities to increase their operational or financial capacity, and
- 3.2.5.17 the maintenance by the Measured Entity of an enterprise development unit which focuses exclusively on support of beneficiary entities or candidate beneficiary entities
- 3.2.6 The creation or development of the capacity of beneficiary entities which will enable them to manufacture and produce goods or provide services previously not available in the Republic of South Africa, may constitute an Enterprise Development Contribution.
- 3.2.7 New projects promoting beneficiation may constitute an Enterprise Development Contribution
- 3.2.8 Provision of preferential credit facilities to a beneficiary entity by a Measured Entity may constitute an Enterprise Development Contribution. Examples of such contributions include without limitation
- 3.2.8.1 provision of finance to beneficiary entities at lower than commercial rates of interest,
- 3.2.8.2 relaxed security requirements or absence of security requirements for beneficiary entities unable to provide security for loans, and
- 3.2.8.3 settlement of accounts with beneficiary entities over a shorter period of time in relation to the Measured Entity's normal payment period. provided the shorter period is no longer than 10 days:
- 3.2.9 providing training or mentoring to beneficiary communities by a Measured Entity. (Such contributions are measurable by quantifying the cost of time (excluding travel or commuting time) spent by staff or management of the Measured Entity in carrying out such initiatives. A clear justification, commensurate with the seniority and expertise of the trainer or mentor, must support any claim for time costs incurred)
- 3.2.9.1 Maintaining an enterprise development unit by the Measured Entity (Only that portion of salaries and wages attributable to time spent by the staff in, and the other expenses related to, promoting or implementing enterprise development constitute contributions)



3.2.9.2 Payments made by the Measured Entity to third parties to perform enterprise development on the Measured Entity's behalf

#### **4 Measurement of Qualifying Contributions**

Qualifying Contributions are measurable using the formula "A" in Annex 600(B)

#### **5 The Benefit Factor Matrix**

The Minister may from time to time, by notice in the gazette, revise or substitute the Benefit Factor Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity in respect of the first 12-month period following the gazetting of a revision or substitution.

**Annexe 600(A) - Benefit Factor Matrix**

| Qualifying Contribution type  | Contribution Amount   | Benefit Factor   |
|---|---|--|
| <b>Grant and Related Contributions</b>  |   |  |
| Grant Contribution  | Full Grant Amount   | 100%   |
| Direct Cost incurred in supporting enterprise development   | Verifiable Cost (including both monetary and non-monetary)        | 100%   |
| Discounts in addition to normal business practices supporting enterprise development                                | Discount Amount (in addition to normal business discount)         | 100%   |
| Overhead Costs incurred in supporting enterprise development (including people appointed in enterprise development) | Verifiable Costs (including both monetary and non-monetary)       | 80%  |
| <b>Loans and Related Contributions</b>  |   |  |
| Interest-Free Loan with no security requirements supporting enterprise development                                  | Outstanding Loan Amount   | 100%   |
| Standard Loan to Black Owned EME and QSEs   | Outstanding Loan Amount   | 70%  |
| Standard Loan provided to other Beneficiary Enterprises   | Outstanding Loan Amount   | 60%  |
| Guarantees provided on behalf of a Beneficiary entity   | Guarantee Amount  | 3%   |
| Lower Interest Rate   | Outstanding loan amount   | Prime Rate - Actual Rate   |
| <b>Equity Investments and Related Contributions</b>   |   |  |
| Minority Investment in Black Owned EME and QSEs   | Investment Amount   | 100%   |
| Minority Investment in Other Beneficiary Enterprises  | Investment Amount   | 80%  |
| Enterprise Development Investment with lower dividend to financier  | Investment Amount   | Dividend Rate of Ordinary Shareholders - Actual Dividend Rate of Contributor |
| <b>Contributions made in the form of human resource capacity</b>  |   |  |
| Professional services rendered at no cost and supporting enterprise development                                     | Commercial hourly rate of professional                            | 80%  |
| Professional services rendered at a discount and supporting enterprise development                                  | Value of discount based on commercial hourly rate of professional | 80%  |
| Time of employees of Measured Entity productively deployed in assisting beneficiaries                               | Monthly salary divided by 160                                     | 80%  |
| <b>Other Contributions</b>  |   |  |
| Shorter payment periods   | Percentage of invoiced amount                                     | Percentage being 15 days less the number of days from invoice to payment     |

**ANNEXE 600(B)**

A: Qualifying Contributions are measurable *on the following basis:*

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

Where

**A** is the score achieved in respect of the Qualifying Contributions made by the Measured Entity

**B** is the value of all Qualifying Contributions made by the Measured Entity measured from the commencement of this statement or the Inception Date to the date of measurement

**C** is compliance target in respect of the Qualifying Contributions as specified in the scorecard for statement 600

**D** is the Weighting points allocated to the criteria under the scorecard for statement 600



## CODE SERIES 700: MEASUREMENT OF THE SOCIO-ECONOMIC DEVELOPMENT ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 700: THE GENERAL PRINCIPLES FOR MEASURING THE SOCIO - ECONOMIC DEVELOPMENT ELEMENT

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

#### Arrangement of this statement

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| 3           | Key Measurement Principles                              | 2           |
| 4           | Measurement of Socio-Economic Development Contributions | 4           |
| 5           | The Benefit Factor Matrix                               | 4           |
| 6           | Annexe 700(A)   | 5           |
| 7           | Annexe 700(B)   | 6           |

## 1 Objectives of this Statement

The objectives of this statement are to specify

- 1.1 the Socio-Economic Development (SED) and Sector Specific Contributions scorecard;
- 1.2 the key measurement principles applicable when calculating Socio-Economic Development Contributions; and
- 1.3 the formula for calculating the individual criteria specified in the SED scorecard.

## 2 The SED Scorecard

2.1. The NPAT or average target applies unless:

2.1.1 the company does not make a profit last year or on average over the last five years

2.1.2 the net profit margin is less than a quarter of the norm in the industry.

2.2 If the Turnover is to be used, the target will be set at:

2.2.1  $1\% \text{ Indicative Profit Margin (NPAT/Turnover) } \times \text{ Turnover}$

2.2.2 Indicative profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm.

2.3 The following table represents the criteria and method used for deriving a score for Socio-Economic Development under this statement

| Criteria  | Weighting Points | Compliance Target |
|---|------------------|-------------------|
| Average annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target | 5                | 1% of NPAT        |

2.4 The weighting points in the SED scorecard represent the maximum number of points possible for each of the criteria.

## 3 Key Measurement Principles

3.1 General principles.

3.1.1 Measured Entities receive recognition for any Socio-Economic Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.

3.1.2 Socio-Economic Development Contributions of any Measured Entity are recognisable cumulatively.

3.1.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date), until the date of measurement

3.1.2.2 The inception date chosen by the Measured Entity must not be earlier than 5 years before the commencement date of this statement, but binds the Measured Entity for the duration of this statement

- 3.1.2.3 No portion of the value of any Socio-Economic Development contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement
- 3.2 Socio-Economic Development Contributions.
- 3.2.1 Socio-Economic Development Contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by a Measured Entity with the specific objective of facilitating sustainable access to the economy for those beneficiaries.
- 3.2.2 The full value of Socio-Economic Development Contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people.
- 3.2.3 If less than 75% of the full value of Socio-Economic Development Contributions directly benefits black people, the value of the contribution made multiplied by the percentage that benefits black people, is recognisable.
- 3.2.4 The following is a non-exhaustive list of Socio-Economic Development Contributions
- 3.2.4.1 grant Contributions to beneficiaries of Socio-Economic Development Contributions.
- 3.2.4.2 guarantees given or security provided for beneficiaries;
- 3.2.4.3 direct costs incurred by a Measured Entity in assisting beneficiaries;
- 3.2.4.4 overhead costs of a Measured Entity directly attributable to Socio-Economic Development Contributions
- 3.2.4.5 developmental capital advanced to beneficiary communities;
- 3.2.4.6 preferential terms granted by a Measured Entity for its supply of goods or services to beneficiary communities;
- 3.2.4.7 payments made by the Measured Entity to third parties to perform socio-economic development on the Measured Entity's behalf,
- 3.2.4.8 subject to paragraph 3.2.5.1, provision of training or mentoring to beneficiary communities which will assist them to increase their financial capacity; and
- 3.2.4.9 subject to paragraph 3.2.5.2, the maintenance by the Measured Entity of a socio-economic development unit which focuses only on support of beneficiaries and beneficiary communities
- 3.2.5 providing training or mentoring to beneficiary communities by a Measured Entity (Such contributions are measurable by quantifying the cost of time (excluding travel or commuting time) spent by staff or management of the Measured Entity in carrying out such initiatives. A clear justification must support any claim for time costs incurred, commensurate with the seniority and expertise of the trainer or mentor)
- 3.2.6 Maintaining a socio-economic development unit by the Measured Entity (Only that portion of salaries and wages attributable to time spent by the staff in, and the other expenses related to, promoting and implementing socio-economic development constitute contributions.)
- 3.2.7 Payments made by the Measured Entity to third parties to perform socio-economic development on the Measured Entity's behalf

#### **4 Measurement of Socio-Economic Development Contributions**

Socio-Economic Development Contributions are measurable using the formula in Annexe 700 (B).

#### **5 The Benefit Factor Matrix**

The Minister may from time to time, by notice in the gazette, revise or substitute the Benefit Factor Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity in respect of the first 12-month period following the gazetting of a revision or substitution.



## Annexe 700(A) - Benefit Factor Matrix

| Qualifying Contribution type  | Contribution Amount   | Benefit Factor |
|---|---|----------------|
| <b>Grant and Related Contributions</b>  |   |                |
| Grant Contribution  | Full Grant Amount   | 100%           |
| Direct Cost incurred in supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions   | Verifiable Cost (including both monetary and non-monetary)        | 100%           |
| Discounts in addition to normal business practices supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions  | Discount Amount (in addition to normal business discount)         | 100%           |
| Overhead Costs incurred in supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions  | Verifiable Costs (including both monetary and non-monetary)       | 80%            |
| <b>Contributions made in the form of human resource capacity</b>  |   |                |
| Professional services rendered at no cost supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions   | Commercial hourly rate of professional                            | 80%            |
| Professional services rendered at a discount supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions  | Value of discount based on commercial hourly rate of professional | 80%            |
| Time of employees of Measured Entity productively deployed in assisting beneficiaries and supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions | Monthly salary divided by 160                                     | 80%            |

## ANNEXE 700(B)

A: SED Contributions are measurable on the following basis:

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

Where

**A** is the score achieved in respect of the SED Contributions made by the Measured Entity

**B** is the value of all SED Contributions made by the Measured Entity measured from the commencement of this statement or the inception Date to the date of measurement

**C** is compliance target in respect of the SED Contributions as specified in the scorecard for statement 700 (see paragraph 2.1)

**D** is the Weighting points allocated to the measured enterprise development criteria under the scorecard for statement 700 (5)



## CODE SERIES 800: CODES OF GOOD PRACTICE FOR QUALIFYING SMALL ENTERPRISES (QSE'S)

ISSUED UNDER SECTION 9 OF THE BROAD-BASED BLACK ECONOMIC  
EMPOWERMENT ACT OF 2003

### Arrangement of this statement

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# 1 STATEMENT 800: THE FRAMEWORK FOR THE QSE SCORECARD AND EXEMPTED MICRO-ENTERPRISES

## 1.1 Objectives of this statement

1.1.1 The objectives of this statement are to:

1.1.1.1 specify the Elements of B-BBEE measurable under the Qualifying Small Enterprise (QSE) Scorecard:

1.1.1.2 specify the QSE Scorecard:

1.1.1.3 specify the principles in the Generic Statements (100 - 700) applicable to Qualifying Small Enterprises.

## 1.2 Eligibility as a QSE

2.1.1 Any enterprise with an annual Total Revenue of between R5million and R35million qualifies as a QSE, if its qualification does not result from circumvention of the codes.

## 1.3 The QSE Scorecard

1.3.1 The following table represents the QSE Scorecard and contains the Elements of the scorecard and the Weightings for each element:

| Element                                  | Weighting | Code Series 800 |
|--|-----------|-----------------|
| Framework                                |           | 800             |
| Ownership                                | 25 points | 801             |
| Management control                       | 25 points | 802             |
| Employment equity                        | 25 points | 803             |
| Skills development                       | 25 points | 804             |
| Preferential procurement                 | 25 points | 805             |
| Enterprise Development                   | 25 points | 806             |
| Socio Economic Development Contributions | 25 points | 807             |

1.3.2 A QSE must select any four of the seven Elements of B-BBEE for the purposes of measurement under the QSE Scorecard. If a QSE does not make a selection, its four best element scores will be used for the purposes of measurement.

1.3.3 A QSE will be scored in proportion to the extent that it meets the compliance targets for those four elements.

1.3.4 The Weighting points in respect of any element in the scorecard represent the maximum number of points possible for each of the criteria,

1.3.5 Wherever a Standard Valuation Method applies to measuring an indicator, the same standard should apply, as far as reasonably possible, in all other applicable calculations in this statement.

1.3.6 The Adjusted Recognition for Gender must be used for the purposes of calculating the Employment Equity Skills Development and Management Control element of the QSE scorecard.

1.3.7 The B-BBEE compliance of a QSE must be determined in accordance with code 000.



- 1 3 8 Any matter concerning the application of the QSE scorecard that is not dealt with explicitly in this scorecard must be dealt with in terms of codes 100-700.

## 1.4 Transitional period

- 1 4 1 For the first year after the commencement of this statement, a Measured Entity may elect to use -
- 1 4 1 1 the QSE Scorecard, or,
- 1 4 2 The transitional Scorecard
- 1 4 2 Thereafter, all BEE compliance measurement under the Codes for QSEs is subject to the use of the QSE Scorecard or, if applicable, a Sector Code.
- 1 4 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;

$$A = B \times 1.18$$

Where

**A** is the indicative BEE Status during the transitional period

**B** is the total score achieved under Code series 801 and 802

## 2 STATEMENT 801: OWNERSHIP FOR QSEs

### 2.1 The QSE 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 |
|---------------------------|--|------------------|-------------------|
| 2.1.1 Voting rights:      |  |                  |                   |
| 2.1.1.1                   | Exercisable Voting Rights in the Enterprise in the hands of black people   | 6                | 25%+1 vote        |
| 2.1.2 Economic Interest:  |  |                  |                   |
| 2.1.2.1                   | Economic Interest of black people in the Enterprise  | 9                | 25%               |
| 2.1.3 Realisation points: |  |                  |                   |
| 2.1.3.1                   | Ownership fulfilment   | 1                |                   |
| 2.1.3.2                   | Net Value  | 9                |                   |
| 2.1.4 Bonus points        |  |                  |                   |
| 2.1.4.1                   | Involvement in the ownership of the Enterprise by black women  | 2                | 10%               |
| 2.1.4.2                   | Involvement in the ownership of the Enterprise by black Participants in Employee Ownership Schemes, Co-operatives or Broad-Based Ownership Schemes | 1                | 10%               |

### 2.2 Key measurement principles

#### 2.2.1 General principles

- 2.2.1.1 An Enterprise receives points for participation by black people in its rights of ownership, using the QSE ownership scorecard. Black people may hold their rights of ownership in a Measured Enterprise as direct Participants or as Participants through a business such as

- a company with shares;
- a close corporation;
- a co-operative;
- any form of juristic person recognised under South African law,
- a partnership or other association of natural persons,
- an Employee Share Ownership Scheme;
- a Broad-Based Ownership Scheme. and
- a trust.

## 2.3 Realisation Points

### 2.3.1 Ownership Fulfilment occurs'

2.3.1.1 on the release of all black Participants in a Measured Enterprise from all third-party rights; or

2.3.1.2 if black Participants have never been subject to any third-party rights.

2.3.1.3 A minimum score of 7 points for Net Value is a requirement for the award of the Ownership Fulfilment point

## 2.4 The bonus points

2.4.1 A Measured Enterprise with 25% black Economic Interest, can receive a maximum of 2 bonus points for a 10% holding of Economic Interest by black women.

2.4.2 A Measured Enterprise with 25% black Economic Interest, can receive a maximum of 1 bonus point for a 10% holding of Economic Interest by black Participants in:

2.4.1.1 Employee Share Ownership Schemes;

2.4.1.2 Co-operatives; or

2.4.1.3 Broad-Based Ownership Schemes.

2.4.3 A Qualifying Small Enterprise *may* benefit from any of the other statements in the Code series 100. When electing to benefit from any of those statements, the provisions of those statements apply to the Qualifying Small Enterprise.

2.4.4 The Qualifying Small Enterprise Ownership Scorecard remains applicable to Qualifying Small Enterprise even if they benefit from other statements in the Code series 100.

2.4.5 Any interpretation or calculation of a QSE's score for ownership must be made in accordance with statement 100.

2.4.6 Without limiting the generality of the preceding clause, the following matters dealt with in code 100 apply expressly to QSEs -

### 2.4.6.1 The Flow-Through Principle

- Specific rules on certain types of enterprises (Broad-Based Ownership Schemes: Employee Share Ownership Schemes and Trusts).



### 3 STATEMENT 802: MANAGEMENT CONTROL FOR QSEs

#### 3.1 THE QSE Management control scorecard

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

| Management control criteria                                | Weighting points | Compliance Target |
|--|------------------|-------------------|
| Black representation at Top-Management level.              | 25               | 50.1%             |
| Bonus Points: Black women representation as Top-Management | 2                | 25%               |

#### 3.2 Key measurement principles

3.2.1 A Measured Entity receives points in proportion to the extent that it meets the targets for participation of **black** people and black women at Top-Management level.

#### 3.3 Common examples of Top Management

The inclusion of the following examples of Top Management is for guidance purposes only:

- 3.3.1 Senior Top Management positions include the chief executive officer, the chief operating officer, the chief financial officer and other people holding similar positions.
- 3.3.2 Other Top Management positions include the chief information officer, the head of marketing, the head of sales, the head of public relations, the head of transformation, ~~the~~ head of human resources and other people holding similar positions.

### 4 STATEMENT 803: EMPLOYMENT EQUITY FOR QSE's

#### 4.2 THE QSE Employment Equity scorecard

4.1.1 The following table represents the criteria used for deriving a score for employment equity under this statement:

| Criteria   | Weighting points | Compliance targets |             |
|--|------------------|--------------------|-------------|
|  |                  | Years 0 - 5        | Years 6 -10 |
| Black employees of the Measured Entity who are Management as a percentage of all Management adjusted using the Adjusted Recognition for Gender | 15               | 40%                | 60%         |
| Black employees of the Measured Entity as a percentage of all employees adjusted using the Adjusted Recognition for Gender                     | 10               | 60%                | 70%         |
| Bonus point for meeting or exceeding the EAP targets in each category above  | 2                |                    |             |

#### 4.2 Key measurement principles

- 4.2.1 A Measured Entity receives points in proportion to the extent that it meets the targets for participation of **black** people and black women at Management level.
- 4.2.2 Wherever possible, a Measured Entity must use the data that it files with the Department of Labour under the Employment Equity Act in calculating its score under the employment equity scorecard.

- 4.2.3 No Measured Entity shall receive any points under the Employment Equity Scorecard unless they have achieved a sub-minimum of 40% of each of the targets set out on the Employment Equity Scorecard in respect of the both five year periods.
- 4.2.4 In order for a measured entity to achieve bonus points at a particular level, the entity needs to meet or exceed the EAP targets.
- 4.2.5 A Measured Entity exempt from filing returns must compile its data for calculating its score under the Employment Equity Scorecard using the guidelines set out in the Employment Equity Act and its EE Regulations.
- 4.2.6 Black women employees in each Measurement Category qualify for enhanced recognition using the Adjusted Recognition for Gender.

### 4.3 Calculating the Adjusted Recognition for Gender

The calculation of the Adjusted Recognition for Gender is as follows:

$$A = \frac{B}{2} + C$$

C is limited to a maximum of 50% of the target

Where

A is the Adjusted Recognition for Gender

B is the percentage of employees in the measurement category that are black people

C is the percentage of employees in the measurement category that are black women

## 5 STATEMENT 804: SKILLS DEVELOPMENT FOR QSE's

### 5.1 The QSE Skills Development Scorecard

- 5.1.1 The following table represents the criteria used for deriving a score for skills development under this statement:

| Skills Development Element  | Weighting points | Compliance Target |
|---|------------------|-------------------|
| Adjusted skills development spend on learning programmes for black employees as a percentage of leviable amount | 25               | 2%                |

### 5.2 Key measurement principles

- 5.2.1 Any Skills Development Spend by a Measured Entity that is an ABET programme is recognisable at a multiple of 1.25 to the actual value of such Skills Development Spend.
- 5.2.2 Skills Development Spend includes any legitimate expenses incurred for any Learning Programme offered by a Measured Entity to its employees evidenced by an invoice or appropriate internal accounting record





5.2.3 Legitimate training expenses include.

5.2.3.1 costs of training materials,

5.2.3.2 costs of trainers including, where appropriate, the opportunity cost of internal trainers;

5.2.3.3 costs of training facilities including costs of catering,

5.2.3.4 scholarships and bursaries,

5.2.3.5 course fees;

5.2.3.6 accommodation and travel and

5.2.3.7 administration costs such as organization of training including, where appropriate, the cost to the Measured Entity of employing a skills development facilitator or a training manager

5.2.4 No portion of any salary or wage paid to any employee participating as a learner in any Learning Programme constitutes Skills Development Spend unless the Learning Programme is an In-service Training Programme

## 6 STATEMENT 805: PREFERENTIAL PROCUREMENT FOR QSE's

### 6.1 THE QSE Preferential Procurement Scorecard

The following table represents the criteria for deriving a score for preferential procurement under this statement.

| Criteria   | Weighting points | Compliance targets |              |
|--|------------------|--------------------|--------------|
|  |                  | Years 0 - 5        | Years 6 - 10 |
| BEE Procurement Spend from all Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend | 25               | 40%                | 50%          |

### 6.2 Key Measurement Principles

6.2.1 All procurement of goods and services by the Measured Entity, other than such portion specifically excluded in this statement, is measurable in calculating Total Measured Procurement Spend of the Measured Entity

6.2.2 Where a Measured Entity can show that it procures goods and services from a Supplier that is also:

6.2.2.1 a recipient of enterprise development contributions from the Measured Entity under Code series 600, the BEE Procurement Spend attributable to that Supplier multiplied by a factor of 1.2 is recognisable; and

6.2.2.2 a Value-Adding Supplier, the BEE Procurement Spend attributable to that Supplier multiplied by a factor of 1.25 is recognisable,

6.2.3 Measured Entities are expected to pursue compliance with this statement in respect of all areas of procurement

- 6 2.4 Total Measured Procurement Spend of a Measured Entity and the Exclusions from Total Measured Procurement Spend must be determined in accordance with Statement 500

## 7 STATEMENT 806: ENTERPRISE DEVELOPMENT FOR QSE's

### 7.1 THE QSE Enterprise Development (ED) scorecard

- 7 1.1 In calculating the compliance of a Measured Entity the following Net Profit After Tax (NPAT) target applies unless:

7 1.1.1 the company does not make a profit last year or on average over the last five years

7 1.1.2 the net profit margin is less than a quarter of the norm in the industry.

7.1.1.3 If the Turnover is to be used, the target will be set at:

- $2\% \times \text{Indicative Profit Margin (NPAT/Turnover)} \times \text{Turnover}$ .
- Indicative profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm.

7.1.2 The following table represents the criteria and method used for deriving a score for approved projects and enterprise development under this statement

| Criteria   | Weighting Points | Compliance Target |
|--|------------------|-------------------|
| Average annual value of all Qualifying Contributions made by the Measured Entity as a percentage of the target | 25               | 2% of MPAT        |

### 7.2 Key Measurement Principles

7.2.1 Measured Entities receive recognition for any Qualifying Contributions that are quantifiable as a monetary value using a Standard valuation method.

7 2.2 Qualifying Contributions of any Measured Entity are recognisable:

7.2.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date):

7.2.2.2 until the date of measurement.

7 2.3 No portion of the value of any Qualifying Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement

7.2.4 The recognition of Enterprise Development contributions must be determined in accordance with statement 600.

## 8 STATEMENT 807: SOCIO-ECONOMIC DEVELOPMENT CONTRIBUTIONS FOR QSE's

### 8.1 The QSE Socio-economic Development (SED) Scorecard

8.1.1 In calculating the compliance of a Measured Entity the following Net Profit After Tax (NPAT) target applies unless

8.1.1.1 the company does not make a profit last year or on average over the last five years

8.1.1.2 the net profit margin is less than a quarter of the norm in the industry.

8.1.2 If the Turnover is to be used, the target will be set at'

8.1.2.1  $1\% \times \text{Indicative Profit Margin (NPAT/Turnover)} \times \text{Turnover}$ .

8.1.2 The following table represents the criteria and method used for deriving a score for socio-economic development under this statement

| Criteria  | Weighting Points | Compliance Target |
|---|------------------|-------------------|
| Average annual value of all Socio-Economic Development Contributions and Approved Socio-Economic Development Contributions made by the Measured Entity as a percentage of the target. | 25               | 1% of NPAT        |

### 8.2 Key Measurement Principles

8.2.1 Measured Entities receive recognition for any Qualifying Contributions that are quantifiable as a monetary value using a Standard Valuation Method.

8.2.2 Qualifying Contributions of any Measured Entity are recognisable;

8.2.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date);

8.2.2.2 until the date of measurement.

8.2.2.3 No portion of the value of any Qualifying Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement

8.2.3 Payments made by the Measured Entity to third parties to perform social development on the Measured Entity's behalf may constitute a SED Contribution.

8.2.4 The recognition of SED Contributions must be determined in accordance with code 700.

8.2.5 Sector Specific Contributions:

8.2.6 Sector Specific Contributions are recognised on the basis set forth in the Sector Code governing them.

# BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT

## SECTION 9(1) CODES OF GOOD PRACTICE

### SCHEDULE 1

#### INTERPRETATION AND DEFINITIONS

##### Part 1 Interpretation

The Codes of Good Practice shall be interpreted according to the following provisions unless the context requires a different meaning:

1. In interpreting the provisions of the Codes any reasonable interpretation consistent with the objectives of the Act and the BEE Strategy must take precedence
2. Words importing persons shall where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisation having legal capacity.
3. The Schedules and Annexes to the Codes are an integral part of the Codes and a reference to the Codes includes a reference to the Schedules

##### Part 2 Definitions

In these Codes unless the context otherwise requires:

|                          |  |
|--------------------------|--|
| "ABET"                   | means Adult Basic Education and Training as determined by the National Qualifications Authority;   |
| "Accreditation Body"     | means the South African National Accreditation System or any other Entity appointed by the Minister from time to time.<br>a. accrediting Verification Agencies; and<br>b. developing, maintaining and enforcing the Verification Standards;  |
| "Acquisition debt"       | means the debts of:<br>(a) black participants incurred in financing their purchase of their equity instruments in the Measured Entity; and<br>(b) juristic persons or trusts found in the chain of ownership between the eventual black Participants and the Measured Entity but excluding debts incurred by the Measured Entity for the same purpose as those in (a); |
| "Associated Enterprise"  | means an Entity with which a Seller has concluded a Qualifying Transaction;  |
| "B-BBEE"                 | means Broad-Based Black Economic Empowerment;  |
| "BEE controlled company" | means a juristic person, having share holding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is more than 50% of the total such rights measured using the Flow Through Principle;  |
| "BEE owned company"      | means juristic person, having share holding or similar members interest, that is BEE controlled, in which black participants enjoy a right to Economic interest that is more than 50% of the total such rights measured using the Flow Through Principle;  |



|                                       |  |
|---------------------------------------|--|
| 'BEE Procurement Recognition Level'   | <p>means the percentage BEE Procurement Recognition Levels as determined:</p> <p>(a) for Enterprises that are neither Qualifying Small Enterprises nor Exempted Micro-Enterprises, using statement 000;</p> <p>(b) for Qualifying Small Enterprises, using statement 800; and</p> <p>(c) for Exempted Micro-Enterprises, a deemed BEE Procurement Recognition of 100% and BEE Status of Level 4 Contributor under statement 800;</p>   |
| 'BEE Status'                          | <p>means the BEE status of a beneficiary of Enterprise Development Contributions as determined under:</p> <p>(a) Statement 800 for Qualifying Small Enterprises and Exempted Micro Enterprises, and</p> <p>(b) Statement 000 for all other Enterprises;</p>  |
| 'Benefit Factor'                      | means a factor specified in the Benefit Factor Matrix applicable to fixing the monetary value of Enterprise Development and Socio Economic Development Contributions claimable under statement 600, 700, 806 and 807.  |
| 'Benefit Factor Matrix'               | means the Benefit Factor Matrix for Enterprise Development and Socio Economic Development Contributions annexed to statement 600, 700, 806 and 807;  |
| 'Black designated groups'             | <p>(a) means unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;</p> <p>(b) Black people who are youth as defined in the National Youth Commission Act of 1996;</p> <p>(c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act,</p> <p>(d) Black people living in rural and under-developed areas</p>   |
| 'Black new entrants'                  | means black participants who hold rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, have not held equity instruments in any other Entity which has a total value of more than R20,000,000,000, measured using a standard valuation method;  |
| 'Black people'                        | <p>has the meaning defined in the Act qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent: or are citizens of the republic of South Africa by naturalisation</p> <p>(a) occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993, or</p> <p>(a) occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalisation before then:</p>   |
| 'Broad-Based Ownership Scheme'        | means a ownership scheme which meets the rules set out in Annexure 100B;   |
| 'Black Professional Service Provider' | means Black individuals who provide services of a professional nature.   |
| 'Certified Learning Programme'        | <p>means any Learning Programme for which the Measured Entity has.</p> <p>(a) any form of independent written certification as referred to in the "Learning Achievements" column of the Learning Programmes Matrix: or if it does not have such certification</p> <p>(b) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in statement 400 and 804 confirming the employee has.</p> <p>(i) enrolled for, is attending and is making satisfactory progress in the Learning Programme; or</p> <p>(ii) enrolled for but not attended the Learning; or</p> <p>(iii) attended the Training Programme but has failed an evaluation of their learning progress:</p> |

|  |   |
|--|---|
| "Companies Act"                        | means the Companies Act 61 of 1973 as amended or substituted;   |
| "Company limited by guarantee"         | means a company as referred to in section 19(1)(b) of the Companies Act;  |
| "Competent person"                     | means a person who has acquired through training, qualification and experience the knowledge and skills necessary for undertaking any task assigned to them under the codes;  |
| "Core Skills"                          | means skills that are: <ul style="list-style-type: none"> <li>(a) value-adding to the activities of the Measured Entity in line with its core business;</li> <li>(b) in areas the Measured Entity cannot outsource; or</li> <li>(c) within the production/operational part of the Measured Entity's value-chain: as opposed to the supply side: services or downstream operations;</li> </ul>   |
| "Critical Skills"                      | means those skills identified as being critical by any SETA;  |
| "Disabled Employees"                   | has the meaning defined in the Code of Good Practice on Key Aspects of Disability in the Workplace issued under section 54 of the Employment Equity Act;  |
| "EAP"                                  | Economically Active Population as determined and published by Stats SA. The operative EAP for the purposes of any calculation under the Codes will be the most recently published EAP;  |
| "Economic interest"                    | means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through and, where applicable, the Modified Through Principles;   |
| "EE Act"                               | means the Employment Equity Act of 1998, as amended;  |
| "EE Regulations"                       | means the regulations under the Employment Equity Act   |
| "Elements"                             | means the measurable quantitative or qualitative elements of BEE compliance in the Generic Scorecard and the Primary Codes;   |
| "Employee"                             | bears the meaning as defined in the Labour Relations Act 66 of 1995 as amended;   |
| "Employee Ownership Scheme"            | means a worker or employee scheme;  |
| "Entrepreneur"                         | means a person who starts and / or operates a business which includes identifying opportunities in the market, taking risks with a view of being rewarded with profits;   |
| "Entity"                               | means a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa;  |
| "Enterprise Development Contributions" | means monetary or non-monetary contributions carried out for the following beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries: <ul style="list-style-type: none"> <li>(a) Category A Enterprise Development Contributions involves Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black women owned;</li> <li>(b) Category B Enterprise Development Contributions involves Enterprise Development Contributions to any other Entity that is 50% black owned or black women owned; or 25% black owned or black women owned with a BEE status of between Level One and Level Six;</li> </ul> |
| "Equity Equivalent contribution"       | means an equity equivalent contribution made by a Multinational under an Equity Equivalent Programme;   |
| "Equity Equivalent Programme"          | means a public programme or scheme of any government department, provincial or local government in the Republic of South Africa or any other programme approved by the Minister as an Equity Equivalent Programme;  |
| "Equity instrument"                    | means the instrument by which a Participant holds rights of ownership in an Enterprise;   |
| "Equivalency Percentage"               | means a percentage ownership performance for all the indicators in the Associated Enterprise's Ownership Scorecard arising from a Qualifying Transaction included in the Ownership Scorecard of the beneficiary entity;   |





|   |   |
|---|---|
| "Executive Members of the Board"          | means those members of the Board who are executive directors as defined in the King Report;   |
| "Exercisable Voting Right"                | means a voting right of a Participant that is not subject to any limit.   |
| "Exempted Micro Enterprises"              | means an Entity with an annual turnover of less than R 5 (five) million;  |
| "Global Practice"                         | means a globally and uniformly applied practice of a Multinational, restricting alienation of equity in or the sale of businesses in its regional operations. The practice must have existed before the promulgation of the Act;  |
| "Grant Contribution"                      | means the monetary value of Qualifying Contributions made by the Measured Entity to a beneficiary in the form of grants, donations, discounts and other similar quantifiable benefits which are not recoverable by the Measured Entity;   |
| "Higher Education Institution"            | means a higher education institution as defined under the Higher Education Act of 1997;   |
| "Inception date"                          | means a date specified by a Measured Entity as being the date from which its contributions are measurable before the commencement date of statement 600, 700, 806 and 807;  |
| "Independent Non-Executive Board Members" | means those members of the Board that are independent directors as defined in the King Report;  |
| "Indicator Percentage"                    | means the percentage compliance of the Associated Entity for all the indicators of the Associated Enterprises ownership Scorecard. The calculation of indicator Percentages follows the rules in statement 100 using the actual percentage compliance for each indicator and not the resulting scores;  |
| "King Report"                             | means the King Report on Corporate Governance for South Africa 2002 by the King Committee on Corporate Governance of the Institute of Directors in Southern Africa;   |
| "Learning Programmes"                     | means any learning programme set out in the Learning Programme Matrix   |
| "Learning Programme Matrix"               | means the Learning Programme Matrix annexed as Annexure "400A" 804(A) in statement 400 and 804,   |
| "Leviable Amount"                         | bears the meaning as defined in the Skills Development Levies Act of 1999 as determined using the Fourth Schedule to the Income Tax Act;  |
| "Management Fees"                         | means the total Economic Interest received by a Broad-Based Ownership Scheme in any year less the amounts distributed or applied to beneficiaries and the amounts reserved for future distribution or application.  |
| "Mandated investments"                    | means any investments made by or through any third party regulated by legislation on behalf of the actual owner of the funds, pursuant to a mandate given by the owner to a third party, which mandate is governed by that legislation. Some examples of domestic mandated investments and the portions of those investments subject to the exclusion principle are contained in Annexure 100A attached to statement 100, |
| "Measured Entity"                         | means an Entity as well as an organ of state or public entity subject to measurement under the Codes,   |
| "50% black owned"                         | means an Entity in which.<br>(a) black people hold more than 50% of the exercisable voting rights as determined under Code series 100<br>(b) black people hold more than 50% of the economic interest as determined under Code series 100; and<br>(c) has earned all the points for Net Value under statement 100;  |
| "50% black women owned"                   | means an Entity in which<br>(a) black women hold more than 50% of the exercisable voting rights as determined under Code series 100;<br>(b) black women hold more than 50% of the economic interest as determined under Code series 100; and<br>(c) has earned all the points for Net Value under statement 100;  |

|  |  |
|--|--|
| "30% black women owned"                    | means an Entity in which:<br>(d) black women hold more than 30% of the exercisable voting rights as determined under Code series 100;<br>(e) black women hold more than 30% of the economic interest as determined under Code series 100; and<br>(f) has earned all the points for Net Value under statement 100;  |
| "Multinational Business"                   | means a Measured Entity with a business in the Republic of South Africa and elsewhere which maintains its international headquarters outside the Republic;   |
| "National Skills Development Strategy"     | means the national skills development strategy referred to in section 5(1)(a)(ii) of the Skills Development Act;   |
| "Net Profit After Tax"                     | means the operating profit of a measured entity after tax. It incorporates both the equity / loss figures and abnormal items, but excludes extraordinary items as determined by (GAAP) Generally Accepted Accounting Practices;  |
| "Net Profit Before Tax"                    | means the operating profit of a measured entity before tax. It incorporates both the equity / loss figures and abnormal items, but excludes extraordinary items as determined by (GAAP) Generally Accepted Accounting Practices;   |
| "Net Value"                                | means the percentage resulting from the formula in Annex 100(C) of statement 100;  |
| "Net-value date"                           | means the later occurring of the date of commencement of statement 100 and the date upon which the earliest of all still operative transactions undertaken by the Measured Entity Measured Entities in order to achieve black rights of ownership, became effective and unconditional;   |
| "Non-profit Organisation"                  | means a non-profit organisation registered under the Non-Profit Organisation Act of 1997;  |
| "Outsourced Labour Expenditure"            | means any expenditure incurred in:<br>(a) procuring the services of or from a labour broker; and<br>(b) procuring the services of any person who receives any remuneration or to whom any remuneration accrues because of any services rendered by such person to or on behalf of a labour broker;   |
| "Ownership Fulfilment"                     | has the same meaning as referred to in the ownership scorecard in statement 100;   |
| "Participant"                              | means a natural person holding rights of ownership in a Measured Entity;   |
| "Priority Skills"                          | means Core, Critical and Scarce Skills as well as any skills specifically identified:<br>(a) in a Sector Skills Plan issued by the Department of Labour of the Republic of South Africa; and<br>(b) by the Joint Initiative for Priority Skills Acquisition (JIPSA) established as part of the Accelerated and Shared Growth Initiative - South Africa (ASGISA);   |
| "Private equity fund"                      | means a third party fund through which investments are made on behalf of the actual owner of the funds pursuant to a mandate given by that person to the private equity fund;  |
| "Public Benefit Organisation"              | means an entity as defined in section 30 of the Income Tax Act of 1962;  |
| "QSE"                                      | means a Qualifying Small Entity that qualifies for measurement under the qualifying small Entity scorecard with a turnover of between R5 and R35 million; "Qualifying Enterprise Development Contributions" is a collective term describing Category A and B Enterprise Development Contributions and in particular Enterprise Development Contributions targeting black owned EME's and QSE's, and black youth in rural, and underdeveloped areas in statement 600; |
| "Socio-Economic Development Contributions" | is a collective term for Socio-Economic development programmes and contributions, approved Socio-Economic development programmes and sector specific programmes;   |



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| Approved Socio-economic development contributions | means monetary or non-monetary contributions carried out for the benefit of any projects approved for this purpose by any organ of state or sectors including without limitation:<br><br>(a) projects focusing on environmental conservation, awareness, education and waste management; and<br><br>(b) projects targeting infrastructural development, enterprise creation or reconstruction in underdeveloped areas: rural communities or geographic areas identified in the government's integrated sustainable rural development or urban renewal programmes,  |
| "Qualifying Transaction"                          | means a sale of a business, valuable business assets or shares that results in the creation of sustainable business opportunities and transfer of specialised skills or productive capacity for black people;  |
| "Realisation Points"                              | means the Ownership Fulfilment point added to the Net Value points in the ownership scorecard.   |
| "Related Enterprise"                              | means an Entity controlled by a Measured Entity whether directly or indirectly controlled by the natural persons who have direct or indirect control over that Measured Entity or the immediate family of those natural persons;   |
| "Rights of ownership"                             | is a collective term for the right to Economic Interest and the right to Exercisable Voting Rights;  |
| "Scarce Skills"                                   | are those skills identified as being scarce by any SETA  |
| "Section 21 Company"                              | means an association not for gain incorporated under section 21 of the Companies Act;  |
| "Sector Code"                                     | means a code in statement 003 which is applicable to a particular sector;  |
| "Sector Specific Programmes"                      | means Sector Specific Programmes that are recognised on the bases set forth in the sector code governing them.   |
| "Seller"  | means the Entity or the person concluding a Qualifying Transaction with the Associated Enterprise.   |
| "Senior Top Management"                           | means employees of a Measured Entity who are:<br><br>(a) members of the occupation category of "Top Management" as determined using the EE Regulations as qualified in a Sector Code;<br><br>(b) appointed by or on the authority of the Board to undertake the day-to-day management of that Measured Entity and who:<br><br>(i) have individual responsibility for the overall management and for the financial management of that Measured Entity; and<br><br>(ii) actively involved in developing and implementing the Measured Entity's overall strategy;   |
| "Skills Development Expenditure"                  | comprises the money that a Measured Entity spends on skills development. It excludes the skills development levy payable by the Measured Entity under the Skills Development Levies Act  |
| "Socio-Economic Development Programmes"           | (a) Socio-Economic Development Programmes commonly take the following forms:<br><br>(b) development programmes for women, youth, people with disabilities, people living in rural areas;<br><br>(c) support of healthcare and HIV/AIDS programmes,<br><br>(d) support for education programmes, resources and materials at primary, secondary and tertiary education level, as well as bursaries and scholarships.<br><br>(e) community training, skills development for unemployed people and adult basic education and training, or<br><br>support of arts, cultural or sporting development programmes; |
| "Standard valuation method"                       | means a standard valuation method for an asset, an Economic Interest, or any other instrument or right relevant to measurement under statement 100, undertaken using normal valuation methods that represent standard market practice;   |
| "Start-up enterprise"                             | means a recently formed or incorporated Entity that has been in operation for less than 1 year. A start-up enterprise does not include any newly constituted enterprise which merely a continuation of a pre-existing enterprise.  |

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| "Subsidiary"                        | has the meaning defined in section 1(3) of the Companies Act;   |
| "Superior Contributor to BEE"       | is a Level One to Level Four Contributor to BEE;  |
| "Supplier"                          | means any supplier or service provider to a Measured Entity if any portion of the supply or service provision falls within the definition of Total Measured Procurement Spend;  |
| "Target"                            | means the targets for the various Elements in the Generic and QSE Scorecard;  |
| "the Act"                           | means the Broad-Based Black Economic Empowerment Act 53 of 2003;  |
| "the Codes"                         | means the Codes of Good Practice including all the statements as issued under section 9 of the Act;   |
| "the Generic Scorecard"             | means the balanced BEE scorecard as contained in statement 100;   |
| "the PFMA"                          | means the Public Finance Management Act 1 of 1999 as amended;   |
| "the QSE Scorecard"                 | means the QSE scorecard referred to in statement 800;   |
| "the Skills Development Act"        | means the Skills Development Act of 1998;   |
| "the Skills Development Levies Act" | means the Skills Development Levies Act of 1999;  |
| "the Strategy Document"             | means the document entitled "South Africa's Economic Transformation - A Strategy for Broad-Based Black Economic Empowerment" published by the department of trade and industry in March 2003 as amended or substituted under section 11 of the Act;   |
| "Third Party Rights"                | means third party legal or commercial rights that restrict withhold or defer any benefit associated with ownership of any Equity Instrument. Third party rights include only those rights:<br><br>(a) created against a black Participant to secure, for a lender, repayment of a loan advanced to that Participant for financing their purchase of their equity instrument in the Measured Entity;<br><br>(b) held against a juristic person or trust that is in the chain of ownership between the Measured Entity and that the eventual black Participant serving the same purpose mentioned in (a) above; |
| "Top Manager"                       | means employees of a Measured Entity who hold rights of ownership, serve on the Board, undertake the day to day management, have overall responsibility for the overall financial management and are actively involved in developing and implementing the overall strategy of the Measured Entity;  |
| "Total Labour Cost"                 | means the total amount of remuneration paid by an entity to its employees determined using section 3(4) of the Skills Development Levies Act of 1999 and the Fourth Schedule of the Income Tax Act of 1962;   |
| "Total revenue"                     | means the total income of an Entity from its operations as determined under South African Generally Accepted Accounting Practice;   |
| "Transformation Charters"           | means the sectoral transformation charters referred to in section 12 of the Act;  |
| "Uncertified Learning Programme"    | means any Learning Programme of the Measured Entity that is not a Certified Learning Programme;   |
| "Unincorporated Joint Venture"      | means a joint venture between two or more Measured Entities effected by agreement without incorporation;  |
| "Value-Adding Enterprise"           | means an Entity registered as a vendor under the Value-Added Tax of 1991, whose Net Profit Before Tax summed with its Total Labour Cost exceeds 25% of the value of its Total Revenue;  |
| "Voting Right"                      | means a voting right attaching to an Equity Instrument owned by or held for a participant measured using the Flow through Principle or the Control Principle;   |
| "Weighting"                         | means the weightings applied to various Elements in the Generic Scorecard;  |
| "Workplace Skills Plan"             | means the plan of a Measured Entity approved by the relevant SETA.  |

